



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: December 9, 2021
Re: **Board of Adjustment Meeting – December 20, 2021**

Applicants

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

Members of the Board of Adjustment & staff may visit each property prior to the meeting. If this occurs, the property owner will be notified beforehand and asked if they approve the visit.

If the project is approved, please be prepared to present your project to the Design Review Board on Thursday, January 6, 2022 at 5:30 p.m.

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-adjustments>.

Parties with standing or members of the public are invited to attend the meeting at 4:00 p.m. on Monday, December 20, 2021.

AGENDA

FACE COVERINGS REQUIRED FOR ALL ATTENDEES REGARDLESS OF VACCINATION STATUS

A ZOOM LINK IS PROVIDED ON THE FOLLOWING PAGE FOR THOSE WISHING TO PARTICIPATE REMOTELY.

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, December 20, 2021 at 4:00 pm in the Town Hall.

1. The meeting will be called to order and roll call taken.
2. The minutes of the November 15, 2021 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).
 - Case 1:** 23 Amherst Road – Special Use permit request for Outside Fireplace and Patio Covering
 - Case 2:** 10 Buena Vista Road – Variance request for Retaining Walls within Front Yard Setback and Special Use permit requests for accessory structures
 - Case 3:** 11 Brookside Road – Variance Request for Exceedance of Detached Accessory Building Maximum Roof Coverage and Extend beyond Line Parallel to Rear of Building and Special Use Permit request for Detached Accessory Building
 - Case 4:** Appeal of Zoning Determination regarding Turf Field at 9 Holly Hill Road

4. Adjourn

Town of Biltmore Forest Board of Adjustment Meeting

Time: Dec 20, 2021 04:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/89577782800?pwd=Z05sYkFHZTNJbTUweVI0VEExKevk3Zz09>

Meeting ID: 895 7778 2800

Passcode: 113403

One tap mobile

+16468769923,,89577782800#,,,,*113403# US (New York)

+13017158592,,89577782800#,,,,*113403# US (Washington DC)

Dial by your location

+1 646 876 9923 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 408 638 0968 US (San Jose)

+1 669 900 6833 US (San Jose)

Meeting ID: 895 7778 2800

Passcode: 113403

Find your local number: <https://us02web.zoom.us/u/km12nLw3L>

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, NOVEMBER 15, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, November 15, 2021.

Members present: Mr. Greg Goosmann, Mr. Robert Chandler, Mr. Lowell Pearlman, Ms. Martha Barnes, and Ms. Rhoda Groce. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, Mr. Mike Dale, Public Works Supervisor, and Ms. Laura Jacobs, Town Clerk. Mr. William Clarke, Town Attorney was also present.

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

Mr. Goosmann swore in the following:

Mr. Jared White
Mr. Andrew Franklin
Mr. Ben Lehman
Mr. Clay Mooney
Mr. Jesse Swords
Ms. Charlene Price

A motion was made by Mr. Robert Chandler to approve the minutes from October 18, 2021. Ms. Martha Barnes seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

A Variance request for encroachment into the setback and Special Use Permit request for fence installation within the rear yard at 56 Cedar Hill Drive. Mr. Robert Chandler shepherded the matter. Mr. Jared White with Judd builders represented the homeowners. Mr. White showed the plan

for the fence and the reason for a variance. Mr. Chandler asked how many feet of fence would be in the setback. Mr. White said approximately one hundred feet. Mr. Chandler asked why they need the fence. Mr. White said Biltmore Estate horse trail runs along the backside of their property and many people walk dogs off their leash when visiting the Estate. They are worried the dogs might come on to their property. The horse trail is within 30-40 feet and is very close. The fence would not be visible from any neighboring property owners. The hardship is for security purposes to protect the people and the animals at this residence. It will be a shadowbox fence with pressure treated lumber. The fence would be six feet tall.

DELIBERATION AND DETERMINATION:

Mr. Robert Chandler restated the facts. Mr. and Mrs. Shores at 56 Cedar Hill Drive are requested a Special Use Permit for a rear yard fence and a Variance for placement within the rear yard setback. There is a one hundred feet on the Northeast side of the house that would be within the twenty-foot setback. It would be up to two feet within the property line to establish the fence as previously described. The hardship is the house was set differently to the setback and would not give them enough room to have the fence in there without being right next to the house. They also need it to protect against wildlife, horses, and other dogs on the Estate trail.

Ms. Martha Barnes made a motion to grant a Special Use Permit and Variance for Mr. Joshua and Mrs. Caitlyn Shores at 56 Cedar Hill Drive for a wooden fence installation and the facts as recited by Robert Chandler 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. Ms. Barnes 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. Barnes further moved that granting this Variance satisfies the applicable Sections of 153.110(D) and paragraphs one through four, and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured and substantial justice done. 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. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter was a variance request for exceeding the maximum roof coverage of a detached accessory building and extending beyond line parallel to rear of building. A Special Use Permit request for the detached accessory building is also included. This matter was shepherded by Ms. Rhoda Groce. Mr. Andrew Franklin spoke about the project. This would allow the homeowner's mother to remain living with his family and to age in place. The larger footprint would allow a hospital bed as well as wide doors for wheelchair accessibility. The reason the structure is not attached to the house is because the utilities are all located on the rear of the home and the foundation has hydrostatic issues. Ms. Groce suggested Mr. Franklin revisit with the architect because of the significant overage of the roof coverage. The maximum is 750 square feet and this would be close to 1,000 square feet. Chairman Goosmann also suggested speaking to the neighbors about the project as well.

DELIBERATION AND DETERMINATION:

Mr. Franklin chose to table this matter until next month and bring back updated plans.

HEARING (Evidentiary):

A Special Use Permit request for existing soccer goal installation within the rear yard and landscaping plan review at 9 Holly Hill Road. Ms. Martha Barnes shepherded the matter. Mr. Ben

Lehman went over the two separate updated plan options with the Board. Mr. Clay Mooney, landscape architect from Design Associates, assisted Mr. Lehman and was trying to explain the most effective way to buffer this area with the soccer goal so it would not be visible from the street. Mr. Mooney suggested an immediate screening and the time frame for the plant material screening. Mr. Mooney suggested a trellis. Mr. Mooney felt this would be a quicker and more complete screening that allows the ability to still plant within the road.

Ms. Barnes asked what the feedback from the neighbors was for the different planting options. Mr. Lehman said the Mulfords approved of the project initially. Ms. Marcia Grant approved either plan Mr. Lehman proposed. Ms. Barnes asked for feedback of the landscape proposal.

Mr. Jesse Swords gave feedback to the Board that this was not what the Board had requested at the last meeting. A dense screen with mature landscaping was proposed and this proposal is for a “fence.” Mr. Swords said the screening does not address his client’s property (Ms. Charlene Price). Mr. Swords also said this does not show landscaping screening and this is a fence. The fence itself requires mature vegetation as well. Mr. Swords said him and Ms. Price request an adequate landscaping plan. Ms. Groce asked Mr. Swords what kind of screening Ms. Price is interested in seeing. Ms. Price said from the beginning the largest issue was screening from the street. Ms. Price said the trellis would not address this matter. Mr. Pearlman asked for a view of the trellis/screening.

Ms. Barnes asked Ms. Price if there was need for additional buffering to obscure the soccer goal. Ms. Price said if the original landscape plan as proposed were finished, then it would be fine. Ms. Barnes asked Mr. Lehman if it was completed. Mr. Lehman said yes. The green giants are eight feet tall and four feet wide. Ms. Price wants to see the plantings more mature and denser. Ms. Price wants to know how to deal with the street. Ms. Barnes said there are three options: a trellis with no vegetation, a trellis with vegetation, and then there is no trellis with vegetation. Mr. Mooney said vines could be planted and grow box style onto the trellis. Ms. Barnes asked Ms. Price if the landscaping plans proposed today are adequate. Mr. Swords said Ms. Price did not realize the planting was done yet. Mr. Swords said currently it is not adequate to Ms. Price. Ms. Price would be satisfied once the vegetation is fully mature. Ms. Barnes asked Mr. Mooney if more plantings should be added. Mr. Mooney said the plant materials as shown on the plan would be mature vegetation. Mr. Mooney referenced hemlock hedges and plantings growing together. Ms. Price agreed to meet with Mr. Mooney.

Ms. Price said she could see the view from her sunroom. Mr. Mooney said they want to be the most effective in planting where there is additional screening put in to block her view. Ms.

Barnes said the lattice screens the soccer goal and wanted to know Ms. Price's reaction to the trellis. Ms. Price's reaction was negative and did not want to see a trellis as the buffer, however, a trellis with buffering would be acceptable as a softening agent. A series of 2x2 planters with vines would be included to soften the trellis. The timeframe installed within a six-month window. An additional 5-6 six-foot schip laurels would be planted on the Price's side as well. Mr. Swords asked for a time-frame. Mr. Mooney said it could be planted within a six-month window. Mr. Lehman agreed. Mr. Swords and Ms. Price agreed. The plantings will be placed within ninety (90) days on the Price side and within six (6) six months on the trellis.

DELIBERATION AND DETERMINATION:

Ms. Martha Barnes recited the facts. A Special Use Permit is requested and a landscape plan has been provided. The proposal is to keep the existing soccer goal, which has not been permitted. The size is 8'x24'. It will be screened on three sides. In the case of the adjacent neighbors (Price), there is 90 days to provide additional plant material that screens the soccer goal. Schip laurels are proposed. They will be between 5'-6' tall. There will be a total of up to six of them. Ms. Price will participate in the placement of these. There will also be a six-foot trellis screen for blocking from the street. The trellis that is perpendicular to the driveway will be screened by plant material. The trellis that is parallel to the driveway will be screened with vines. The vines will be in planters so it does not affect the drainage of the driveway. The materials for the trellis are wooden. They will be natural wood color. The softening of the front will be done with plant material that is already out there in pots as well as the vine that is chosen. Mr. Lehman agreed with Ms. Barnes about the reciting of the facts.

Ms. Rhoda Groce made a motion that a Special Use Permit and landscaping plan be granted to Mr. Ben Lehman and Ms. Christie Lehman of 9 Holly Hill Road 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. Ms. Groce 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 also added that there are 90 days allotted for the planting of the schip laurel on the side between the Price and Lehman property and six months for the plantings of the wood trellis which would be natural wood to face the street.

Mr. Lowell Pearlman seconded the motion. The motion was unanimously approved. Chairman Goosmann adjourned the meeting at 5:29 pm. The next Board of Adjustment meeting is scheduled for Monday, December 20, 2021 at 4:00 pm.

ATTEST:

Greg Goosmann
Chairman

Laura Jacobs
Town Clerk

**BOARD OF ADJUSTMENT
STAFF MEMORANDUM**

December 20, 2021



**Case 1 – 23 Amherst Road
Special Use Request for Accessory Structure**

Property Owner: David and Celeste Sandridge
Property Address: 23 Amherst Road

Project Description

The applicant request a special use permit from the Board of Adjustment for the construction of a roof over the existing patio and construction of a new stone fireplace. The existing patio will be replaced with a new bluestone patio as part of this project.

Special Use Request

The ordinance requires a special use permit approval from the Board of Adjustment for the accessory structure. The accessory structures are the new roof over the existing patio and the new stone fireplace. The applicants intend to plant ten (10) new trees for additional privacy and screening. The site plan shows the project is in compliance with setbacks.

Zoning Compliance Application

Town of Biltmore Forest

Name

David and Celeste Sandridge

Property Address

23 Amherst Road

Phone

(828) 230-8898

Email**Parcel ID/PIN Number**

965607055200000

ZONING INFORMATION

Current Zoning

R-1

Lot Size

.83 acre

Maximum Roof Coverage

4,682 square feet (Up to 1 acres)

Proposed Roof Coverage Total

3794 sq ft

Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Proposed Impervious Surface Coverage

4903 sq ft

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 existing stone patio with new stone patio.

Stone fireplace

Roof over patio

Estimated Start Date

1/11/2022

Estimated Completion Date

2/28/2022

Estimated Cost of Project

\$80,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

23 Amherst Patio Floor Plan RT notes.pdf

Applicant Signature

Date
11/30/2021

Mary Hiers

Special Use Permit Application

Town of Biltmore Forest

Name

Celeste and David Sandridge

Address

23 Amherst Road

Phone

(828) 230-8898

Email

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:

Replacing old stone patio with new bluestone patio.

Adding roof over patio and stone fireplace.

New steps at side of patio

Planting approximately 10 large trees

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

It will be a nice outdoor addition to the home. The design is in keeping with the architecture of the home. The patio is located in a wooded area of the property that won't be visible. Part of the projecting includes planting approximately 10 trees, to make the patio even more private.

