



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: June 8, 2023  
Re: **Board of Adjustment Meeting – June 19, 2023**

**Applicants:**

You or a representative **MUST** attend the meeting to have the matter considered.

Members of the Board of Adjustment & staff will conduct a site visit, as noted on the agenda, prior to the meeting. The applicant or their representative **MUST** be present for this site visit.

**Neighbors:**

You are receiving this notice because your property is adjacent to an applicant on this month's agenda.

You may review applications & plans for the projects on this agenda at <http://www.biltmoreforest.org/board-of-adjustment>

You are invited to attend the scheduled meeting at the Town Hall and make comment when called upon.

Additional information regarding the meeting will be provided on the Town's website no later than June 15, 2023.

**\*\*\*PROPOSED AGENDA\*\*\***

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, June 19, 2023 at 4:00 p.m at the Biltmore Forest Town Hall at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

Remote viewing via Zoom at the link provided below.

1. The meeting will be called to order and roll call taken.
2. The minutes of the May 15, 2023 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 24 White Oak Road – Special Use permit request for fence installation in rear yard and variance request for intrusion into setback.**

Site Visit – 2:30 PM

**Case 2: 4 Fairway Place – Special Use permit request for wall construction and variance request for location within front yard setback.**

Site Visit – 2:50 PM

**Case 3: 13 Cedar Chine – Special Use permit request for fence installation and variance request for intrusion into rear yard setback.**

Site Visit – 3:15 PM

4. Adjourn

<https://us02web.zoom.us/j/82405586759?pwd=VlFaQ0JMUXFCaGRRYUNoTHVHU2tmZz09>

Meeting ID: 824 0558 6759

Passcode: 804985

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, MAY 15, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, May 15, 2023.

Mr. Greg Goosmann, Mr. Lowell Pearlman, Ms. Lynn Kieffer, Mr. Robert Chandler, Ms. Martha Barnes, and Ms. Rhoda Groce were present. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, Mr. Tony Williams, Town Planner, and Mr. Billy Clarke, Town Attorney were also present.

Chairman Goosmann called the meeting to order at 4:00 p.m.

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe

Mrs. Janet Whitworth

Mr. Phil Hardin

Mr. Con Dameron

Mr. Peter Stebbing

Mr. Jerome Douglas

Mr. Michael Silverman

Mr. Tom Gleason

Mrs. Cecilia Gleason

Mr. Harry Buckner

Mr. Wally Hachil

Mrs. Ann Skoglund

Mr. William Morrison

A motion was made by Mr. Robert Chandler to approve the minutes from March 20, 2023. Ms. Lynn Kieffer seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use permit request for an accessory structure in the rear yard at 25 Park Road. Ms. Martha Barnes shepherded the matter. This request is for a retaining wall and landscaping. Ms. Whitworth would like to add a two-foot-tall and forty feet long retaining wall to create an area for planting perennials. Incorporated into the wall is a natural stone. It will also have a water fountain bird bath. It will not be visible. The fountain is the same height as the wall. Mr. Phil Hardin said he is in support of the project but wanted to let Ms. Whitworth know about the utility line on the property. Ms. Whitworth said she will not be working anywhere near that area of the utility line and is aware of it.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer recited the facts and said Mr. Mark Whitney and Ms. Janet Whitworth are applying for a Special Use Permit for a retaining wall that will be two feet tall and forty feet long and include landscaping at 25 Park Road.

Ms. Lynn Kieffer moved that a Special Use Permit be granted to Janet Whitworth and Mark Whitney of 25 Park Road for a retaining wall and landscaping and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above

ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Groce seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is a Special Use Permit request for a swimming pool in the rear yard at 26 East Forest Road and a landscaping plan. Mr. Lowell Pearlman shepherded the matter. The pool will be within the setback. Mr. Pearlman verified the fence will not encroach within the setback. The fence will comply with state law. This was verified by Mr. Dameron. Ms. Barnes asked if the landscaping plans will be submitted before the dirt is dug. A landscaping plan will be provided before the pool is dug.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Jason and Jennifer Marks are applying for a Special Use Permit at 26 East Forest Road to accommodate a pool and a fence. The fence is required under state law. The original plans showed the fence within the setback requirements. They are amending it to accommodate that setback as a four-foot black wrought iron fence. They will return later with a landscaping plan.

Ms. Rhoda Groce moved a Special Use Permit be granted to Jason and Jennifer Marks of 26 East Forest Road for a swimming pool and a fence and the facts as recited by Lowell Pearlman and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. He further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The

applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Groce amended the motion to bring the information of the landscaping plan prior to the project being started. The motion was seconded by Ms. Lynn Kieffer and unanimously approved.

HEARING (Evidentiary):

The third matter is a for a Special Use Permit request for a rear yard fence and Variance request for encroachment into the side and rear yard setbacks at 24 White Oak Road. The matter is being shepherded by Ms. Rhoda Groce. Mr. Jerome Douglas said they would like to put a fence in their rear yard to have space for their dogs. There will be sufficient buffering for the neighbors. Ms. Groce asked if Mr. Douglas would be willing to buffer further if requested by neighboring property owners. Mr. Douglas said yes. The hardship could be the lot size since it is .39 acres. Mr. Kanipe pulled up the lot frontage which is eighty-seven feet and the current Ordinance requires one hundred feet. Mr. Douglas said he also would like to protect his dogs which he didn't think would be considered a hardship against the neighbors. Ms. Barnes said if he didn't build the fence in the setback and built fifteen feet in, what would the issue be. Mr. Douglas said there is no issue, but it would be a smaller space. Mr. Pearlman said the applicant did not bring up the hardship, but Ms. Kieffer did. Mr. Clarke said to get a variance, a hardship needs to be identified. Mr. Clarke said it sounds like the hardship is the size of the lot. Mr. Clarke said it would be easier if we had better measurements and showed a layout of the fence with the actual encroachment.

DELIBERATION AND DETERMINATION:

The matter was tabled until Mr. Douglas could get accurate measurement of the fence with the encroachment.