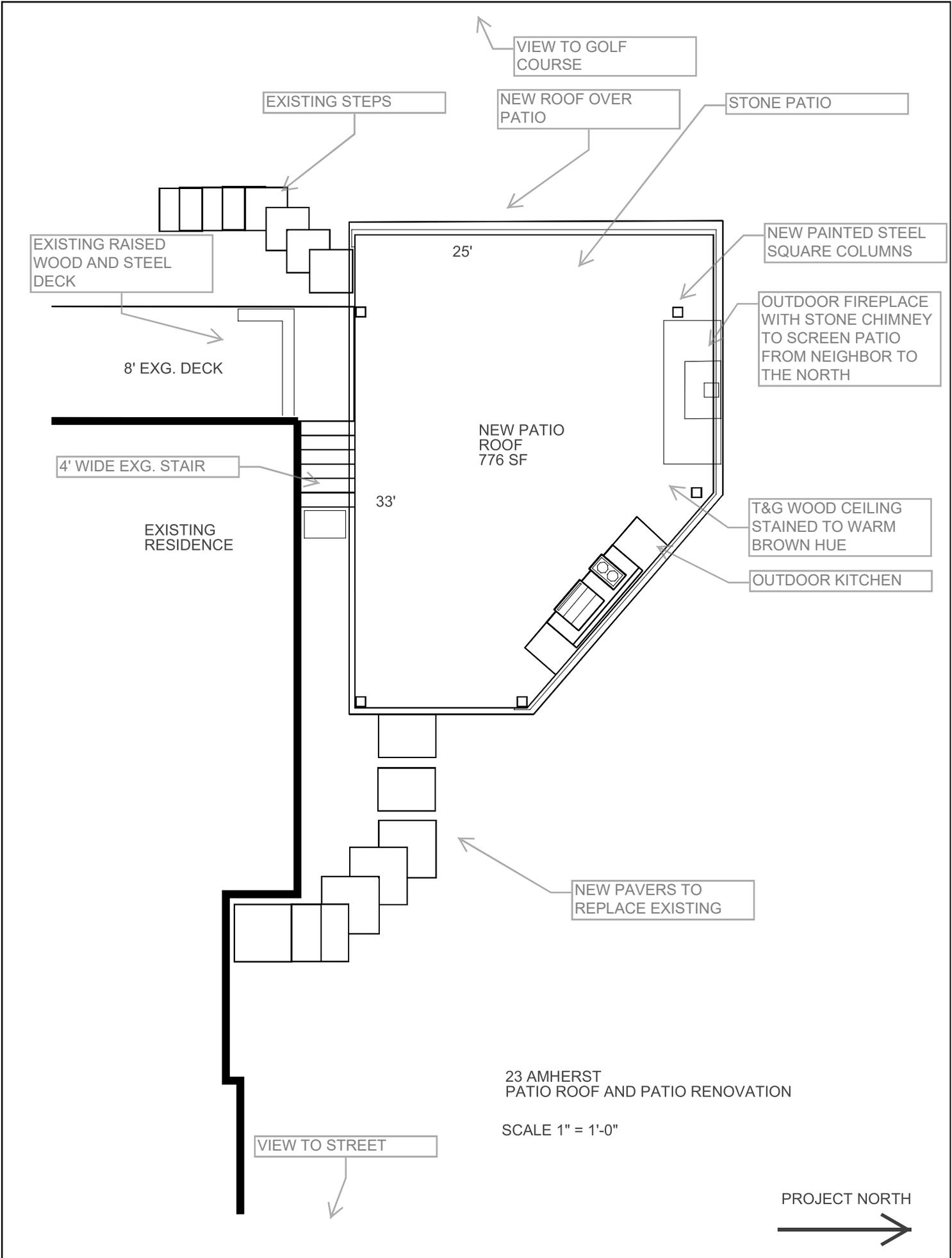
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Date

11/30/2021





VIEW TO GOLF COURSE

EXISTING STEPS

NEW ROOF OVER PATIO

STONE PATIO

EXISTING RAISED WOOD AND STEEL DECK

NEW PAINTED STEEL SQUARE COLUMNS

8' EXG. DECK

OUTDOOR FIREPLACE WITH STONE CHIMNEY TO SCREEN PATIO FROM NEIGHBOR TO THE NORTH

4' WIDE EXG. STAIR

NEW PATIO ROOF 776 SF

EXISTING RESIDENCE

33'

T&G WOOD CEILING STAINED TO WARM BROWN HUE

OUTDOOR KITCHEN

NEW PAVERS TO REPLACE EXISTING

23 AMHERST PATIO ROOF AND PATIO RENOVATION

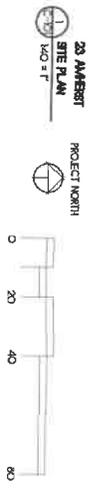
SCALE 1" = 1'-0"

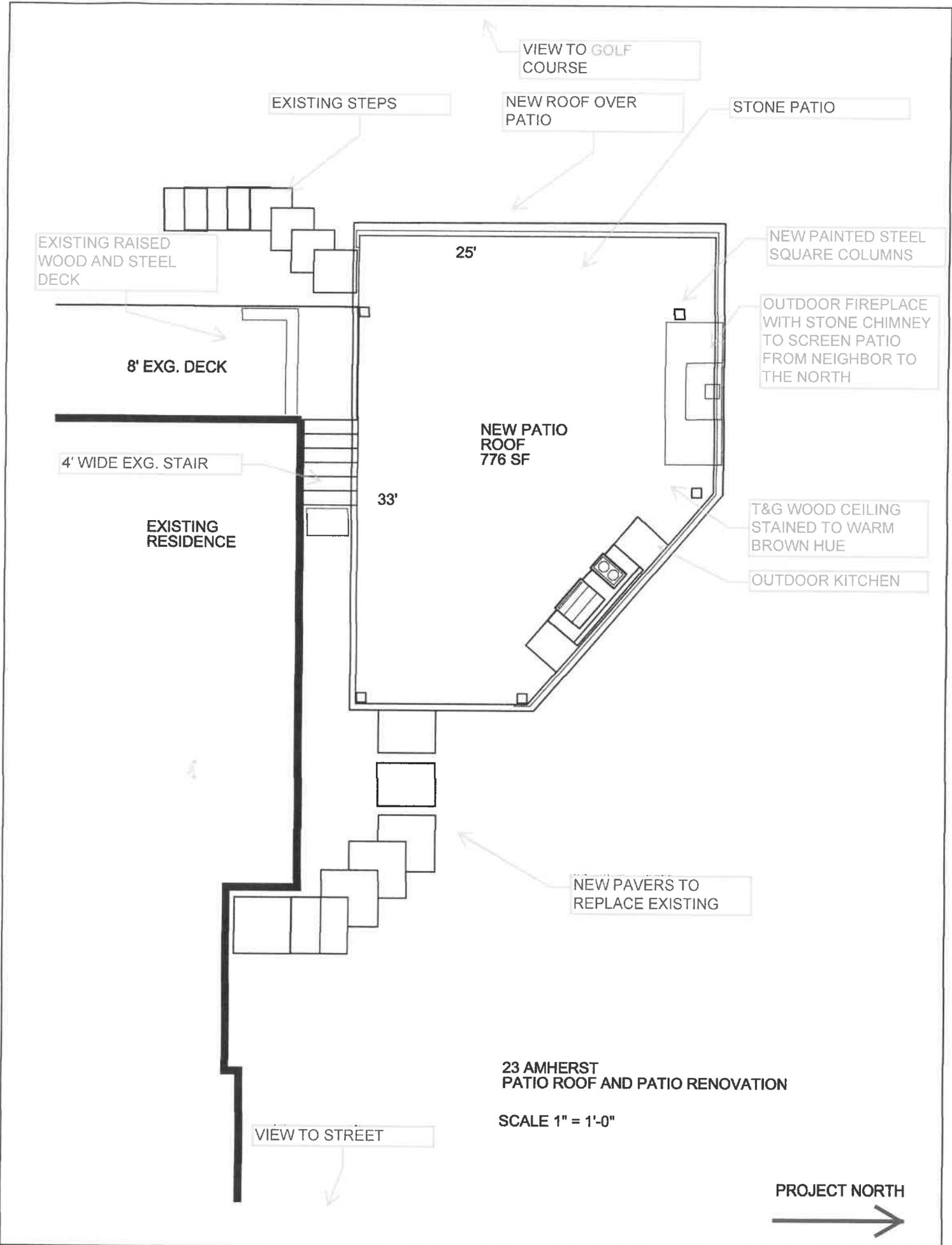
VIEW TO STREET

PROJECT NORTH



23 Amherst Road





VIEW TO GOLF COURSE

EXISTING STEPS

NEW ROOF OVER PATIO

STONE PATIO

EXISTING RAISED WOOD AND STEEL DECK

NEW PAINTED STEEL SQUARE COLUMNS

8' EXG. DECK

OUTDOOR FIREPLACE WITH STONE CHIMNEY TO SCREEN PATIO FROM NEIGHBOR TO THE NORTH

4' WIDE EXG. STAIR

NEW PATIO ROOF 776 SF

T&G WOOD CEILING STAINED TO WARM BROWN HUE

EXISTING RESIDENCE

33'

OUTDOOR KITCHEN

NEW PAVERS TO REPLACE EXISTING

23 AMHERST
PATIO ROOF AND PATIO RENOVATION

SCALE 1" = 1'-0"

VIEW TO STREET

PROJECT NORTH





776 SF PATIO ROOF

23 AMHERST EXISTING HOUSE

23 AMHERST SITE PLAN



23 AMHERST EXISTING DIMENSIONS TO PROPERTY BOUNDARIES

**BOARD OF ADJUSTMENT
STAFF MEMORANDUM**

December 20, 2021



**Case 2 – 10 Buena Vista Road
Special Use Request for Accessory Structures
Variance Request for Retaining Wall within Front Yard**

Property Owner: Karla & Preston Diamond
Property Address: 10 Buena Vista Road

Project Description

The applicant is performing extensive tree preservation work. A portion of this work requires digging around the root structure of the tree to expose portions of the trunks covered by excessive soil over many years. As part of this work, the existing front yard is being regraded to provide a more level front yard and side yard. This will also allow for a more accessible front entry into the property.

Special Use Request

The ordinance requires a special use permit approval from the Board of Adjustment for the accessory structures – noted specifically as retaining walls, stone paths, and some low site lighting. The Zoning Ordinance regulations for accessory structures are attached to this memorandum. The applicant’s proposal does include two (2) retaining walls within the front yard setback. A copy of the Town’s Zoning Ordinance related to accessory structures is included with this memorandum.

Variance Request

The Town’s definition for front yard (also attached) includes a prohibition on accessory structures within the front yard. The applicant has requested two (2) retaining walls within the front yard as part of the re-grading for the property. The variance application includes information related to the request including rationale for hardship.

Zoning Compliance Application

Town of Biltmore Forest

Name

Karla Diamond

Property Address

10 Buena Vista Road

Phone

(828) 450-6609

Email

karla@iwcpro.com

Parcel ID/PIN Number

9647808343000000

ZONING INFORMATION

Current Zoning

R-2

Lot Size

.81 acres

Maximum Roof Coverage

4,682 square feet (Up to 1 acres)

Proposed Roof Coverage Total

N/A

Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Proposed Impervious Surface Coverage

N/A

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

N/A

Description of the Proposed Project

Regrading of front yard due to tree restoration work to uncover root flares located 30" below ground level. The excess soil will be pulled from the top of the property and spread over the bottom of the property, with some moved to level a side yard. This earth movement will necessitate the construction of some retaining walls to hold the soil in place.

I've attached the survey as well as the master plan for our garden. The master plan isn't a final plan and is not 100% accurate in noting existing structures and trees, but does show where the retaining walls are needed.

Also, I guessed at the zoning.

Estimated Start Date

12/6/2021

Estimated Completion Date

12/17/2021

Estimated Cost of Project

\$15,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

201104-10 Beuna Vista Road survey.pdf

Diamond L1 master plan 1-19-21.pdf

Applicant Signature

Date

11/11/2021

Karla E Diamond

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Karla Diamond

Address

10 Buena Vista Road

Phone

(828) 450-6609

Email

karla@iwcpro.com

Current Zoning/Use

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?

Build retaining walls at various places in our front lawn area.

What does the ordinance require?

Preservation of large trees.

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.

Unsafe and unsightly front approach

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

At some point lots of fill was added to the front lawn areas surrounding the large old trees. This has effectively been suffocating them and hastening their demise.

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

The fill was already in place when we purchased the property.

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.

The retaining walls would help us make the approach to our front door safer AND preserve the lives of our old trees while enhancing the curb appeal of our property.

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

knowledge.

Signature

Date
12/3/2021

Karla Diamond

Special Use Permit Application

Town of Biltmore Forest

Name

Karla Diamond

Address

10 Buena Vista Road

Phone

(828) 450-6609

Email

karla@iwcpro.com

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

Accessory Buildings

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:

The installation of retaining walls, paths, garden lighting resulting in regrading of ground due to tree preservation work.

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

Rather than adversely affect the public, the tree preservation work at the heart of this project serves to protect the wooded nature of the Forest. In addition, the retaining walls, paths and garden lighting will make the approach to our house safer for everyone.

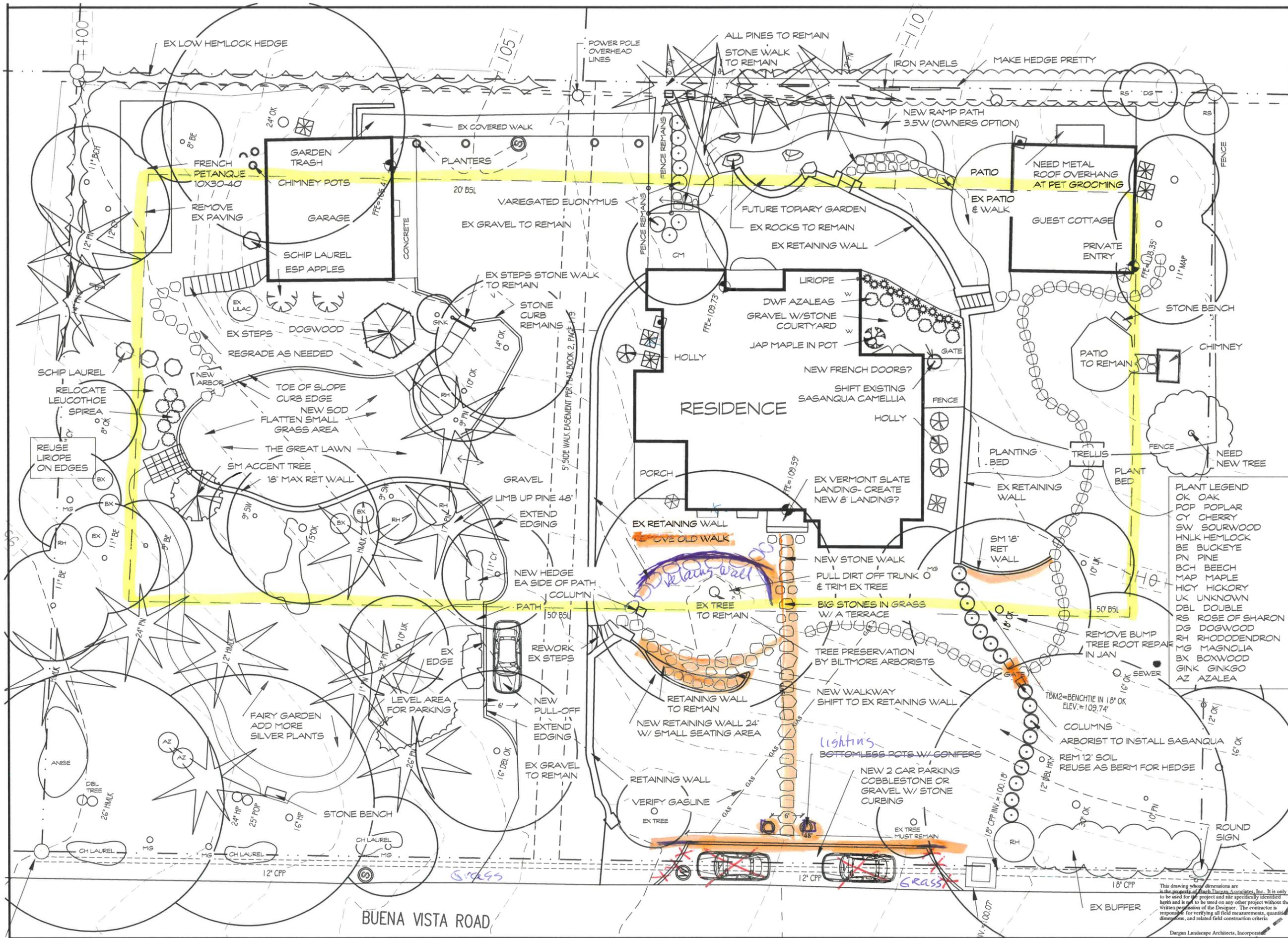
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Date

12/6/2021





Diamond
DARGAN
 LANDSCAPE ARCHITECTS

GARDEN DESIGN
 WWW.DARGAN.COM

PO Box 2638
 Cashiers, NC 28717
 Phone: 828-743-0307

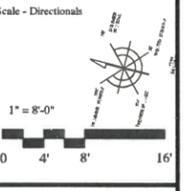
Date Drawn 11.24.20

Revisions

12.01.20
12.02.20
12.07.20
12.08.20
12.15.20
01.13.21
01.19.21

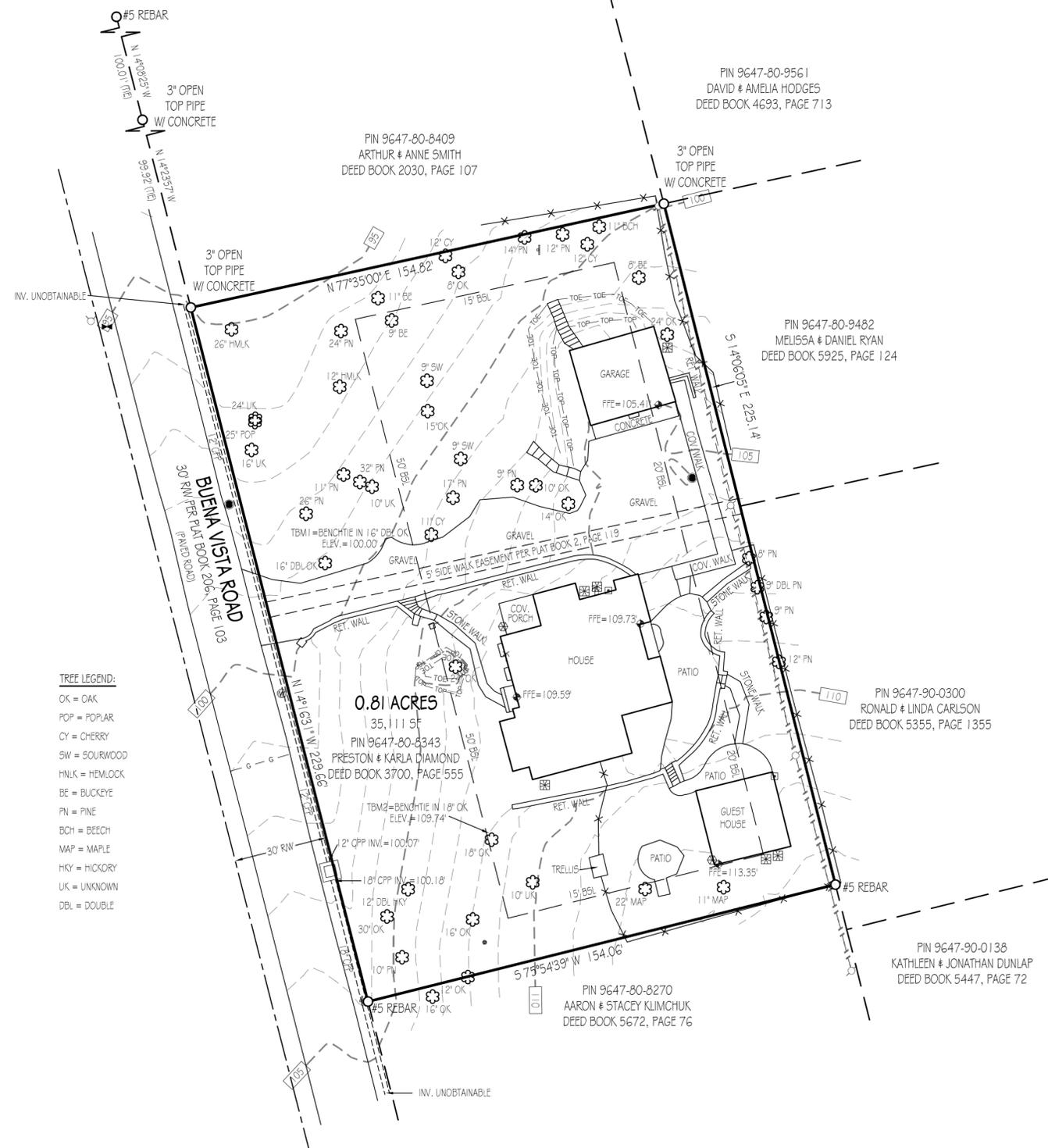
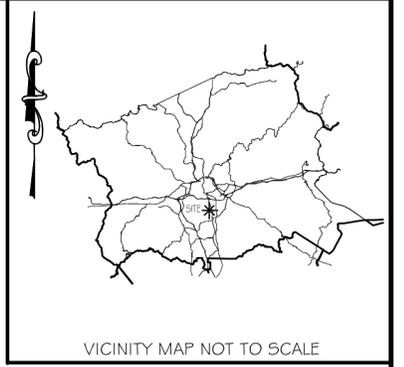
Client
 Karla & Preston Diamond
 10 Buena Vista Rd
 Asheville, NC

Sheet Title
MASTER PLAN



Sheet No. **L1.7**

License Numbers:
 GEORGIA #986
 NORTH CAROLINA #612
 SOUTH CAROLINA #111A58
 MISSISSIPPI #301
 TENNESSEE #0589
 CLARB #653



NOTES:

- * THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.
- * ALL AREAS CALCULATED BY COORDINATE COMPUTATION METHOD.
- * THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.
- * THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.
- * ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE BUNCOMBE COUNTY GIS WEBSITE.
- * NO UNDERGROUND UTILITIES WERE LOCATED. CALL 1-800-632-4949 BEFORE DIGGING.
- * BASED ON GRAPHIC DETERMINATION, THIS PROPERTY DOES NOT LIE IN A FEMA/FIRM SPECIAL FLOOD HAZARD AREA PER COMMUNITY PANEL NO. 3700964700J, DATED 1-6-2010.
- * ANY RIVERS, STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC...LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY PERSON(S)/FIRM(S) AUTHORIZED, BY THE PROPER AUTHORITIES, TO MAKE SUCH DETERMINATION.
- * ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
- * CONTOURS SHOWN HEREON ARE 1' INTERVALS AND DATUM IS ASSUMED.
- * TREES SHOWN HEREON ARE NOT FIELD VERIFIED BY AN ARBORIST AND ARE SUBJECT TO MIS-IDENTIFICATION.
- * THIS PROPERTY IS LOCATED IN ZONE R-2, BUILDING SETBACKS ARE AS FOLLOWS:
- FRONT - 50'
- SIDE - 15'
- REAR - 20'

- LEGEND:**
- = FOUND CORNER (AS NOTED)
 - = CALCULATED & UNMARKED POINT
 - ⊕ = WATER METER
 - ⊙ = FIRE HYDRANT
 - ⊕ = WATER VALVE
 - ⊕ = SIGN
 - ⊕ = UTILITY POLE
 - = OVERHEAD UTILITY LINE(S)
 - = SEWER MANHOLE
 - = FENCE
 - ⊕ = HOSE BIBB
 - ⊕ = DRAINAGE INLET
 - = CLEAN-OUT
 - ⊕ = GAS METER
 - ⊕ = ELECTRIC METER
 - ⊕ = HVAC
 - TOP— = TOP OF BANK
 - TOE— = BOTTOM OF BANK
 - ⊕ = TREE
 - G — = GAS LINE
 - RW = RIGHT OF WAY
 - BSL = BUILDING SETBACK LINES
 - CPP = CORRUGATED PLASTIC PIPE

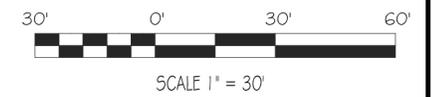
- TREE LEGEND:**
- OK = OAK
 - POP = POPLAR
 - CY = CHERRY
 - SW = SOURWOOD
 - PN = PINE
 - BCH = BEECH
 - MAP = MAPLE
 - HKY = HICKORY
 - UK = UNKNOWN
 - DBL = DOUBLE



I HEREBY CERTIFY THAT THIS DRAWING IS A TRUE, ACCURATE, AND CORRECT REPRESENTATION OF THE AREA SHOWN, AND WAS PREPARED FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION. WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS 18th DAY OF NOVEMBER, A.D., 2020.

Jason Spencer
N.C. PROFESSIONAL LAND SURVEYOR

L-4785
LICENSE #



BOUNDARY, TOPOGRAPHIC, AND TREE SURVEY FOR
PRESTON & KARLA DIAMOND
REFERENCES
PIN 9647-80-8343
DEED BOOK 3700, PAGE 555
BILTMORE TOWNSHIP, BUNCOMBE COUNTY, N.C.
DATE: 11-9-2020 DRAWN BY: MSW
JOB #201104 CHECKED BY: JJJ

CURRENT OWNER:
PRESTON & KARLA DIAMOND
PO BOX 5437
ASHEVILLE, NC 28803



**BOARD OF ADJUSTMENT
STAFF MEMORANDUM**

December 20, 2021



**Case 3 – 11 Brookside Road
Special Use Request for Accessory Building
Variance Request for Exceeding Maximum Roof Coverage
for Accessory Building & Placement**

Property Owner: Andrew & Karen Franklin
Property Address: 11 Brookside Road

Project Description

The applicant has modified the plans presented at last month's Board meeting related to the requested accessory building. The new request is for an accessory building to serve as an accessory dwelling unit with a single car garage. The proposed accessory building contains 813 square feet of roof coverage; the maximum allowable per the Ordinance is 750 square feet, triggering a variance request. The accessory building's placement also requires a variance approval from the Board of Adjustment as it is not located behind a line parallel to the rear of the main home.

Special Use Request

The ordinance requires a special use permit approval from the Board of Adjustment for the detached accessory building. The Zoning Ordinance regulations for accessory buildings are attached to this memorandum. The applicant's proposal does not infringe on setback requirements.

Variance Request

The roof coverage proposed for the accessory building is 813 square feet. This is an exceedance of 8.4 percent. The applicant's variance request includes information related to hardship and necessity for this request. In addition, the application also notes that the placement for the accessory building is not behind a line parallel to the rear of the building. The applicant has provided information for this request in the application.

Zoning Compliance Application

Town of Biltmore Forest

Name

Andrew Franklin

Property Address

11 BROOKSIDE RD

Phone

(573) 280-2813

Email

andrew01franklin@gmail.com

Parcel ID/PIN Number

964663384900000

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.44

Maximum Roof Coverage

5,060 square feet (Up to 1.2 acres)

Proposed Roof Coverage Total

4329

Maximum Impervious Surface Coverage

1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage

3869

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

16ft

Description of the Proposed Project

Multiple improvements will be performed on the property to improve livability and accommodate aging in place.

1. Screened in porch in the rear of the house to allow more enjoyment of the outdoors. Will go over the existing patio and will be screening. The roof will be a standing seam metal roof to accommodate for the shallow pitch and the color will match the current roof. The colors and finishes will match the current house theme. Will increase roof coverage by 267sqft.

2. Main garage extension and additional garage. The garage can only accommodate one car due to internal additions made

by previous owners. This 6-foot addition would allow the garage to accommodate 2 cars. The extension would also allow for a small mudroom. An additional garage would be built on the north side of the house. The finishes would match the current theme of the house and be a mix of brick with board and batten. Will increase roof coverage by 471 sqft.

3. Accessory dwelling. This would be a combination of an apartment with a single car garage meeting the standards of aging in place for an elderly member of the family. This would increase the roof coverage by 813 sqft and impervious surface coverage by 983 sqft.

Estimated Start Date

2/1/2022

Estimated Completion Date

5/31/2022

Estimated Cost of Project

\$400,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

Franklin Addition - Pricing Set - 11-29-21.pdf

Applicant Signature

Date

11/30/2021

A handwritten signature in black ink, consisting of a stylized, cursive script. The signature starts with a large, sweeping initial letter, followed by several smaller, connected letters, and ends with a long, horizontal tail stroke. The signature is written above a thin horizontal line.

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Andrew Franklin

Address

11 BROOKSIDE RD

Phone

(573) 280-2813

Email

andrew01franklin@gmail.com

Current Zoning/Use

residential

Requested Use

residential

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?

Build an accessory dwelling. This would be a combination of an apartment with a single car garage meeting the standards of aging in place for an elderly member of the family. The total sqft would be 813. Also, the building would not be located behind a parallel line rear of the principal structure on the lot.

What does the ordinance require?

153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(b) The maximum roof coverage area for accessory buildings shall be 750 square feet

(e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot.

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 are several issues to be covered:

The accessory structure is greater than 750 square feet. The need for a larger structure is due to a number of factors.