HEARING (Evidentiary):

The fourth matter is a Variance request for a retaining wall placement and landscaping plan review for a new home construction on lot 2 at Cedar Hill Road. Ms. Lynn Kieffer shepherded the matter. Mr. Silverman said the homeowners would like to have as much separation from the street as possible and maximize the amount of undisturbed area. This is the primary reason for having the retaining walls. There are three retaining walls. The average height of the entire 120-foot wall is less than 5 feet. The highest wall is right where it hits the home and the garage which is 6.5 feet. There will be evergreen plantings along the driveway on the base of the wall. The goal is to minimize destruction of trees. Ms. Kieffer addressed the free-standing wall. Mr. Silverman said the purpose is the garden is an intense garden/courtyard area. This wall height will not exceed six feet in height. Not counting the 120-foot retaining wall, there are three additional walls. Ms. Kieffer asked about the slope. Mr. Silverman said it's an average of 15%. This slope does create a hardship. The adjusted setback is due to the height of the house. The building height exceeds the maximum height. It does not exceed the maximum roof coverage. Ms. Barnes said the numbers have not been presented and neither has the landscaping plan. Mr. Pearlman said since the plans are not clearly presented, this issue needs to be properly presented to the Board.

Mr. Silverman said large native evergreen trees will be planted to screen from future neighbors. He also said he would present final landscaping plans, but he has never had to do this before. Ms. Barnes said if the detailed landscape plans were submitted for 2 Southwood, that landscape as installed does not meet the spirit of our tree ordinance. It is not in harmony with Biltmore Forest environs.

Chairman Goosmann asked for the height to be clarified. Mr. Buckner said it is the distance measured from the average ground level to the highest point. Someone needs to tell us where the ground level is. It varies because it is on a slope. The ground height of the home is a couple of inches too high and can be dropped to comply. Mr. Silverman will supply the updated plan and update the 25 foot barrier to show correct calculations and resubmit them to the Board. Given the

adjusted roof height of 26.9 feet, the revised side setback will be set to 25 feet. In addition, a hard copy will be submitted with each of those numbers by Mr. Silverman.

DELIBERATION AND DETERMINATION:

Ms. Kieffer restated the facts and said Thomas and Cecilia Gleason of lot 2 on Cedar Hill would like to request three walls and the others are 4'x12', 6'x12', and 4'x70'. We can vote to approve this subject to the conditions of the roof height. New numbers will be submitted not to exceed 26.9 feet, in addition to the extended side setback that is required. The landscaping plan has been reviewed and a final landscaping plan will be submitted prior to construction for approval.

Ms. Barnes moved that a Special Use Permit for two retaining walls and a dry stack stone wall be granted to Thomas and Cecilia Gleason on lot 2 of Cedar Hill and the facts as recited by Lynn Kieffer and her summation be accepted as findings and facts to support this grant. The condition of this approval is that the landscape architect go back and find the average site height and calculate the average building height so we can see if in fact alternate or modified setbacks are appropriate. If the average building height is up to 26.9 feet then they do not have to come back to the Board but if it is greater than 26.9 feet then they do have to come back to the Board. The Board has inspected this site and no neighboring property owner has objected.

She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report

to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Mr. Lowell Pearlman seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request for an accessory structure and Variance request for an accessory structure placement within the setback at 7 Stuyvesant Road. Mr. Robert Chandler shepherded the matter. Mr. Hachil from Bessemer Trust apologized for not having the dimensions on hand for the road but will provide this. Several weeks ago, a large oak tree came down and the gravel road was accessed by heavy machinery. Part of the required road may not be within the side setback. Mr. Clarke said we need to know the exact location of the road. Mrs. Skoglund said if the road was there in 1992 it would not have been in the setback. The deed did not have a drawing, it had a legal description. In 1992, it no longer goes to that corner as Mrs. Skoglund showed in the GIS. The very heavy equipment tore up the road path and sank into the dirt. In order to get to the point where there wasn't a mud hole, they covered it with materials. Mr. Morrison was unaware of any dirt, stone, or gravel path on either side of 388 Vanderbilt Road. Mr. Morrison owns 388 Vanderbilt Road. Mr. Hachil said the gravel serves as a purpose for soil erosion. It would help to prevent mud erosion to 388 Vanderbilt Road. Mr. Morrison said historically for the last eight years that path has been used as a path for lawn equipment and mowers. The Special Use Permit is for a gravel drive. Mr. Morrison said they were unable to see the road before this work was done and now all they see is rocks from the outside of their house. Mr. Morrison would like to see the rock removed and replace it with ground gravel and put sand on top of it. There has been no water erosion in the past eight years. Ms. Skoglund suggested mulch. Mr. Morrison said the mulch would get torn up with the heavy equipment that goes back and forth. Mulch will only last for a few months and would like to see the material he described. Chairman Goosmann said it seems like the neighbors could discuss a solution together. Mr. Chandler suggested tabling this matter until the homeowner talks to the neighbor which would include a good solution.

DELIBERATION AND DETERMINATION:

The matter was tabled until next month.

The meeting was adjourned at. The next Board of Adjustment meeting is scheduled for Monday, June 19th, 2023 at 6:04pm.

ATTEST:

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Greg Goosmann

Chairman

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Laura Jacobs

Town Clerk



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

JUNE 14, 2023

#### CASE 1

**Property Address:** 24 White Oak Road

**Property Owner:** Jerry Douglas

**Request:** Special Use Permit request for Fencing in Rear Yard  
and Variance Request for Encroachment into Side & Rear Setbacks

**Site Visit:** 2:30 PM – Monday, June 19, 2023

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#### Background

Last month, the applicant submitted a request to the Board of Adjustment for a fence installation within the rear and side yard. The applicant agreed to table the matter and return in June with more information regarding the proposed distance of intrusion into the side yard setback.

#### Fence Description

The proposed fence is four (4) feet tall and would attach to an existing fence already located along the rear property line. The proposed material, black powder coated aluminum, complies with the Town's requirements and an example is shown in the attached documents. There are two gates associated with the project as well.

#### Special Use Permit Request

The Town's Zoning Ordinance regulates fences and gates in Chapter 153.049. This regulation is attached to the memorandum and provides additional information regarding the requirements for fence installations. The fence itself is proposed to be 78' on the south side of the property and 80' on the north side of the property. As noted above, the fence will run into the rear yard setback and connect to an existing fence on the rear property line.

#### Variance Request

The applicant obtained a survey for his property that shows the specific distance from the existing house to the side property lines. Staff has broken out the specific intrusion and distances based on the survey information as noted below.

### North Property Line

Distance from Side Property Line to Existing Home = 19'7"

Setback for Side Property Line = 15'

Proposed Fence Location – 11' (total) from corner of home toward side property line  
RESULT - 6'5" intrusion into setback

### South Property Line

Distance from Side Property Line to Existing Home = 16'5"

Setback for Side Property Line = 15'

Proposed Fence Location – 12' (total) from corner of home toward side property line  
RESULT = 10'7" intrusion into setback

### West Property Line

Fence is proposed to connect to an existing fence on the rear property line that is already within setback. Intrusion would follow the length of the north and south property lines to enter the 20' rear yard setback in order to connect.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Jerome Douglas

**Property Address**

24 White Oak Road

**Phone**

(828) 777-9749

**Email**

28jdouglas28@gmail.com

**Parcel ID/PIN Number**

9646993829

## ZONING INFORMATION

**Current Zoning**

R-2

**Lot Size**

.39

**Maximum Roof Coverage**

2,874 square feet (Up to .5 acres)

**Proposed Roof Coverage Total**

up to 2874

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

up to 1 acre

**Front Yard Setback**

50 feet (R-2, R-3, R-4, and R-5 Districts)

**Side Yard Setback**

15 feet (R-2, R-3, R-4, and R-5 Districts)

**Rear Yard Setback**

20 feet (R-2, R-3, R-4, and R-5 Districts)

**Building Height**

1 story

**Description of the Proposed Project**

Fence backyard - iron pickets - 4 ft high x

**Estimated Start Date**

**Estimated Completion Date**

**Estimated Cost of Project**

**Supporting Documentation (Site Plan, Drawings, Other Information)**

fence.png

**Applicant Signature**

**Date**  
10/17/2022

*Jerome B. Douglas*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Jerome Douglas

**Address**

24 white oak rd

**Phone**

(828) 777-9749

**Email**

28jdouglas28@gmail.com

**Please select the type of special use you are applying for:**

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

**Please provide a description of the proposed project:**

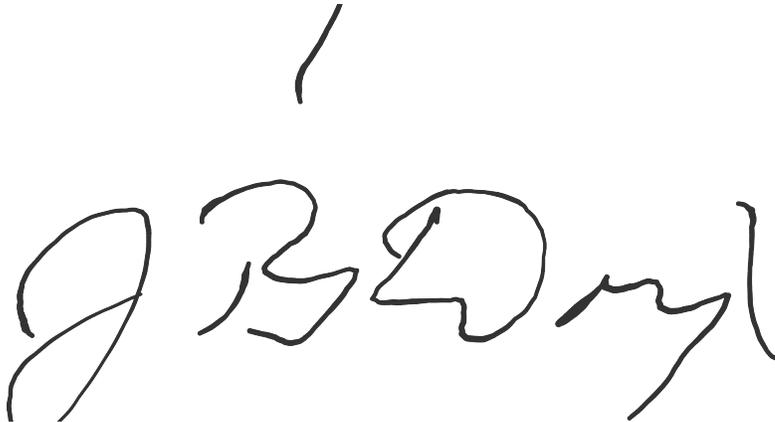
Backyard fence

**Explain why the project would not adversely affect the public interest of those living in the neighborhood:**

Low visibility

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

A handwritten signature in black ink, appearing to read "J. Douglas". The signature is written in a cursive style with large, sweeping letters.

**Date**

4/14/2023

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Jerome Douglas

**Address**

24 white oak rd

**Phone**

(828) 777-9749

**Email**

28jdouglas28@gmail.com

**Current Zoning/Use**

R

**Requested Use**

**APPLICATION REQUIREMENTS:** An application to the Board of Adjustment for a variance must be submitted to the Town of Biltmore Forest Town Manager at least 21 days prior to the meeting at which the application will be considered. A pre-application meeting with Town staff is required prior to application submittal to the Board of Adjustment.

**What would you like to do with your property?**

Install fence in backyard

**What does the ordinance require?**

Rear yard only, suitable materials (black powder coated aluminum flat-top picket fence)

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

**REQUIRED FINDINGS: Please provide a thorough response to each.**

**Unnecessary hardship would result from the strict application of the ordinance.**

Need to fence yard to contain our dog

**The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

Na

**The hardship did not result from actions taken by the applicant or the property owner.**

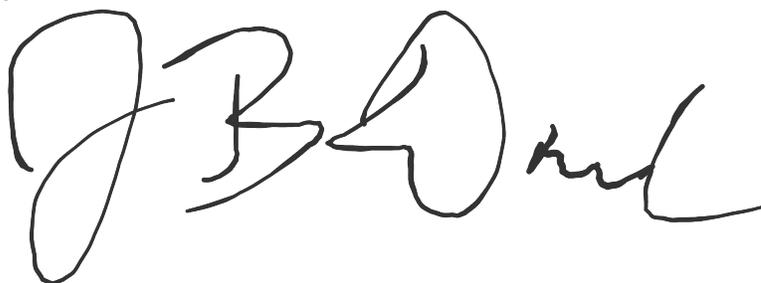
Na

**The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

I believe it is

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

A handwritten signature in black ink, appearing to read "JBA" followed by a stylized flourish.

**Date**  
4/14/2023

## § 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

(1) The driveway gate and columns shall not be located in the front or side yard setback of a property.

(2) The driveway gate shall not be more than eight feet in height.

(3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.

(4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.

(C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.

(2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.

(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

(2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.

(3) No new chain link fencing or gates shall be allowed.

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).

(5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.

(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020; Ord. passed 6-8-2021)

LINE BEARING DISTANCE  
L 1 N 64°52'57"E 5.00'



ANDREW R. & LYDIA P. HARRELL  
DB 5660 PG 1946  
PIN # 9646-99-2998  
PB 188 PG 143

JONAS L. & LAUREN E. KARLSSON  
DB 5407 PG 745  
PIN # 9647-90-4071

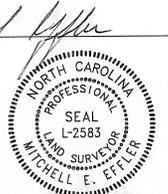
NOTES:

1. C: THIS SURVEY IS OF AN EXISTING LOT AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
2. SUBJECT PROPERTY SEE DB 6244 PG 895 PIN # 9646-99-3829
3. THIS PROPERTY IS SUBJECT TO ANY EASEMENTS OR RIGHT OF WAYS OF RECORD, THAT MIGHT BE FOUND IN A FULL TITLE SEARCH SHOWN OR NOT
4. ACREAGE IS CALCULATED BY THE COORDINATE METHOD.
5. THIS PROPERTY IS NOT IN A FLOOD AREA

I, MITCHELL E. EFFLER P.L.S. CERTIFY THAT UNDER MY SUPERVISION THIS MAP WAS DRAWN FROM AN ACTUAL FIELD SURVEY AND IS IN ALL RESPECTS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THAT THE ERROR OF CLOSURE IS CALCULATED COORDINATE METHOD. AND IS BETTER THAN 1 : 10,000; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. FOR REFERENCE SEE NOTES AND TITLE BLOCK SURVEYED FROM DB 6244 PG 895 PB 02 PG 85 WITNESS MY HAND AND SEAL THIS 8 TH DAY OF JUNE 2023.