1. The efficient apartment and single car garage are being built for an elderly member of our family (my mother) and were designed to the latest standards of aging in place. My mother is 65 and our goal is for her to live with us until no longer feasible. Our current house layout does not allow for this. The apartment and garage are designed to accommodate all aspects of aging in place. All key doors are 3ft, which allows for easy wheelchair access and would allow for a hospital bed. There are minimal trip points and no steps. The bathroom is designed with a zero clearance shower. There is are no "tight corners" allowing for easy access of EMS stretcher if ever needed. Also, there is enough space to accommodate an in-home caregiver if needed. The garage has enough area to provide for easy walker accessibility to a car and also fit a wheelchair conversion van. Furthermore, the garage provides protection from the elements and

minimizes the risk of a fall. All of these aging-in-place considerations resulted in a larger footprint and there are no reasonable ways to decrease the size.

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

Here I will address the need for the accessory building to be partially located in front of a line parallel to the rear of the house. There are several reasons for the location selected and there is no suitable alternative. With the current location, the structure would sit in an area that is already mostly clear of trees and only require minimal tree removal. Also, the selected area has a manageable slope and would require very minimal changes to the natural topography of the lot. Moving the structure back any further would push it onto heavily forested and steep-sloped areas of the lot. This would lead to the loss of significant old-growth trees, and significant excavation for the accessory structure to be on the same elevation as the main house. The character of the lot and house would be changed for the worse. If the decision was made to leave the structure at a higher elevation to minimize excavation this would cause it to significantly stand out and be more visible, and defeat the purpose of this ordinance. Moving the structure back would also dramatically increase the impervious surface, again impacting the forest, rainwater runoff, and other factors like this. The current design and layout would conceal the bulk of the structure and screen the front with current old-growth trees and vegetation.

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

Hardship is a result is not result of actions taken by the applicant or the property owner.

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.

Yes

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, consisting of a stylized, cursive name followed by a long horizontal line extending to the right.

Date

11/30/2021

Special Use Permit Application

Town of Biltmore Forest

Name

Andrew Franklin

Address

11 BROOKSIDE RD

Phone

(573) 280-2813

Email

andrew01franklin@gmail.com

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

Accessory Buildings

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:

Our family would like to build a detached apartment and garage. This would provide a comfortable living space for my mother and allow her to "age in place" safely.

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

The project would architecturally mirror the main house and seeks to blend into the surrounding forest. Likely few trees would be required to be removed. Furthermore, our lot is well suited for this additional structure and it won't have to be "squeezed" in.

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

Signature

Date

11/30/2021



§ 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;
- (e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;
- (f) The accessory building must be designed in the same architectural style as the principal structure;
- (g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and
- (h) Solar collectors shall be regulated in accordance with G.S. § 160D-914.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.037 ACCESSORY STRUCTURES OR BUILDINGS UTILIZED AS DWELLINGS.

(A) Upon adoption of this chapter, accessory buildings used as dwelling units and occupied by a "family" (see definition in § 153.004) member shall be a conforming use. Such units occupied by a non-family member shall be nonconforming uses.

(B) (1) The definitions and provisions of this chapter provide for this situation.

(2) Therefore, the following shall apply:

(a) An existing accessory structure occupied at the time of adoption of this chapter by a non-family member can continue to be used for such purpose. If the unit occupied by a non-family member becomes vacant for more than 60 days (see § 153.036(C)(2)(c)4.), then such unit could only be reoccupied by a family member.

(b) New accessory structures intended for use as dwellings shall only be occupied by a family member.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

**BOARD OF ADJUSTMENT
STAFF MEMORANDUM**

December 20, 2021



Case 4 – Appeal of Zoning Determination regarding Turf Field at 9 Holly Hill Road

Appellant: Mrs. Charlene Price, 11 Holly Hill Road

Appeal of Zoning Determination regarding Turf Field at 9 Holly Hill Road

The appellant has appealed the Town's determination that the turf field at 9 Holly Hill Road is not an accessory structure. The appeal procedure is outlined in Section 153.111 of the Town's Zoning Ordinance. I have included a copy of this ordinance as Attachment 10 to this memorandum.

The following items are attached to this memorandum as part of the record for the appeal.

1. Letter from Attorney Jesse Swords, representing Mrs. Price, requesting a zoning determination for the turf field at 9 Holly Hill Road (dated October 18, 2021).
2. Letter from Jonathan Kanipe, Town Manager (and Zoning Administrator), denying the zoning determination of accessory structure for the turf field at 9 Holly Hill Road (dated November 12, 2021).
3. Email from Attorney Jesse Swords, representing Mrs. Price, requesting additional information regarding the zoning determination for the turf field at 9 Holly Hill Road (dated November 16, 2021).
4. Letter from Jonathan Kanipe, Town Manager (and Zoning Administrator), providing additional information for the determination that the turf field was not an accessory structure (dated November 24, 2021).
5. Letter from Jesse Swords, representing Mrs. Price, appealing the zoning determination that the turf field was not an accessory structure (dated December 8, 2021).
6. Section 153.004 – Town Zoning Ordinance – Interpretations and Definitions (Accessory Structure Definition highlighted)
7. Section 153.005 – Town Zoning Ordinance – Establishment of Zoning Districts and Map
8. Section 153.006 – Town Zoning Ordinance – Permitted Use Table
9. Section 153.045 – Town Zoning Ordinance – Site Design and Building Form and Mass for Residential Dwelling Units
10. Section 153.111 – Town Zoning Ordinance – Appeals and Applications

allen
stahl+
kilbourne

JESSE M. SWORDS
Attorney at Law
jswords@asklawnc.com
828-254-4778

October 18, 2021

Jonathan Kanipe, Biltmore Forest Town Manager
jkanipe@biltmoreforest.org
[VIA EMAIL ONLY]

Re: Request for Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Kanipe:

Our firm has been retained by Ms. Charlene Price regarding her opposition to unpermitted structures located at 9 Holly Hill Road.

We understand that, before the owner of 9 Holly Hill Road undertook a large project to renovate his property in 2018, he submitted a site plan (see Attachment 1), and apparently a Conditional Use Permit was issued to him at that time. However, the submitted site plan did not show the unpermitted structures, which are made up of an artificial turf field (the “Turf Field”) and soccer goals. These structures are located in the space shown only as a “lawn” on Attachment 1.

We also understand that the Town has deemed the soccer goals themselves unpermitted “accessory structures” under the Town of Biltmore Forest Zoning Ordinance (the “Zoning Ordinance”), and is in the process of requiring mitigation measures, including screening landscaping, to be installed.

However, based on the minutes from the September 2021 meeting of the Board of Adjustment, it appears that the Town considers the Turf Field merely a “lawn,” and that the Town does not plan to take any action regarding it.

The characterization of the Turf Field as a “lawn” is incorrect. Unlike a lawn, the Turf Field incorporates a base of compacted material, and the artificial turf surface is mechanically attached to its base with stakes or pins. A typical installation of an artificial turf field would also include a curb structure around the edge. Indeed, such a structure is visible on the attached aerial photograph of 9 Holly Hill Road (Attachment 2, from the October 2021 BOA Agenda Packet).

The compacted base structure upon which the artificial turf is laid causes the Turf Field to have drastically different drainage characteristics than a natural lawn, which means a drainage system is needed to mitigate damaging runoff. Generally, the hard base also necessitates a layer of padding to allow the artificial turf to “give” such that it mimics the feel of natural turf and lowers the risk of injury to players. This is typically accomplished by incorporating a layer of plastic and rubber particles, which can be shed into the environment even in a well-designed installation.

Finally, artificial turf stays green year-round, which is out of keeping with the natural landscape, and the compacted base structure also makes it difficult for natural vegetation to grow after the artificial turf surface is removed.

See Attachment 3 for cross section drawings of a typical artificial turf installation for your further reference.

Because it is not merely a lawn, but is a structure in and of itself, the Turf Field clearly meets the definition of “accessory structure,” which is defined in the Zoning Ordinance as follows:

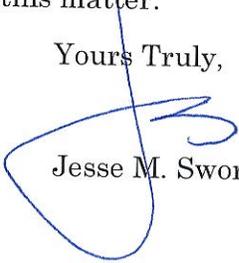
ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. ACCESSORY STRUCTURES include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Therefore, pursuant to Section 160D-403(b) of the North Carolina General Statutes, we request that you make a determination that the Turf Field at 9 Holly Hill Road is an “accessory structure,” and that you take appropriate action to ensure that it is removed or brought into full compliance with the Zoning Ordinance.

In particular, because accessory structures are a special use in the R-1 zoning district, the owner of 9 Holly Hill Road should have obtained a Special Use Permit before the Turf Field was built. If he cannot produce competent, relevant, and substantial evidence that the Turf Field meets all of the Town’s Special Use requirements—including by expert testimony on issues such as drainage, neighboring property values, and environmental contamination—it should be removed.

If this letter has reached you in error, please forward to the appropriate Town staff member as quickly as possible. Please copy my office on any correspondence with Ms. Price on this matter.

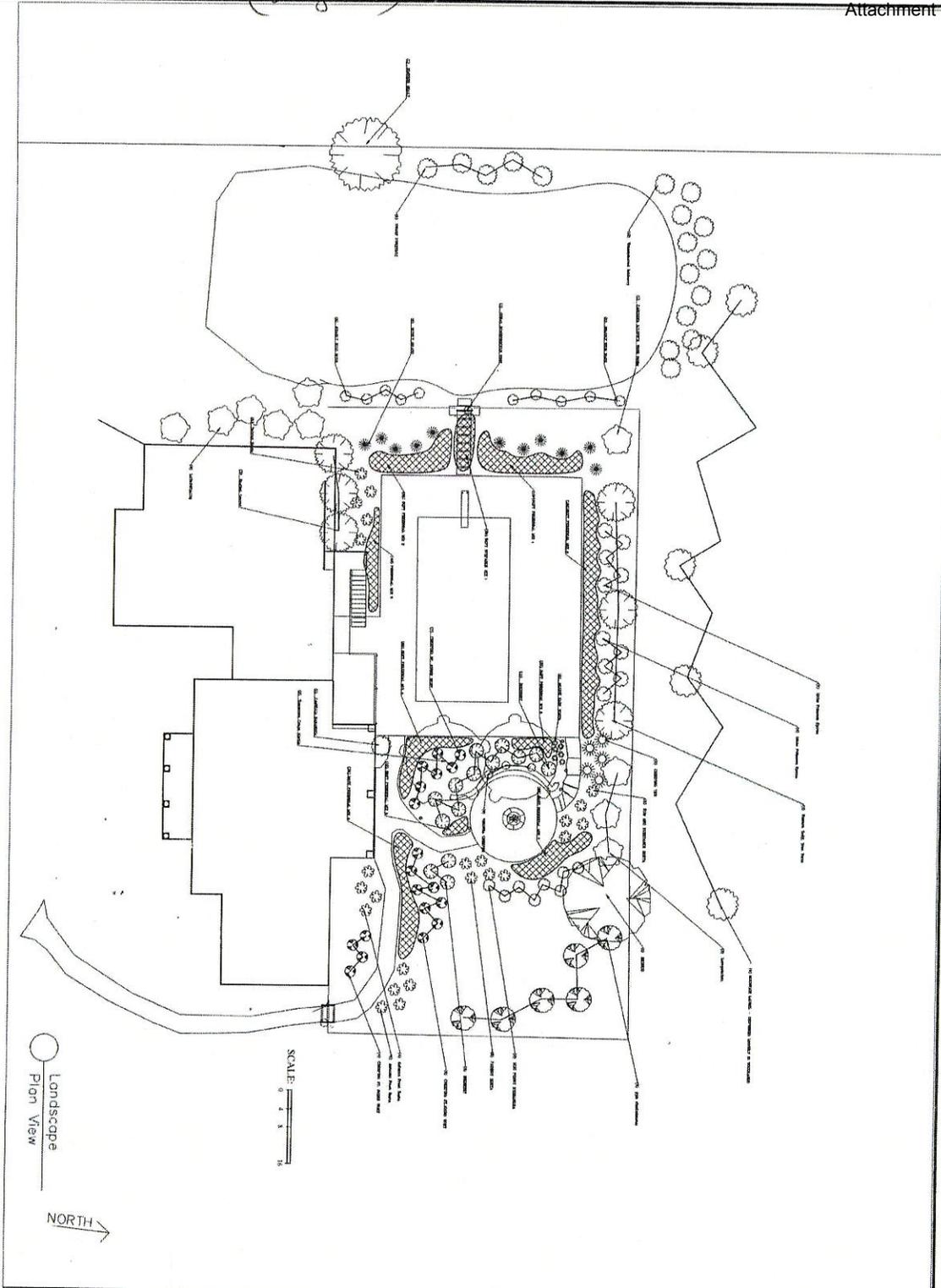
Yours Truly,



Jesse M. Swords

Attachment 1

(Original)