C: THIS SURVEY IS OF AN EXISTING LOT AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.

SIGNATURE *Mitchell E. Effler*



JOEL H. & ALLISON S. PURYEAR  
DB 6223 PG 372  
PIN # 9646-99-3861

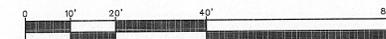
BILTMORE - FOREST  
PLAT BOOK 2 PAGE 85

24 WHITE OAK ROAD  
SURVEY FOR

**JEROME & CAROL DOUGLAS**

BILTMORE TWP. BUNCOMBE CO., NC

SCALE 1" = 20' JUNE 8, 2023

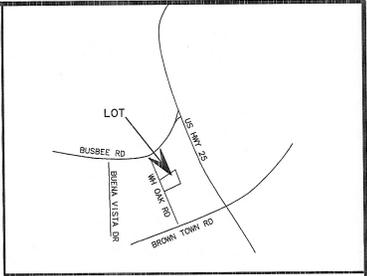


EFFLER SURVEYING INC. 732 OLD US 70, SWANNANOA N.C.  
PHONE (828) 686-5676 FAX (828) 686-9175

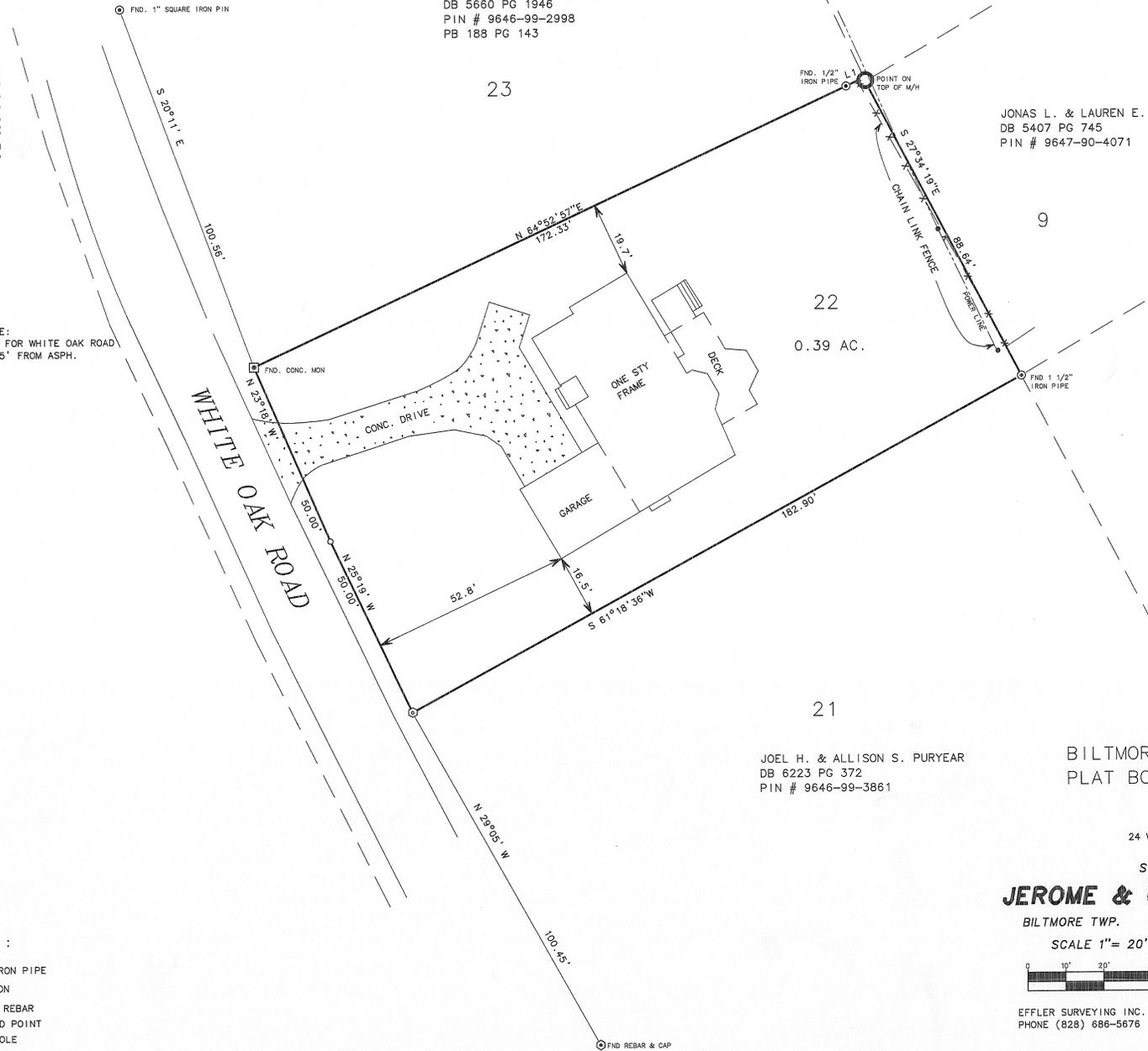
NOTE:  
R/W FOR WHITE OAK ROAD  
IS 5' FROM ASPH.

LEGEND :

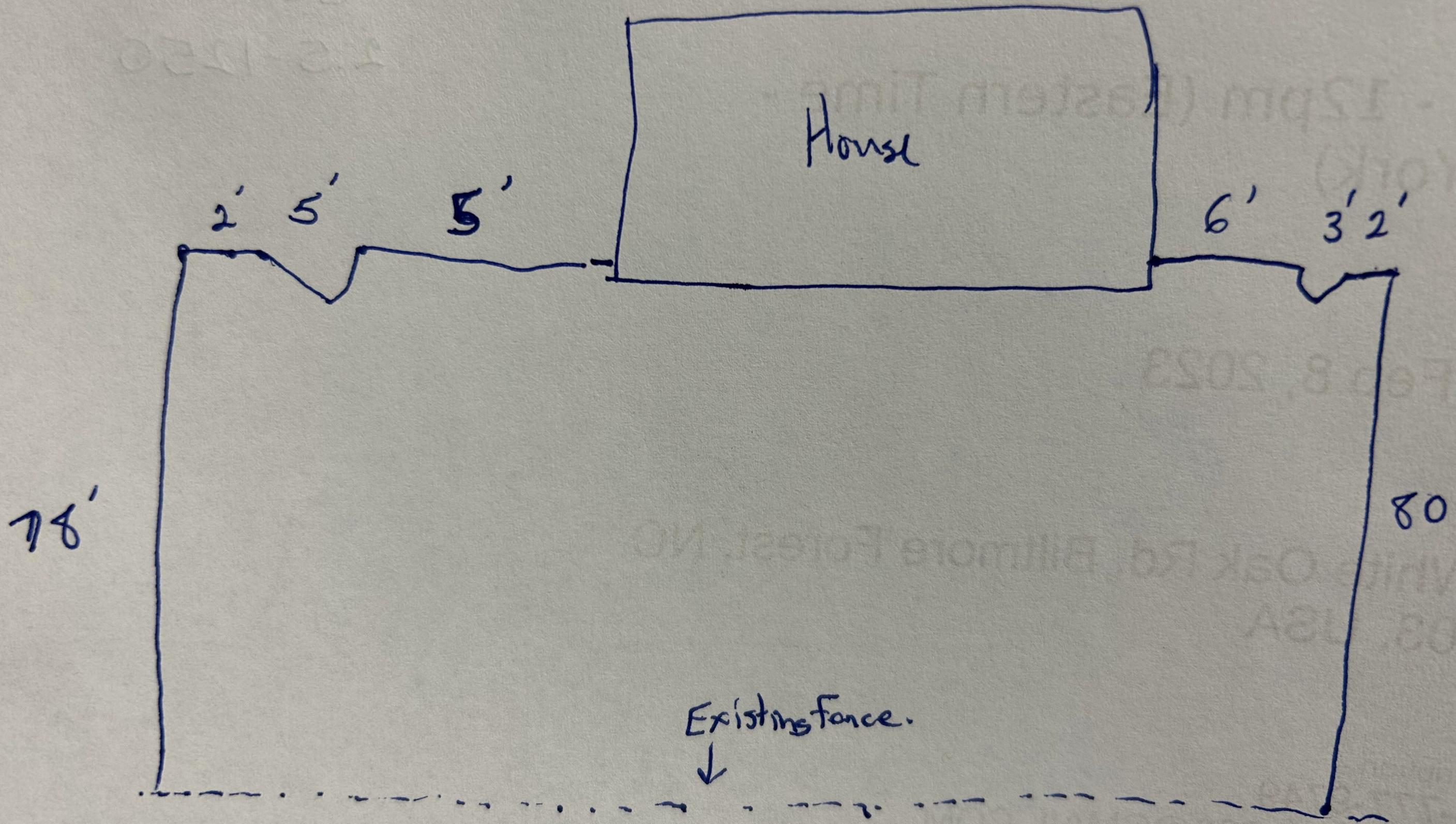
- FOUND IRON PIPE
- CONC. MON
- ⊙ SET # 5 REBAR
- UNMARKED POINT
- POWER POLE



VICINITY MAP



# Job Sketch



Details about Jobsite:





White Oak Rd

White Oak Rd

White Oak Rd

White Oak Rd

White

20

24

25

26

933

939

945



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

JUNE 19, 2023

#### CASE 2

**Property Address:** 4 Fairway Place  
**Property Owner:** Michael O' Buckley  
**Request:** Special Use Permit request for Stone Wall in Front Yard  
Variance Request for Installation within Front Yard Setback  
**Site Visit:** 2:50 PM – Monday, May 15, 2023

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#### Background

The property owner requests permission to install a stone retaining wall within the front yard. The applicant states the purpose of this wall is to hold mulch and planting areas in place on the hill. The applicant's proposed wall material is Tennessee river stone.

The Town's Zoning Ordinance, Chapter 153.049, governs new fences, gates, and walls. The applicant began this project prior to applying for a permit from the Town, and the Town subsequently stopped work and required the applicant to remove the installation or file an application for the work.

#### Special Use Permit Requirements

Section 153.049 (attached) of the Town's Zoning Ordinance regulates fences, gates, and walls as accessory structures. The ordinance requires approval by the Board of Adjustment before new walls may be constructed. These new walls must meet the following requirements:

*153.049 (A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.*

*(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).*

*(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.*

### Variance Request

The applicant has filed a variance request to allow this installation within the front yard, and specifically, within the front yard setback. The proposed location of the wall is not within the Town's right of way and is located nine (9) feet from the edge of pavement. Specific information regarding the wall's dimensions and location are noted below.

### Wall Dimensions

Front Setback for R-1 District = 60 feet

Distance from Fairway Place = 9' from edge of pavement (Town right of way is 5')

Wall height = 2 feet

Wall Length = 85 feet

Wall Depth = 1 foot

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Michael O'Buckley

**Property Address**

4 Fairway Place

**Phone**

(704) 363-4101

**Email**

Mob820@yahoo.com

**Parcel ID/PIN Number**

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.5

**Maximum Roof Coverage**

3,520 square feet (Up to .75 acres)

**Proposed Roof Coverage Total**

3400

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

.05

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

12

**Description of the Proposed Project**

Replace barrier at bottom of landscape bed front of property

**Estimated Start Date**

5/15/2023

**Estimated Completion Date**

5/18/2023

**Estimated Cost of Project**

\$3,500.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

**Applicant Signature**

**Date**  
5/12/2023

*Michael O Buckley*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Michael O'Buckley

**Address**

4 Fairway Place

**Phone**

(704) 363-4101

**Email**

Mob820@yahoo.com

**Please select the type of special use you are applying for:**

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

**Please provide a description of the proposed project:**

Replace metal landscape edging with stone on front of property near street

**Explain why the project would not adversely affect the public interest of those living in the neighborhood:**

Keep landscape on hill and achieve same look as stone wall around new power box

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

**Date**

5/24/2023

*Michael O'Buckley*

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Michael O'Buckley

**Address**

4 Fairway Place

**Phone**

(704) 363-4101

**Email**

Mob820@yahoo.com

**Current Zoning/Use**

Residential

**Requested Use**

**APPLICATION REQUIREMENTS:** An application to the Board of Adjustment for a variance must be submitted to the Town of Biltmore Forest Town Manager at least 21 days prior to the meeting at which the application will be considered. A pre-application meeting with Town staff is required prior to application submittal to the Board of Adjustment.

**What would you like to do with your property?**

Remove metal landscape edging and replace with stone to match new underground power box

**What does the ordinance require?**

No fence or wall in front of property/house

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

**REQUIRED FINDINGS: Please provide a thorough response to each.**

**Unnecessary hardship would result from the strict application of the ordinance.**

Keep mulch on bank from wash and replacing

**The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

Existing topography or property

**The hardship did not result from actions taken by the applicant or the property owner.**

Existing when purchased December 2023

**The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

Hope it will help with hill and be visually consistent with community

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

**Date**  
5/24/2023

*Michael O Buckley*

## § 153.049 FENCE, GATE AND WALL REGULATIONS.

The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

(A) New fences, gates or walls may be approved by the Board of Adjustment as a special use, so long as the gate, fence or wall meets the following requirements.