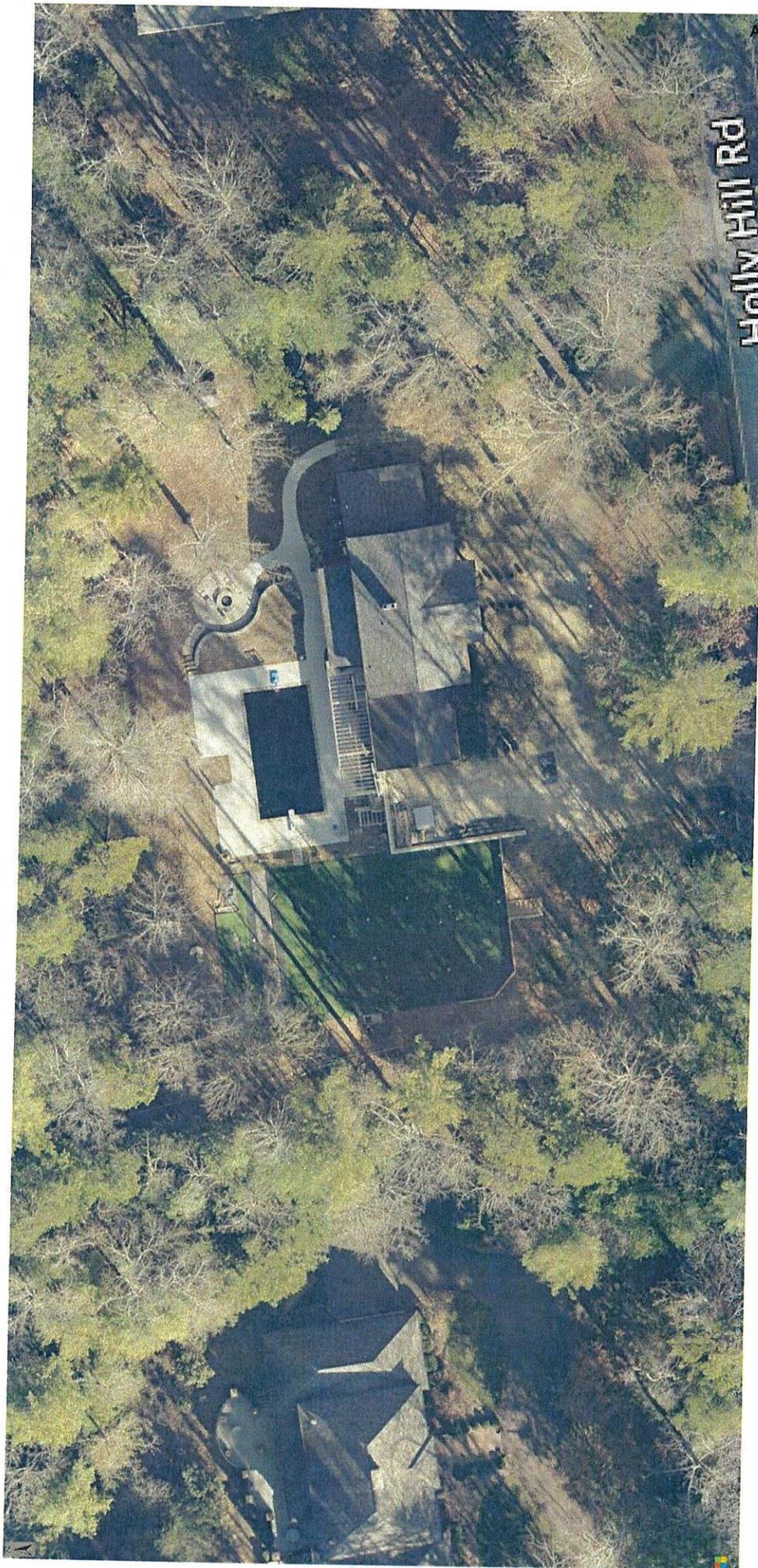
NORTH
 Landscape Plan View

SCALE: 0 1 2 3 4 5

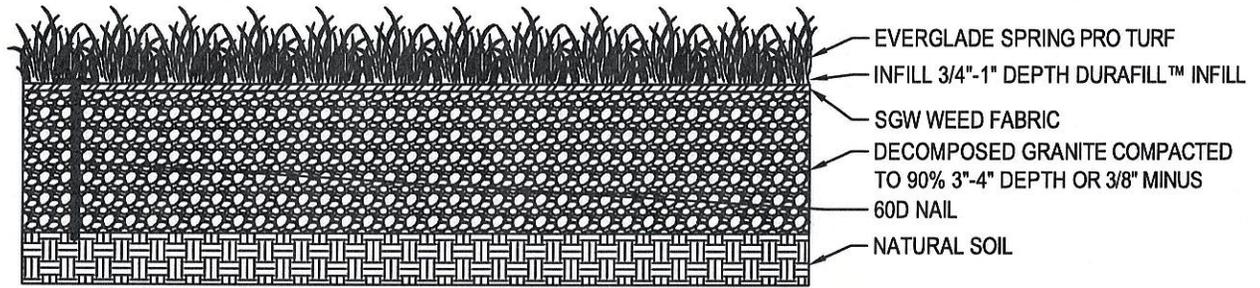
- Perennial Mixes:
- Mix 1: Aster (5)
 - Mix 2: Black-eyed Susan (3)
 - Mix 3: Iris - Caesar's Beaker (5)
 - Mix 4: Dianthus - Salsk Pink (10)
 - Mix 5: Aster (5)
 - Mix 6: Iris - Caesar's Beaker (5)
 - Mix 7: Dianthus - Salsk Pink (7)
 - Mix 8: Mandy Grass (3)
 - Mix 9: Dianthus - Salsk Pink (7)
 - Mix 10: Candytuft (7)
 - Mix 11: Variegated Sweet Iris (3)
 - Mix 12: Iris - Caesar's Beaker (5)
 - Mix 13: Aster (3)
 - Mix 14: Aster (3)
 - Mix 15: Daphne - Hippo Returns (3)
 - Mix 16: Aster (3)
 - Mix 17: Aster (3)
 - Mix 18: Daphne - Hippo Returns (3)
 - Mix 19: Aster (3)
 - Mix 20: Aster (3)
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 - Mix 92: Aster (3)
 - Mix 93: Aster (3)
 - Mix 94: Aster (3)
 - Mix 95: Aster (3)
 - Mix 96: Aster (3)
 - Mix 97: Aster (3)
 - Mix 98: Aster (3)
 - Mix 99: Aster (3)
 - Mix 100: Aster (3)
- Sample Mixes:
- Dwarf Mondo Grass (7)
 - Dianthus - Salsk Pink (5)

Attachment 2

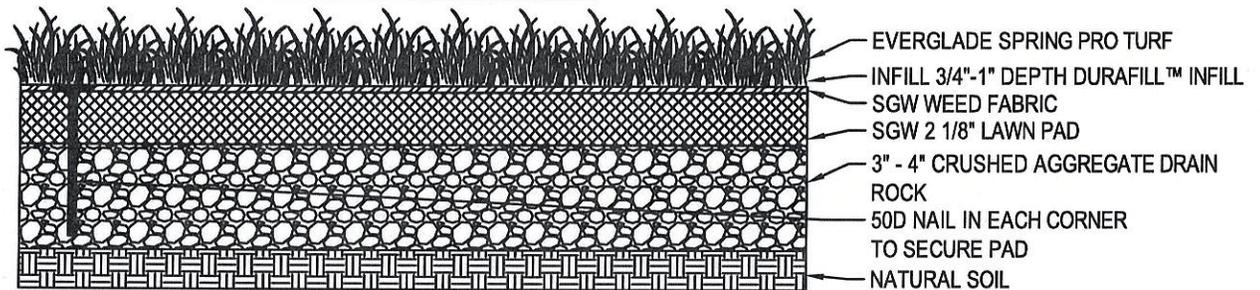
9 Holly Hill Road



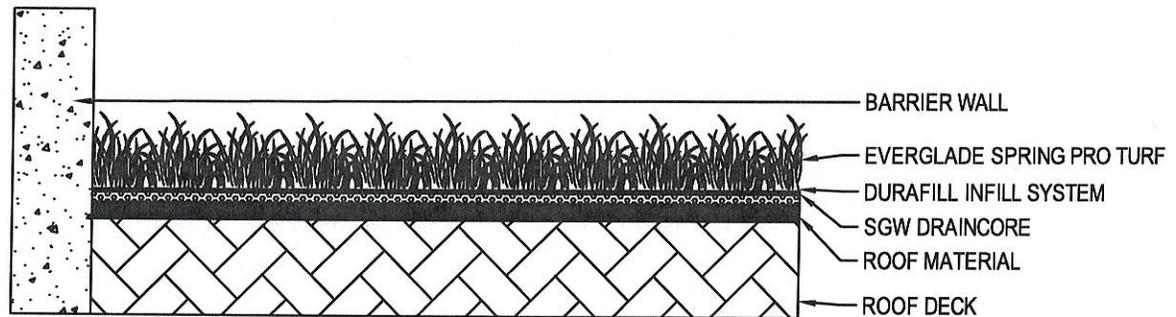
Attachment 3



STANDARD INSTALL CROSS SECTION



PLAYGROUND INSTALL WITH PAD



ROOFTOP INSTALLATION SECTION

SPECIFICATIONS:

BRAND: TIGER EXPRESS

MODEL: EVERGLADE SPRING PRO

RECOMMENDED USE: MODERATE TO HEAVY TRAFFIC

YARN COLORS: FIELD GREEN / LIME GREEN WITH BROWN THATCH

YARN TYPE: MONOFILAMENT

YARN COMPOSITION: PE WITH THATCH

THATCH COLOR: BROWN

YARN DENIER: 9000 / 5000

FACE WEIGHT: APPROX. 75 OZ/YD

TOTAL WEIGHT: 102 OZ/YD

PILE HEIGHT: APPROX. 1 3/4"

GAUGE: 3/8"

ROLL WIDTH: 15'

ROLL LENGTH: 100'

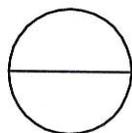
ROLL WEIGHT: 1155 LB

RECOMMENDED INFILL: 1.5 ~ 2.5 LBS/S.F.

WEIGHT/SQ.FT: 0.77 LB

NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. DO NOT SCALE DRAWING.
3. THIS DRAWING IS INTENDED FOR USE BY ARCHITECTS, ENGINEERS, CONTRACTORS, CONSULTANTS AND DESIGN PROFESSIONALS FOR PLANNING PURPOSES ONLY. THIS DRAWING MAY NOT BE USED FOR CONSTRUCTION.
4. ALL INFORMATION CONTAINED HEREIN WAS CURRENT AT THE TIME OF DEVELOPMENT BUT MUST BE REVIEWED AND APPROVED BY THE PRODUCT MANUFACTURER TO BE CONSIDERED ACCURATE.
5. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT www.CADdetails.com/info AND ENTER REFERENCE NUMBER 5028-008.



SYNTHETIC GRASS WAREHOUSE

EVERGLADE SPRING PRO

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner
Jonathan B. Kanipe,
Town Manager

November 12, 2021

Jesse M. Swords
Attorney at Law
jswords@asklawnc.com
[VIA EMAIL ONLY]

Re: Request for Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Swords,

I am writing in response to your letter of October 18, 2021, requesting, pursuant to N.C. Gen. Stats. Section 160D-403(b) that the Town of Biltmore Forest make a determination that the turf field at 9 Holly Hill Road is an “accessory structure” as defined in the town zoning ordinance. You further request that the town take appropriate action to ensure that the turf field is removed or brought into full compliance with the zoning ordinance.

On behalf of the Town of Biltmore Forest, your request is declined. The turf field is not a structure and does not qualify as an Accessory Structure as that term is defined in the Zoning Ordinance. Since the Town does not consider the turf field an accessory structure, the Town declines to take the additional actions requested in your letter of October 18, 2021. Please let me know if you have questions, or if you need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan B. Kanipe".

Jonathan B. Kanipe
Zoning Administrator

Copy: Mr. William Clarke, Biltmore Forest Town Attorney (via email)
Members of Biltmore Forest Board of Adjustment (via email)

allen
stahl+
kilbourne

JESSE M. SWORDS
Attorney at Law
jswords@asklawnc.com
828-254-4778

October 18, 2021

Jonathan Kanipe, Biltmore Forest Town Manager
jkanipe@biltmoreforest.org
[VIA EMAIL ONLY]

Re: Request for Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Kanipe:

Our firm has been retained by Ms. Charlene Price regarding her opposition to unpermitted structures located at 9 Holly Hill Road.

We understand that, before the owner of 9 Holly Hill Road undertook a large project to renovate his property in 2018, he submitted a site plan (see Attachment 1), and apparently a Conditional Use Permit was issued to him at that time. However, the submitted site plan did not show the unpermitted structures, which are made up of an artificial turf field (the “Turf Field”) and soccer goals. These structures are located in the space shown only as a “lawn” on Attachment 1.

We also understand that the Town has deemed the soccer goals themselves unpermitted “accessory structures” under the Town of Biltmore Forest Zoning Ordinance (the “Zoning Ordinance”), and is in the process of requiring mitigation measures, including screening landscaping, to be installed.

However, based on the minutes from the September 2021 meeting of the Board of Adjustment, it appears that the Town considers the Turf Field merely a “lawn,” and that the Town does not plan to take any action regarding it.

The characterization of the Turf Field as a “lawn” is incorrect. Unlike a lawn, the Turf Field incorporates a base of compacted material, and the artificial turf surface is mechanically attached to its base with stakes or pins. A typical installation of an artificial turf field would also include a curb structure around the edge. Indeed, such a structure is visible on the attached aerial photograph of 9 Holly Hill Road (Attachment 2, from the October 2021 BOA Agenda Packet).

The compacted base structure upon which the artificial turf is laid causes the Turf Field to have drastically different drainage characteristics than a natural lawn, which means a drainage system is needed to mitigate damaging runoff. Generally, the hard base also necessitates a layer of padding to allow the artificial turf to “give” such that it mimics the feel of natural turf and lowers the risk of injury to players. This is typically accomplished by incorporating a layer of plastic and rubber particles, which can be shed into the environment even in a well-designed installation.

Finally, artificial turf stays green year-round, which is out of keeping with the natural landscape, and the compacted base structure also makes it difficult for natural vegetation to grow after the artificial turf surface is removed.

See Attachment 3 for cross section drawings of a typical artificial turf installation for your further reference.

Because it is not merely a lawn, but is a structure in and of itself, the Turf Field clearly meets the definition of “accessory structure,” which is defined in the Zoning Ordinance as follows:

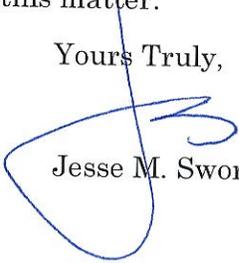
ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. ACCESSORY STRUCTURES include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Therefore, pursuant to Section 160D-403(b) of the North Carolina General Statutes, we request that you make a determination that the Turf Field at 9 Holly Hill Road is an “accessory structure,” and that you take appropriate action to ensure that it is removed or brought into full compliance with the Zoning Ordinance.

In particular, because accessory structures are a special use in the R-1 zoning district, the owner of 9 Holly Hill Road should have obtained a Special Use Permit before the Turf Field was built. If he cannot produce competent, relevant, and substantial evidence that the Turf Field meets all of the Town’s Special Use requirements—including by expert testimony on issues such as drainage, neighboring property values, and environmental contamination—it should be removed.

If this letter has reached you in error, please forward to the appropriate Town staff member as quickly as possible. Please copy my office on any correspondence with Ms. Price on this matter.