(1) The fence, gate, or wall is constructed entirely within the rear yard, is not located in any side or rear yard setbacks, and is constructed of materials deemed acceptable in § 153.049(D).

(2) Mature vegetation or other buffering sufficient to screen the fence, gate, or wall from neighboring properties shall be required to the extent necessary.

(B) A driveway gate and supporting columns may be approved by the Board of Adjustment as a special use so long as it meets the following requirements:

(1) The driveway gate and columns shall not be located in the front or side yard setback of a property.

(2) The driveway gate shall not be more than eight feet in height.

(3) The driveway gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.

(4) The driveway gate must open wide enough to provide for ingress and egress of emergency vehicles. The minimum acceptable standard is for the gate access to be 14 feet wide with a 14 foot minimum height clearance.

(C) Replacement of existing fences, gates, and walls shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in § 153.049(D) and meets the requirements below. A special use permit application to replace an existing fence, gate, or wall shall include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(1) Existing chain link fences or gates shall not be replaced with new chain link fences or gates.

(2) Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.

(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

(2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.

(3) No new chain link fencing or gates shall be allowed.

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).

(5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.

(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

(Ord. passed 2-11-2020; Ord. passed 6-8-2021)

Nike O'Backley  
4 Fairway Place  
701-263-4101

Rhododendrum

Wooded area

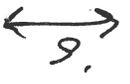
laurels

BANK

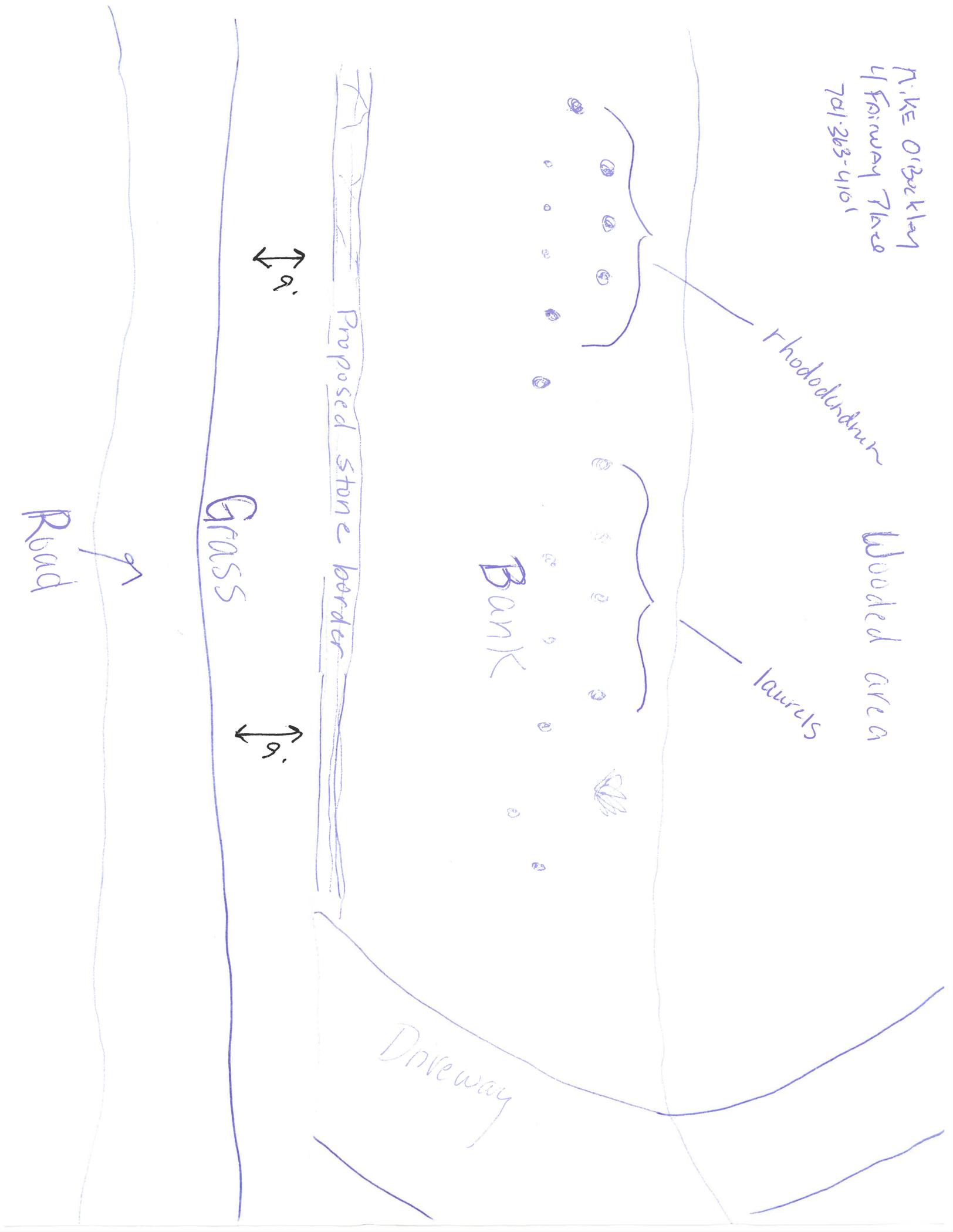
Driveway

Proposed stone border

Grass



Road



Front

4 Fairway Place

Michael Orbeckly

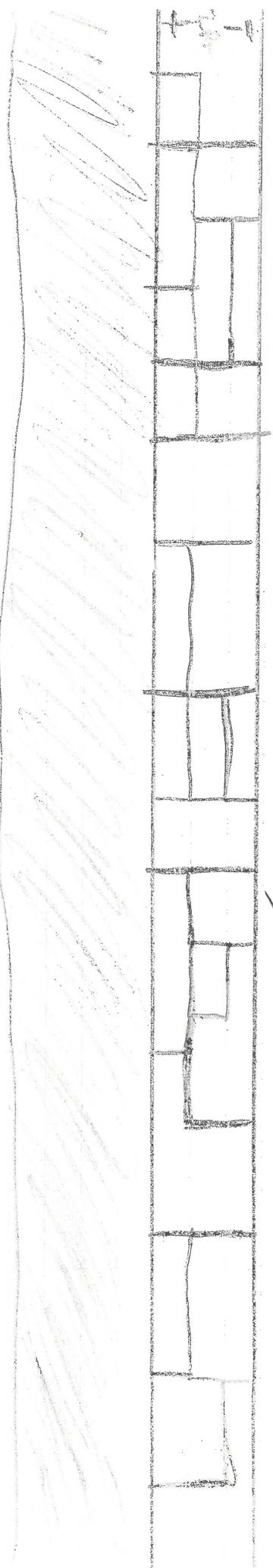
mob 880@yahoo.com  
704-303-4101



Both ends settle into mark



Tennessee  
River Stone  
(Same as River box)  
To left



Top

85 ft

Wall

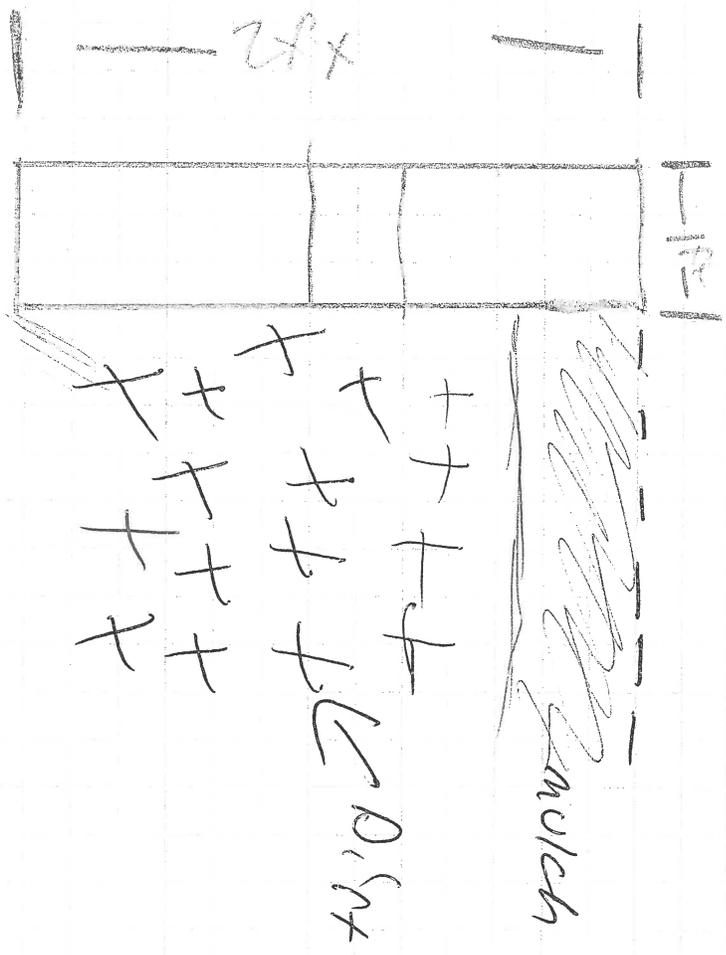
ft

Wavy scribbled line

Driveway

Pool

Side







## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

JUNE 14, 2023

#### CASE 3

**Property Address:** 13 Cedar Chine

**Property Owner:** James Mullins

**Request:** Special Use Permit request for Fencing in Rear Yard  
and Variance Request for Encroachment into Rear Setback

**Site Visit:** 3:15 PM – Monday, June 19, 2023

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#### Background

The applicant requests permission from the Board of Adjustment to construct a deer fence within the rear yard. The proposed deer fence material is acceptable according to the Town's Zoning Ordinance requirements. The proposed fence would be installed in compliance with the side yard setbacks but would extend 12-18 inches from the rear property line. The setback for the rear yard is 25 feet.

#### Fence Description

The proposed fence is 170 feet long and 8-10 feet tall, depending upon ground topography. The proposed material and height comply with the Town's requirements for a deer fence and an example is shown in the attached documents. The applicant proposed installation of evergreen shrubs along the neighbor's side of the fence.

#### Special Use Permit Request

The Town's Zoning Ordinance regulates fences and gates in Chapter 153.049. This regulation is attached to the memorandum and provides additional information regarding the requirements for fence installations. The fence length, as located in the proposed rear yard setback, is 170 feet long.

#### Variance Request

The ordinance requires fences to be located within the rear yard and not within any setback. The applicant's proposal indicates compliance with the side yard setbacks but intrusion into the rear yard setback by 23 ½ to 24 feet.

### Rear Property Line Intrusion Information

Setback for Rear Property Line = 25'

Proposed Fence Location – Intrusion of 23 ½'-24' (fence location proposed 12-18" from property line)

### Additional Information

Please note the applicant includes references to the neighboring property, 6 Hemlock Road, having an electrified fence on their property. Staff has verified several times that this fence is not electrified, and Town Planner Tony Williams conducted a site visit on Wednesday, June 14 to verify once more that the fence was not electrified. Below is a picture of Mr. Williams touching the fence while verifying that it is not electrified.



# Zoning Compliance Application

Town of Biltmore Forest

**Name**

JAMES MULLINS

**Property Address**

13 CEDAR CHINE

**Phone**

(321) 795-7009

**Email**

vfamullins@aol.com

**Parcel ID/PIN Number**

9646-52-898900000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.37 acres

**Maximum Roof Coverage**

5,500 square feet (Up to 1.5 acres)

**Proposed Roof Coverage Total**

NA

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

NA

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

NA

**Description of the Proposed Project**

INSTALL DEER FENCE MADE OF NATURAL WOOD 170 FEET LONG AND 8 FEET - 10 FEET TALL BASED ON GROUND TOPOGRAPHY TO PRESENT A LEVEL TOP FENCE LINE AND BOTTOM LINE REACHING THE GROUND, LOCATED OUTSIDE MY SIDE SETBACKS, WITH 10 FEET SIDE SUPPORTS, BUT INSIDE THE REAR SETBACK OF MY PROPERTY BY 12"-18" FROM REAR PROPERTY LINE, SCREENED BY SUBSTANTIAL EVERGREEN SHRUBBERY ON REMMES VIEW SIDE OF DEER FENCE, THE SIDE FENCE SUPPORTS SCREENED BY CANOPY TOLERANT SHRUBBERY OF CAMILLIAS, AND ALL IRRIGATED FOR WATER. SEE ATTACHED SURVEY AND LANDSCAPE PLAN.