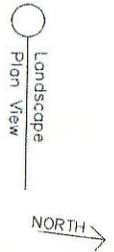
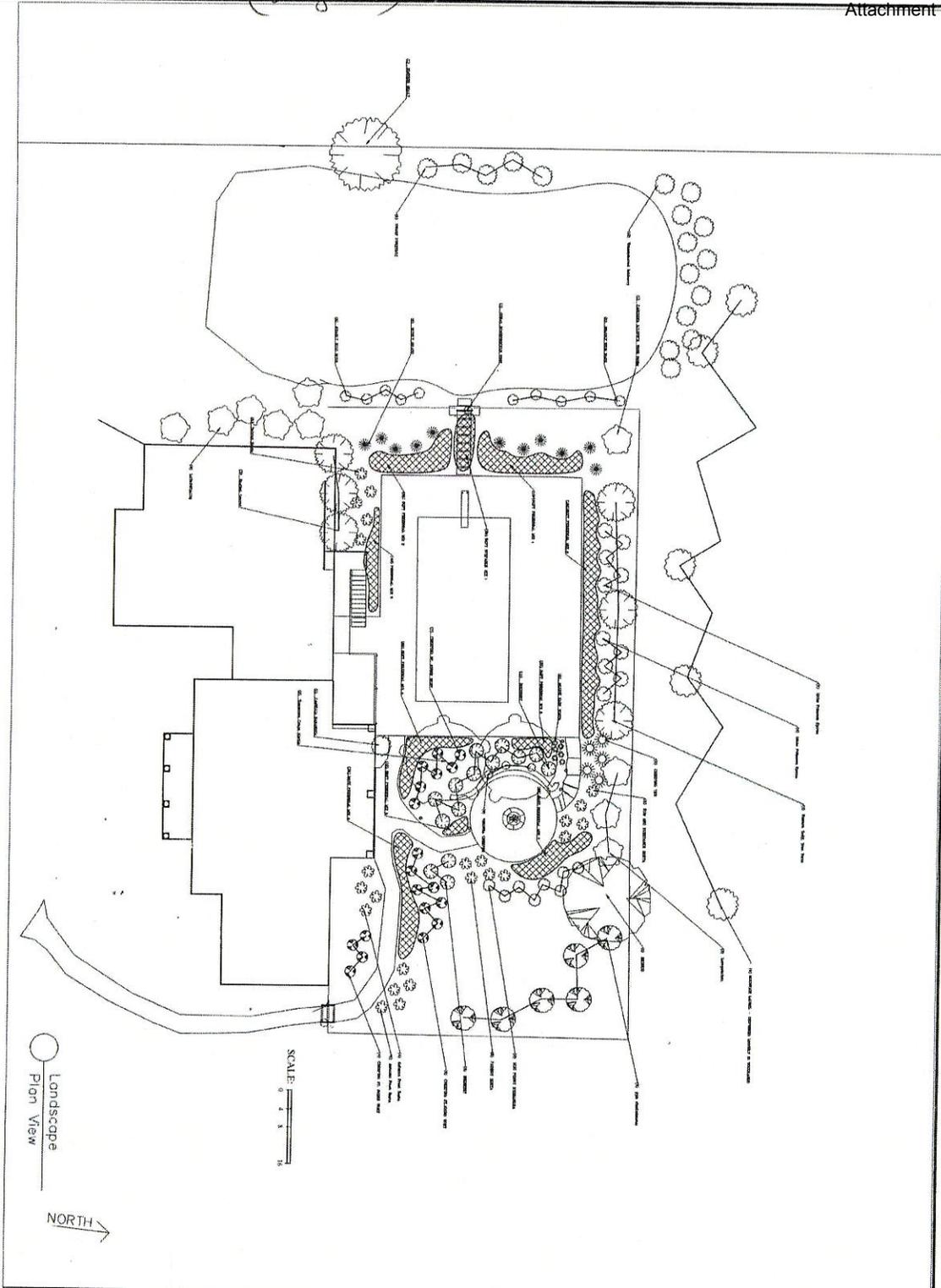
Yours Truly,



Jesse M. Swords

Attachment 1

(Original)

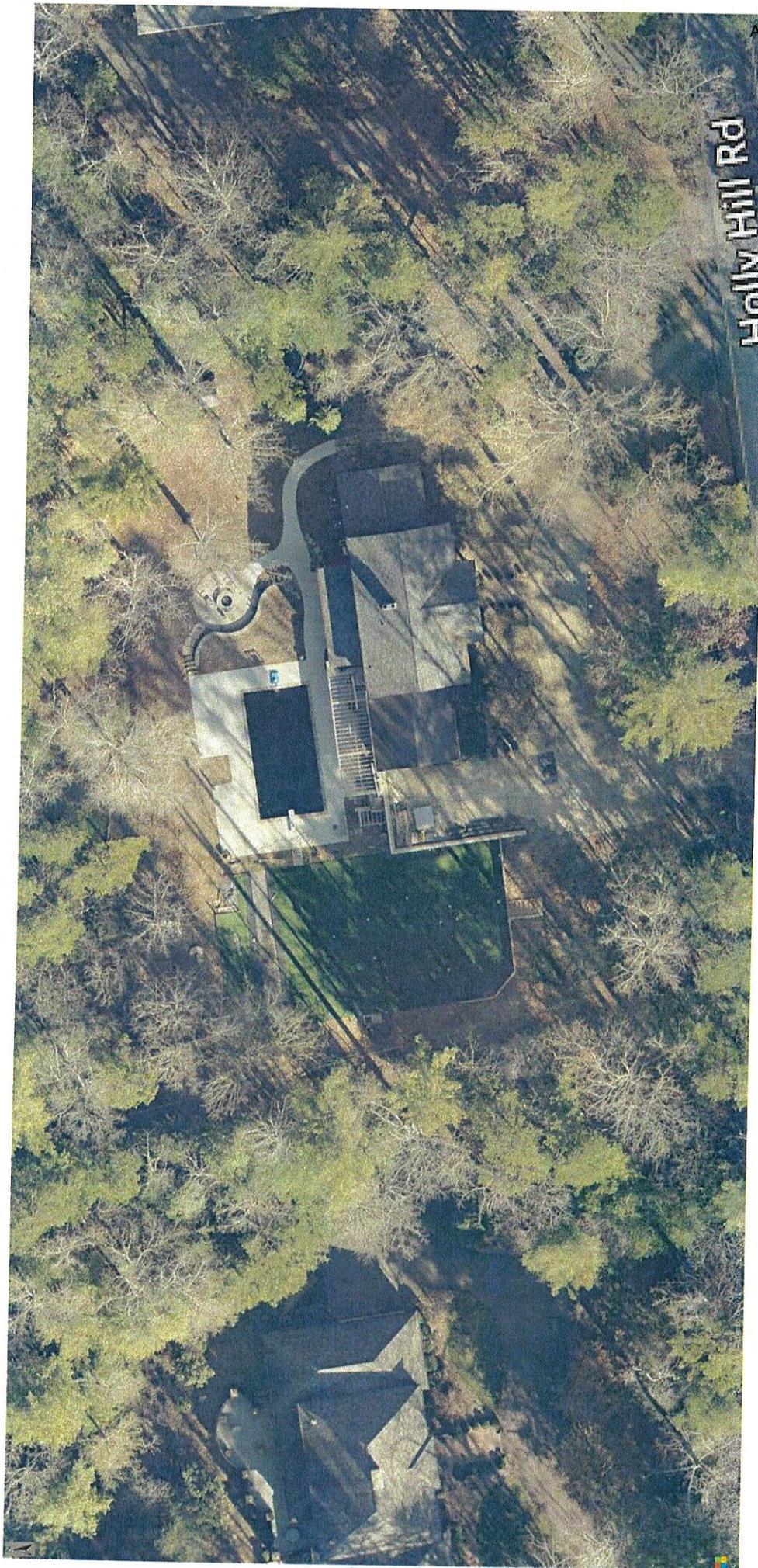


SCALE: 0 1 2 3 4 5

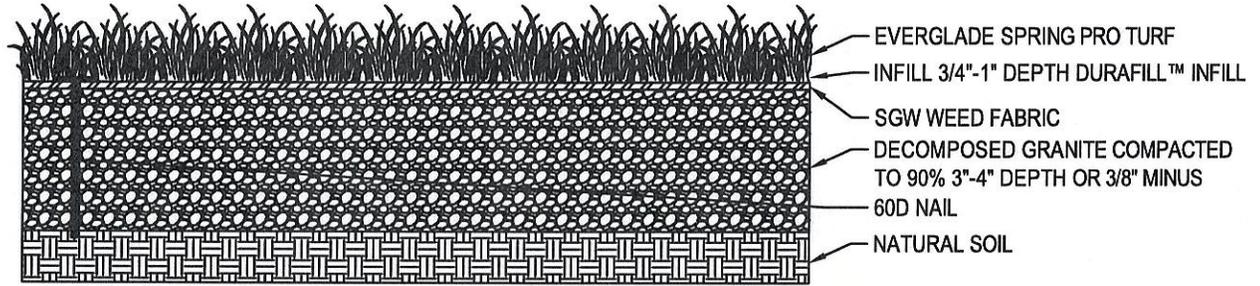
- Perennial Mixes:
- Mix 1: Aster (5)
 - Mix 2: Black-eyed Susan (3)
 - Mix 3: Iris - Caesar's Beaker (5)
 - Mix 4: Dianthus - Salsk Pink (10)
 - Mix 5: Aster (5)
 - Mix 6: Iris - Caesar's Beaker (5)
 - Mix 7: Dianthus - Salsk Pink (7)
 - Mix 8: Mandy Grass (3)
 - Mix 9: Dianthus - Salsk Pink (7)
 - Mix 10: Candytuft (7)
 - Mix 11: Variegated Sweet Iris (3)
 - Mix 12: Iris - Caesar's Beaker (5)
 - Mix 13: Aster (3)
 - Mix 14: Aster (3)
 - Mix 15: Daphne - Hippo Rumex (3)
 - Mix 16: Aster (3)
 - Mix 17: Aster (3)
 - Mix 18: Aster (3)
 - Mix 19: Aster (3)
 - Mix 20: Aster (3)
 - Mix 21: Aster (3)
 - Mix 22: Aster (3)
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 - Mix 91: Aster (3)
 - Mix 92: Aster (3)
 - Mix 93: Aster (3)
 - Mix 94: Aster (3)
 - Mix 95: Aster (3)
 - Mix 96: Aster (3)
 - Mix 97: Aster (3)
 - Mix 98: Aster (3)
 - Mix 99: Aster (3)
 - Mix 100: Aster (3)
- Sample Mix:
David's Moon Grass (7)
Dianthus - Salsk Pink (5)

Attachment 2

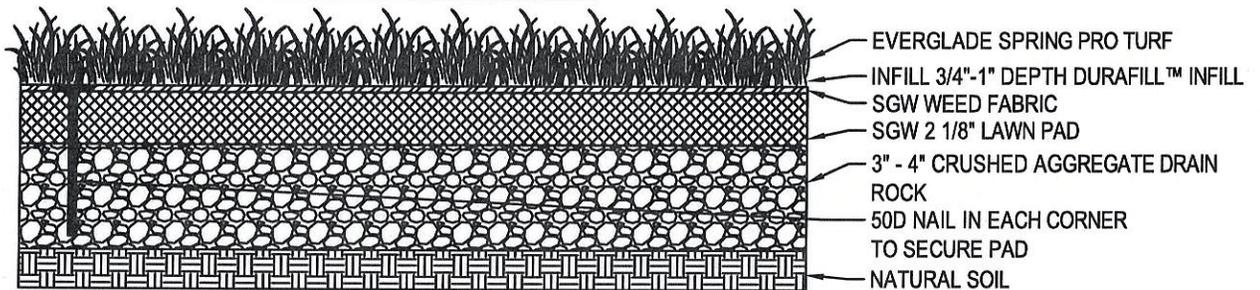
9 Holly Hill Road



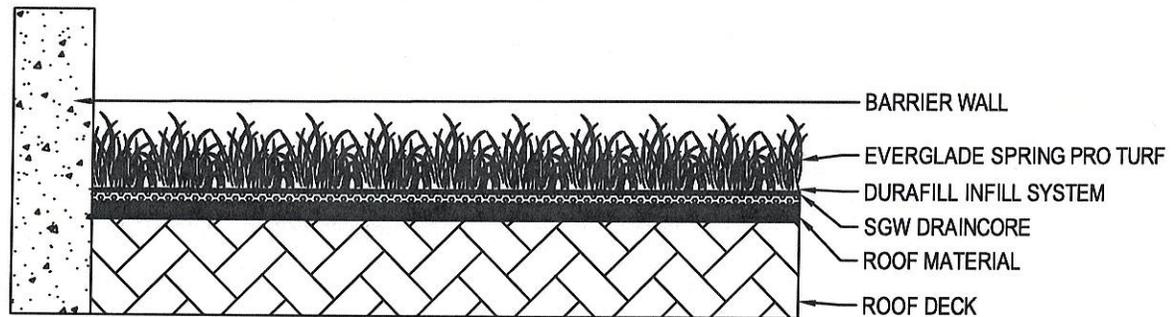
Attachment 3



STANDARD INSTALL CROSS SECTION



PLAYGROUND INSTALL WITH PAD



ROOFTOP INSTALLATION SECTION

SPECIFICATIONS:

BRAND: TIGER EXPRESS

MODEL: EVERGLADE SPRING PRO

RECOMMENDED USE: MODERATE TO HEAVY TRAFFIC

YARN COLORS: FIELD GREEN / LIME GREEN WITH BROWN THATCH

YARN TYPE: MONOFILAMENT

YARN COMPOSITION: PE WITH THATCH

THATCH COLOR: BROWN

YARN DENIER: 9000 / 5000

FACE WEIGHT: APPROX. 75 OZ/YD

TOTAL WEIGHT: 102 OZ/YD

PILE HEIGHT: APPROX. 1 3/4"

GAUGE: 3/8"

ROLL WIDTH: 15'

ROLL LENGTH: 100'

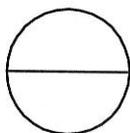
ROLL WEIGHT: 1155 LB

RECOMMENDED INFILL: 1.5 ~ 2.5 LBS/S.F.