**Estimated Start Date**

7/31/2023

**Estimated Completion Date**

9/29/2023

**Estimated Cost of Project**

\$10,000.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**

IMG\_6303.jpg

DEER FENCE 322389800\_5782702548472353\_4619628597969797832\_n.jpg

**Applicant Signature**

**Date**  
5/26/2023

*JAMES WILLIAMS*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

JAMES MULLINS

**Address**

13 CEDAR CHINE

**Phone**

(321) 795-7009

**Email**

vfamullins@aol.com

**Please select the type of special use you are applying for:**

Accessory Structures

The applicant must show that the proposed use will not materially endanger public health or safety or injure value of adjoining or abutting property. In addition, the proposed use must be in general conformity with the plan of development of the town and be in harmony with scale, bulk, height, coverage, density, and character of the neighborhood.

**Please provide a description of the proposed project:**

INSTALL DEER FENCE MADE OF NATURAL WOOD 170 FEET LONG AND 8 FEET - 10 FEET TALL BASED ON GROUND TOPOGRAPHY TO PRESENT A LEVEL TOP FENCE LINE AND BOTTOM LINE REACHING THE GROUND, LOCATED OUTSIDE MY SIDE SETBACKS, WITH 10 FEET SIDE SUPPORTS, BUT INSIDE THE REAR SETBACK OF MY PROPERTY BY 12"-18" FROM REAR PROPERTY LINE, SCREENED BY SUBSTANTIAL EVERGREEN SHRUBBERY ON REMMES VIEW SIDE OF DEER FENCE, THE SIDE FENCE SUPPORTS SCREENED BY CANOPY TOLERANT SHRUBBERY OF CAMILLIAS, AND ALL IRRIGATED FOR WATER. SEE ATTACHED SURVEY AND LANDSCAPE PLAN WITH ZONING COMPLIANCE FORM.

**Explain why the project would not adversely affect the public interest of those living in the neighborhood:**

DEER FENCE WILL ONLY BE ON MY PROPERTY. THERE IS NO PUBLIC TRAFFIC. IT WILL NOT RESTRICT EMERGENCY PERONNEL AS THEY CAN EASILY GO AROUND IT, WILL PROVIDE SAFETY TO PUBLIC FROM DANGEROUS ELECTRIFIED FENCE.

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

**Date**  
5/26/2023

*JAMES WALLACE*

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

JAMES MULLINS

**Address**

13 CEDAR CHINE

**Phone**

(321) 795-7009

**Email**

vfamullins@aol.com

**Current Zoning/Use**

R

**Requested Use**

R

**APPLICATION REQUIREMENTS:** An application to the Board of Adjustment for a variance must be submitted to the Town of Biltmore Forest Town Manager at least 21 days prior to the meeting at which the application will be considered. A pre-application meeting with Town staff is required prior to application submittal to the Board of Adjustment.

**What would you like to do with your property?**

INSTALL DEER FENCE MADE OF NATURAL WOOD 170 FEET LONG AND 8 FEET - 10 FEET TALL BASED ON GROUND TOPOGRAPHY TO PRESENT A LEVEL TOP FENCE LINE AND BOTTOM LINE REACHING THE GROUND, LOCATED OUTSIDE MY SIDE SETBACKS, WITH 10 FEET SIDE SUPPORTS, BUT INSIDE THE REAR SETBACK OF MY PROPERTY BY 12"-18" FROM REAR PROPERTY LINE, SCREENED BY SUBSTANTIAL EVERGREEN SHRUBBERY ON REMMES VIEW SIDE OF DEER FENCE, THE SIDE FENCE SUPPORTS SCREENED BY CANOPY TOLERANT SHRUBBERY OF CAMILLIAS, AND ALL IRRIGATED FOR WATER. SEE ATTACHED SURVEY AND LANDSCAPE PLAN WITH ZONING COMPLIANCE FORM.

**What does the ordinance require?**

FENCE TO BE OUTSIDE SETBACKS ON SIDES AND REAR.

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

**REQUIRED FINDINGS: Please provide a thorough response to each.**

**Unnecessary hardship would result from the strict application of the ordinance.**

THERE IS A DANGEROUS ABOVE-GROUND ELECTRIFIED FENCE THAT IS VERY CLOSE TO OUR REAR PROPERTY LINE AND THERE ARE DEER THAT COME INTO THE YARD FROM THE GREEN WAY LEADING FROM THE BILTMORE ESTATE AND FROM THE BLUE RIDGE PARKWAY DESTROYING CANOPY PLANTS AND BRINGING TICKS WITH LYME DISEASE.WILL KEEP LEAVES AND BRANCHES FROM ENTERING REAR NEIGHBOR'S YARD.

**The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

THERE IS A DANGEROUS ABOVE-GROUND ELECTRIFIED FENCE THAT IS VERY CLOSE TO OUR REAR PROPERTY LINE AND THERE ARE DEER THAT COME INTO THE YARD FROM THE GREEN

WAY LEADING FROM THE BILTMORE ESTATE AND FROM THE BLUE RIDGE PARKWAY DESTROYING CANOPY PLANTS AND BRINGING TICKS WITH LYME DISEASE.WILL KEEP LEAVES AND BRANCHES FROM ENTERING REAR NEIGHBOR'S YARD.

**The hardship did not result from actions taken by the applicant or the property owner.**  
WE DID NOT INSTALL THE PROHIBITED ABOVE-GROUND ELECTIFIED FENCE. WE DID NOT CREATE GREENWAY FROM BILTMORE ESTATE OR THE BLUE RIDGE PARKWAY.

**The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**  
VARIANCE IS CONSISTENT WITH ORDINANCE SPIRIT, PURPOSE AND INTENT SUCH THAT PUBLIC SAFETY IS IMPROVED, JUSTICE FOR ORDINANCE VIOLATIONS ARE ADDRESSED AND TREATMENT IS MORE CONSISTENT BETWEEN RESIDENTS.

**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

**Date**  
5/26/2023

*JANE S MULLINS*

(13)  
 JESUS A. VALDEZ  
 WILLIAM M. RODEN  
 D.B. 6034 Pg. 339  
 P.B. 53 Pg. 126

Line	Bearing	Distance
L1	S 50° 31' 09" E	48.71'
L2	N 30° 03' 53" W	126.45'

**BILTMORE FOREST  
 BLOCK "T"**



(12)  
 EVAN REMMES  
 ALEXANDRA REMMES  
 D.B. 5651 Pg. 71  
 P.B. 53 Pg. 126

(12)

(11)  
 MARY E. FLYNN TRUST  
 D.B. 4732 Pg. 1380  
 P.B. 53 Pg. 126

(11)