WEIGHT/SQ.FT: 0.77 LB

NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. DO NOT SCALE DRAWING.
3. THIS DRAWING IS INTENDED FOR USE BY ARCHITECTS, ENGINEERS, CONTRACTORS, CONSULTANTS AND DESIGN PROFESSIONALS FOR PLANNING PURPOSES ONLY. THIS DRAWING MAY NOT BE USED FOR CONSTRUCTION.
4. ALL INFORMATION CONTAINED HEREIN WAS CURRENT AT THE TIME OF DEVELOPMENT BUT MUST BE REVIEWED AND APPROVED BY THE PRODUCT MANUFACTURER TO BE CONSIDERED ACCURATE.
5. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT www.CADdetails.com/info AND ENTER REFERENCE NUMBER 5028-008.



SYNTHETIC GRASS WAREHOUSE

EVERGLADE SPRING PRO

From: [Jesse Swords](#)
To: [Jonathan Kanipe](#)
Cc: [Billy Clarke \(BClarke@roberts-stevens.com\)](#)
Subject: RE: Response from Town of Biltmore Forest regarding Request for Zoning Determination
Date: Tuesday, November 16, 2021 7:23:06 PM

WARNING:This email originated from outside of the Town of Biltmore Forest Network.

Jonathan,

As you and I discussed briefly the other night, please provide us with some information regarding how the Town reached its conclusion about the Turf Field at 9 Holly Hill Road. For example, what facts were considered? Did the Town do any investigation as to how the Turf Field was installed, what components make up the installation, whether there is a base system or drainage system, whether there is any fill material (e.g., plastic or rubber particles), etc.? If so, what investigation was done, and by whom.

Also, please confirm that Ms. Price's appeal would be on the BOA agenda for the December meeting if we submit it by December 8.

Thank you.



Jesse Swords
Attorney
Allen Stahl + Kilbourne
20 Town Mountain Road
Suite 100
Asheville, NC 28801
828.575.5248 Direct
828.254.4778 Main
828.254.6646 Fax
www.asklawnc.com
jswords@asklawnc.com

From: Jonathan Kanipe <jkanipe@biltmoreforest.org>
Sent: Friday, November 12, 2021 2:54 PM
To: Jesse Swords <jswords@asklawnc.com>
Cc: Billy Clarke (BClarke@roberts-stevens.com) <BClarke@roberts-stevens.com>
Subject: Response from Town of Biltmore Forest regarding Request for Zoning Determination

Good afternoon Mr. Swords,
The Town's response to your request for a revised zoning determination, dated 10/18/21, is attached for your review. I am copying Town Attorney Billy Clarke on this email; please feel free to reach out to either of us with any questions.

Thank you,

Jonathan Kanipe
Town Manager
Town of Biltmore Forest
(828) 274-0824 // jkanipe@biltmoreforest.org
<http://www.biltmoreforest.org>

All email correspondence to and from this address is subject to public review under the NC Public Records Law.

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

November 24, 2021

Jesse M. Swords
Attorney at Law
jswords@asklawnc.com
[VIA EMAIL ONLY]

Re: Request for Additional Information
Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Swords,

I am writing in response to our conversation after the Biltmore Forest Board of Adjustment meeting on November 15, 2021 and subsequent email from November 16, 2021. The question, specifically, was to provide information regarding how the Town reached its conclusion about the turf field at 9 Holly Hill Road.

The Town deemed the turf field *not* an accessory structure because the existence of the turf is not regulated within the Town's Zoning Ordinance definition of accessory structure. The definition of accessory structure, from Section 153.004 of the Town's Zoning Ordinance, is as follows:

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Specifically, each of the items listed above are *vertical structures* extending up from the ground. This is not the case with the turf field. The components of the turf field are artificial turf flush with the ground in the place of the lawn called out on the original plan.

Town staff spoke with the homeowner, Ben Lehman, in November 2019 after the field was installed. Mr. Lehman provided information regarding the installation. This information specifically provided installation details, including that the turf field was installed over a 3-inch subbase of gravel and stone dust with ½ inch perforated holes allowing drainage into the water table. This information led to staff determination that the artificial turf was pervious. These two

factors contributed to the Town's initial determination that the turf field was not an accessory structure. This information, as well as subsequent information from Mr. Lehman verifying that no drainage structure exists underneath the turf field, led the Town to its most recent re-determination that the turf field did not constitute an accessory structure and thereby did not require a special use permit.

I appreciate the opportunity to provide this information. Please let me know if you have any additional questions.

Sincerely,



Jonathan B. Kanipe
Town Manager

Copy: Mr. William Clarke, Biltmore Forest Town Attorney (via email)



JESSE M. SWORDS
Attorney at Law
jswords@asklawnc.com
828-254-4778

December 8, 2021

Town of Biltmore Forest Board of Adjustment
C/O Jonathan Kanipe, Town Manager
jkanipe@biltmoreforest.org
VIA EMAIL ONLY

Re: Appeal of Request for Zoning Determination – Turf Field at 9 Holly Hill Road

Dear Board of Adjustment:

This firm represents Charlene Price regarding her continued opposition to the Turf Field constructed by her neighbors, Ben and Christine Lehman, at 9 Holly Hill Road (the “Turf Field”).

Pursuant to Section 160D-405 of the North Carolina General Statutes and Section 153.095 of the Town of Biltmore Forest Zoning Ordinance, we now submit this appeal of the Town Manager’s November 12, 2021, determination that the Turf Field is not an “Accessory Structure” within the meaning of the Zoning Ordinance and therefore that that no action needs to be taken to address its adverse impacts.

I. Relevant Procedural History

On October 18, 2021, I submitted a letter to Town Manager Jonathan Kanipe pursuant to North Carolina General Statute Section 160D-403(b), requesting that he make a formal determination that the Turf Field is an “Accessory Structure” under language of the Town of Biltmore Forest Zoning Ordinance (the “Zoning Ordinance”), and requesting that the Town take appropriate action to ensure that it is removed or is brought into compliance with the Zoning Ordinance. (Attachment A).

On November 12, 2021, Mr. Kanipe responded to our request via letter (Attachment B), stating that he did not understand the Turf Field to be an “Accessory Structure” under the Zoning Ordinance, and declining to take action to address it. In response to my requests for clarification, Mr. Kanipe sent a second letter on November 24, 2021, with additional exposition of his decision-making process. (Attachment C).

II. Relevant Sections of the Zoning Ordinance

A. Section 153.004 Definitions

ACCESSORY STRUCTURE. *A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building.*
ACCESSORY STRUCTURES *include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.*

(bold and italics in original).

B. Section 153.005(E)(1)(Statement of district intent regarding the R-1 Residential District)

(1) *R-1 Residential District.*

(a) *The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to **preserve and enhance the character of existing neighborhoods** and generally to provide a pleasant living environment. These neighborhoods consist of single-family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low-density residential environment.*

...

(c) ***Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods.*** *Therefore, structures should be compatible in **materials**, height, siting, **color**, texture, scale, and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.*

(emphasis added).

C. **Section 153.006 Permitted Uses Table** (providing that "Accessory buildings, structures and uses" are a "special use" in the R-1 district).

D. Section 153.045 Site Design and Building Form and Mass for Residential Dwelling Units

(A) (1) *The town is a unique community and it is within the public interest and general welfare of the town to regulate the site*

design and building form and mass encompassing all residential structures.

(2) ***Site design shall include*** *grading, surface water drainage, **preservation and restoration of existing flora**, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings.*

(B) *Of particular concern is preservation of the streetscape, signs, lighting, trees, and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the residential structures.*

(1) *Site materials and features. The intent of these provisions is to encourage site materials and features which **blend with the existing visual environment**, e.g., native flora and curvilinear roadways.*

(a) *Built of planted landscape elements.*

1. ***Permitted. All native flora and materials***, (e.g., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units); and

2. ***Prohibited. Abrupt physical configurations***, (e.g., site revisions causing excessive tree removal, land slope revisions greater than natural repose).

...

(emphasis added).

III. Appeal

1. ***Mr. Kanipe's determination erroneously applies the Zoning Ordinance's definition of Accessory Structure.***

The Zoning Ordinance defines "Accessory Structure" as follows:

ACCESSORY STRUCTURE. *A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. ***ACCESSORY STRUCTURES*** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.*

Zoning Ordinance § 153.004 (bold and italics in original). The sole reasoning provided for Mr. Kanipe's analysis was that "each of the items listed above are *vertical structures* extending up from the ground," and that the Turf Field is installed "flush with the ground." Attachment C (emphasis in original).

Mr. Kanipe's determination is erroneous for the following reasons.

a. ***The definition of “Accessory Structure” is written broadly and the examples provided are not an exclusive list.***

The list of examples to which Mr. Kanipe refers is not an exclusive list. Rather, examples of accessory structures “include, but are not limited to” the items on the list. Note that the remainder of the definition provided by the ordinance is very broadly worded.

Therefore, the fact that “Turf Field” or some similarly applicable term is not included in the list is not determinative, and this Board should give effect to the broad definition as written.

b. ***The items on the list are not necessarily “vertical structures.”***

In addition, Mr. Kanipe’s analysis that the list of examples are all “vertical structures” is incorrect. To provide a few examples: (1) a “water feature” could include a pond which is level with the ground; (2) solar collectors can be installed flush to roofs or other surfaces such that they do not create a “vertical” protrusion; and (3) similar to (2), “rock and stone moved from its original location to any other location on the property” could be installed flush with the ground (e.g., a patio).

Therefore, Mr. Kanipe’s reduction of the definition of “Accessory Structure” to “vertical structure” is incorrect and should be rejected.

c. ***The facts disagree with Mr. Kanipe’s assertion that the Turf Field is not a “vertical structure.”***

Mr. Kanipe’s letter of November 24, 2021 states that the Turf Field is made up of multiple layers. Specifically, “the components of the turf field are artificial turf” ... “installed over a 3-inch subbase of gravel and stone dust.”

Because the surface of the Turf Field is at least 3 inches above the ground, it obviously represents a “vertical” alteration of the landscape, even though it is much wider than it is tall. In other words, even if “vertical” was part of the definition of “Accessory Structure,” the Turf Field would qualify.

d. ***Additional factors indicate that the Turf Field is an “Accessory Structure.”***

In addition to the “artificial turf” surface and “3-inch subbase of gravel and stone dust” mentioned in Mr. Kanipe’s letter, previous materials have indicated that the Turf Field is surrounded by timber curbs, and we believe that the artificial turf surface is affixed to the compacted subbase with mechanical fasteners. The existence of multiple components of artificial materials (or artificially altered materials, e.g., compacted gravel and milled timbers), arranged in a systematic way, is the very definition of “structure.”

e. ***The Turf Field should be required to comply with the Special Use Permitting process.***

Because the Turf Field is, in fact, an Accessory Structure, and all accessory structures are a “special use” in the R-1 residential district, the Town should require the Lehmans to comply with the special use permitting process.

The special use permitting process is designed to ensure that certain types of uses are “compatible with the other uses permitted in a district.” Zoning Ordinance § 153.008. Among other things, an applicant for a special use permit must show (using competent, substantial, and material evidence) that the proposed project “will not substantially injure the value of adjoining or abutting property,” “will be in general conformity with the plan or development of the town and its environs,” “will not materially endanger the public health or safety,” etc.

The latter item on that list is important for at least two reasons. First, my client has previously submitted materials showing the potential for the Turf Field to be (or to become) an environmental hazard. Second, the Town has been made aware of significant drainage problems the Turf Field has created for the Lehmans’ downhill neighbors. Although the Town has expressed its belief that it does not have authority to regulate drainage, the Town can clearly require conditions that would mitigate the “public health or safety” problems (not to mention the impact on neighboring property values) caused by excessive drainage.

2. *Mr. Kanipe’s assertion that the Turf Field is like a lawn and thus cannot be regulated is erroneous.*

Mr. Kanipe’s determination letters (see Attachments B and C) and other statements made by Town representatives indicate the Town’s position that the Turf Field has been and will continue to be addressed as a “lawn.” (See, e.g., the Minutes from the September 2021 Board of Adjustment Meeting: “Mr. Kanipe said the AstroTurf was addressed as a ‘lawn.’”; Mr. Baker noted that the original plan for the site did not show astroTurf and thus the neighbors had not had a chance to object to it; “Mr. Clarke said when a project is submitted, the Board does not consider what kind of grass is going to be put down.”)

Along with this idea, the Town has expressed its belief that it does not have authority to regulate the type of grass (or, apparently, whether the “grass” is natural or artificial) incorporated into a lawn.

However, the Zoning Ordinance does provide site design requirements for residential dwellings that empower the Town and this Board to regulate aspects of the Turf Field, even if it is merely a “lawn.”

Specifically, Section 153.045(A)(2) provides that site designs “shall include” “preservation and restoration of existing flora.”

In addition, Section 153.045(B)(1) requires site designs “which blend with the existing visual environment” incorporating “all native flora and materials,” and that “abrupt physical configurations” are prohibited.

Based on the above-referenced provisions of Section 153.045, and contrary to the Town’s treatment of the issue to this point, the Zoning Ordinance ***does*** prohibit the use of artificial turf because it is neither native “flora” nor a “native material.”

At the very least, the Zoning Ordinance requires that any materials used “blend with the existing visual environment.” The Turf Field is a shade of green that could hardly blend with the natural landscape of the Town at the peak of summer, and in other seasons of the year is in jarring contrast to its surroundings. In fact, because the Turf Field cannot change colors in keeping with the seasons as natural grass does, it is difficult to imagine

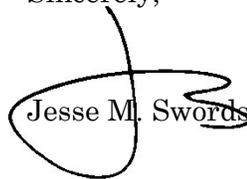
how any artificial turf (much less the bright shade of the Turf Field) could meet the requirement to “blend with the existing visual environment.”

For these reasons, the Town and this Board should take action to bring the Turf Field into compliance with the Zoning Ordinance and the natural character of the Town’s environment by requiring the Lehmans to remove the artificial turf and replace it with natural grass.

IV. Conclusion

Thank you for your consideration. My client wishes for this matter to be placed on the agenda for the December 2021 regular meeting of the Board of Adjustment. Please keep me informed as to the status of that meeting’s agenda, as well as the Town’s observance of the notice requirements set forth in Section 160D-406(b) of the North Carolina General Statutes.

Sincerely,



Jesse M. Swords

Attachment A

allen
stahl+
kilbourne

JESSE M. SWORDS
Attorney at Law
jswords@asklawnc.com
828-254-4778

October 18, 2021

Jonathan Kanipe, Biltmore Forest Town Manager
jkanipe@biltmoreforest.org
[VIA EMAIL ONLY]

Re: Request for Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Kanipe:

Our firm has been retained by Ms. Charlene Price regarding her opposition to unpermitted structures located at 9 Holly Hill Road.

We understand that, before the owner of 9 Holly Hill Road undertook a large project to renovate his property in 2018, he submitted a site plan (see Attachment 1), and apparently a Conditional Use Permit was issued to him at that time. However, the submitted site plan did not show the unpermitted structures, which are made up of an artificial turf field (the “Turf Field”) and soccer goals. These structures are located in the space shown only as a “lawn” on Attachment 1.

We also understand that the Town has deemed the soccer goals themselves unpermitted “accessory structures” under the Town of Biltmore Forest Zoning Ordinance (the “Zoning Ordinance”), and is in the process of requiring mitigation measures, including screening landscaping, to be installed.

However, based on the minutes from the September 2021 meeting of the Board of Adjustment, it appears that the Town considers the Turf Field merely a “lawn,” and that the Town does not plan to take any action regarding it.

The characterization of the Turf Field as a “lawn” is incorrect. Unlike a lawn, the Turf Field incorporates a base of compacted material, and the artificial turf surface is mechanically attached to its base with stakes or pins. A typical installation of an artificial turf field would also include a curb structure around the edge. Indeed, such a structure is visible on the attached aerial photograph of 9 Holly Hill Road (Attachment 2, from the October 2021 BOA Agenda Packet).

The compacted base structure upon which the artificial turf is laid causes the Turf Field to have drastically different drainage characteristics than a natural lawn, which means a drainage system is needed to mitigate damaging runoff. Generally, the hard base also necessitates a layer of padding to allow the artificial turf to “give” such that it mimics the feel of natural turf and lowers the risk of injury to players. This is typically accomplished by incorporating a layer of plastic and rubber particles, which can be shed into the environment even in a well-designed installation.

Finally, artificial turf stays green year-round, which is out of keeping with the natural landscape, and the compacted base structure also makes it difficult for natural vegetation to grow after the artificial turf surface is removed.

See Attachment 3 for cross section drawings of a typical artificial turf installation for your further reference.

Because it is not merely a lawn, but is a structure in and of itself, the Turf Field clearly meets the definition of “accessory structure,” which is defined in the Zoning Ordinance as follows:

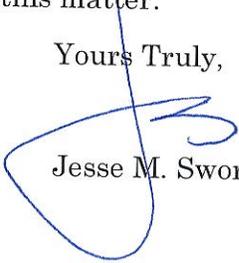
ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. ACCESSORY STRUCTURES include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Therefore, pursuant to Section 160D-403(b) of the North Carolina General Statutes, we request that you make a determination that the Turf Field at 9 Holly Hill Road is an “accessory structure,” and that you take appropriate action to ensure that it is removed or brought into full compliance with the Zoning Ordinance.

In particular, because accessory structures are a special use in the R-1 zoning district, the owner of 9 Holly Hill Road should have obtained a Special Use Permit before the Turf Field was built. If he cannot produce competent, relevant, and substantial evidence that the Turf Field meets all of the Town’s Special Use requirements—including by expert testimony on issues such as drainage, neighboring property values, and environmental contamination—it should be removed.

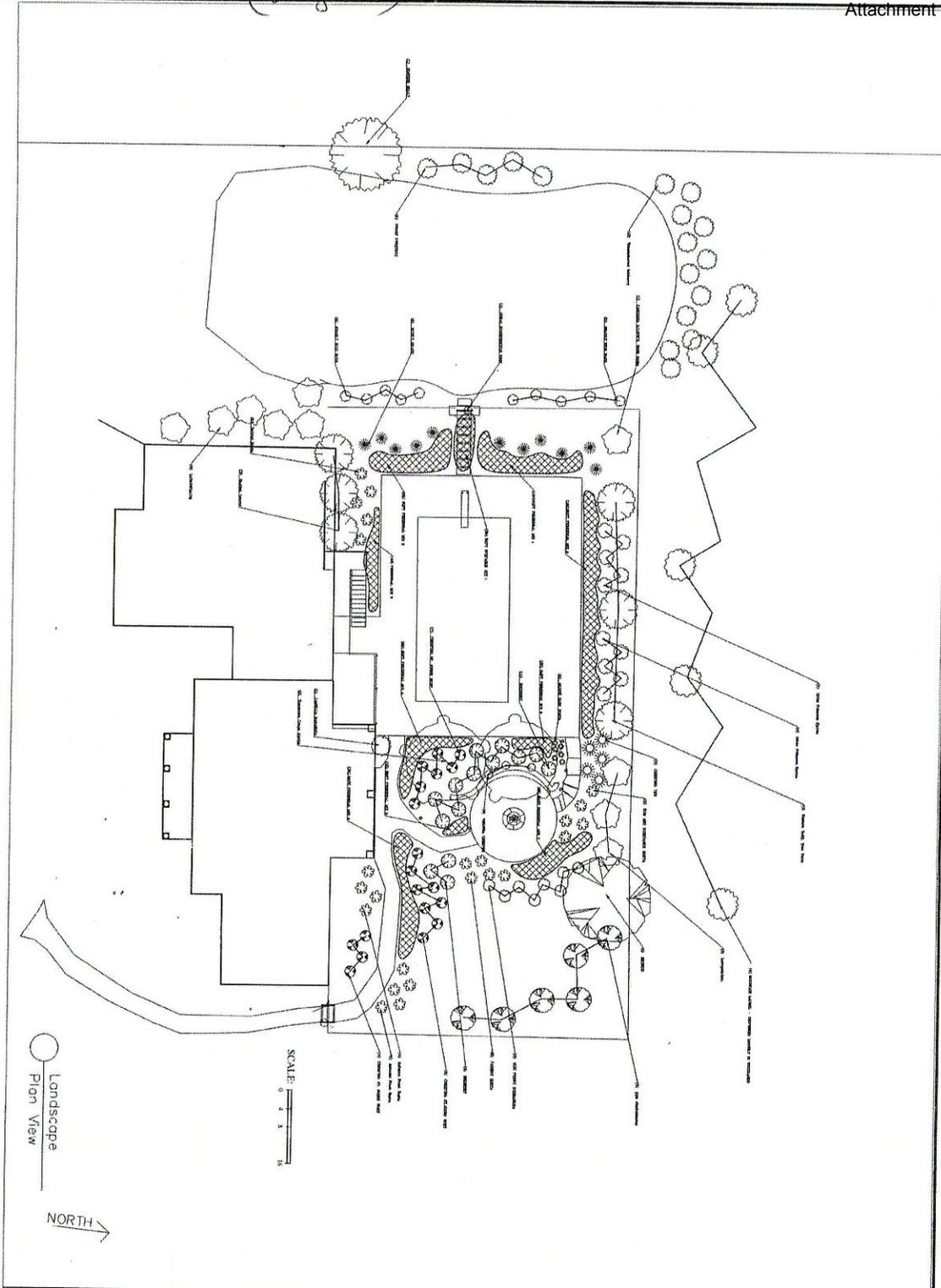
If this letter has reached you in error, please forward to the appropriate Town staff member as quickly as possible. Please copy my office on any correspondence with Ms. Price on this matter.

Yours Truly,



Jesse M. Swords

(Original)



Landscape Plan View

NORTH

SCALE: 0 1 2 3 4 5

- Perennial Mixes:
- Mix 1: Aster (5)
 - Mix 2: Black-eyed Susan (3)
 - Mix 3: Iris - Caesar's Beaker (5)
 - Mix 4: Dianthus - Salsk Pink (10)
 - Mix 5: Aster (5)
 - Mix 6: Iris - Caesar's Beaker (5)
 - Mix 7: Dianthus - Salsk Pink (7)
 - Mix 8: Mandy Grass (3)
 - Mix 9: Dianthus - Salsk Pink (7)
 - Mix 10: Candytuft (7)
 - Mix 11: Variegated Sweet Iris (3)
 - Mix 12: Iris - Caesar's Beaker (5)
 - Mix 13: Aster (3)
 - Mix 14: Aster (3)
 - Mix 15: Daphne - Hippo Reuteri (3)
 - Mix 16: Aster (3)
 - Mix 17: Aster (3)
 - Mix 18: Aster (3)
 - Mix 19: Aster (3)
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 - Mix 93: Aster (3)
 - Mix 94: Aster (3)
 - Mix 95: Aster (3)
 - Mix 96: Aster (3)
 - Mix 97: Aster (3)
 - Mix 98: Aster (3)
 - Mix 99: Aster (3)
 - Mix 100: Aster (3)
- Sample Mix:
 David's Moon Grass (7)
 Dianthus - Salsk Pink (5)

SPLASH LUXURY POOLS

Mailing Address: 825-C Merrimon Ave., # 248 Asheville, NC 28804. OFFICE: 828-458-7690 GC #: 76475 splashluxurypools.com

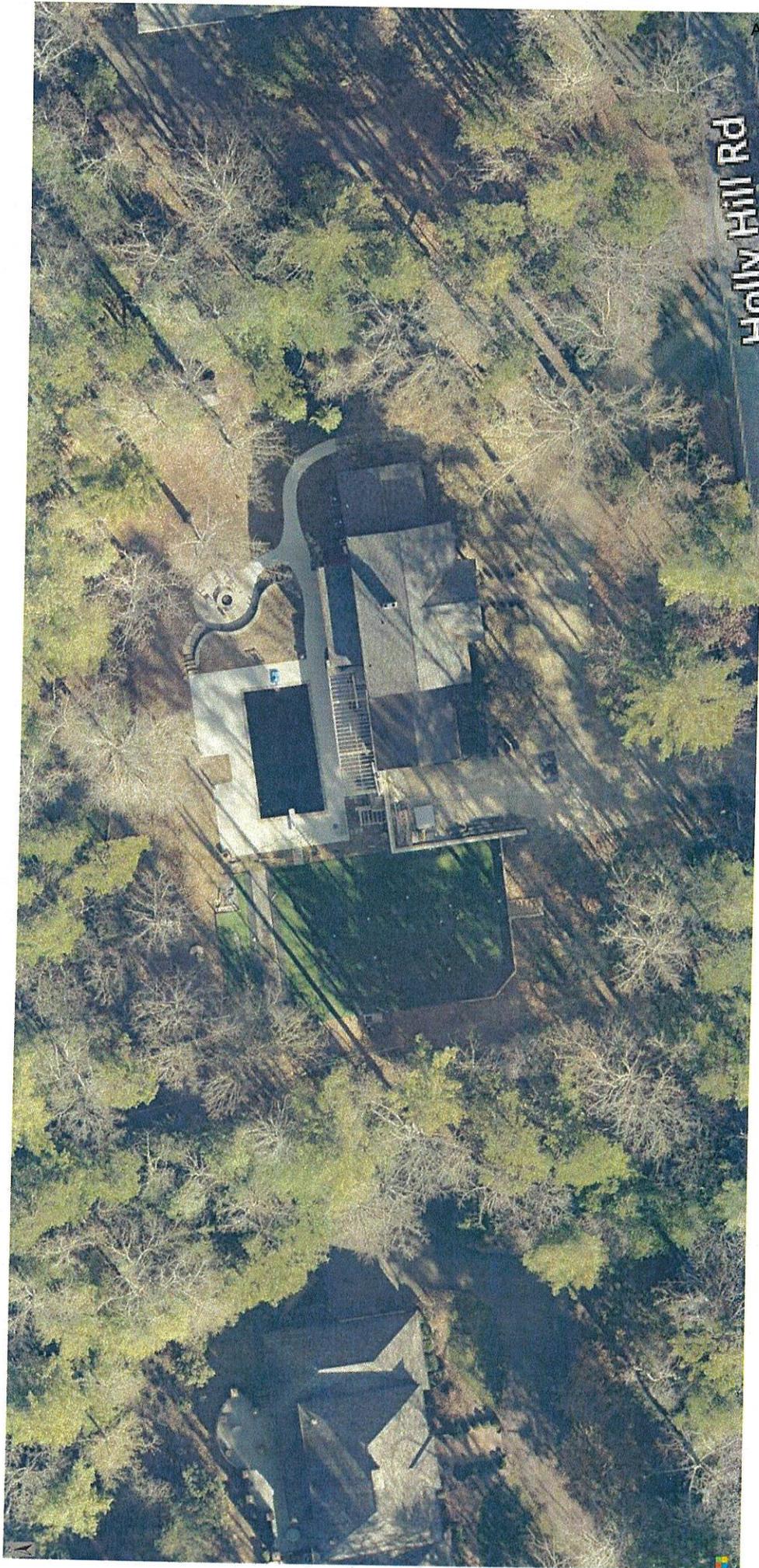
Lehman Residence 9 Holly Hill Road Asheville, NC Buncombe County

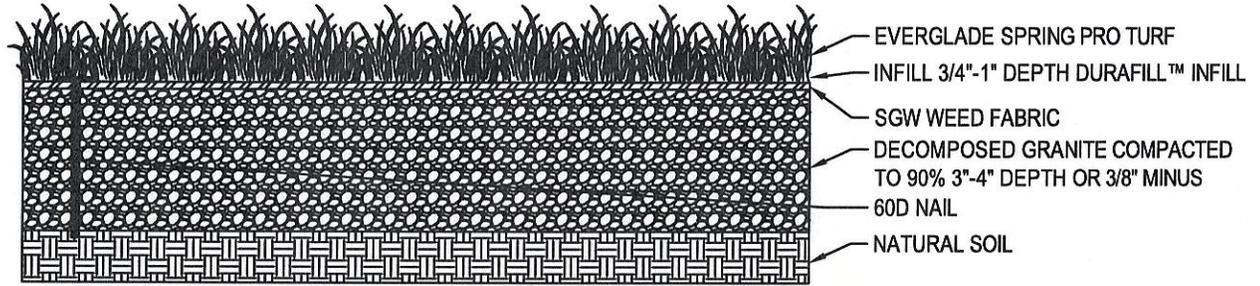
PLANS PREPARED BY: RIP HOOKER LAST REVISED ON: 04-27-2018

Landscape Plan

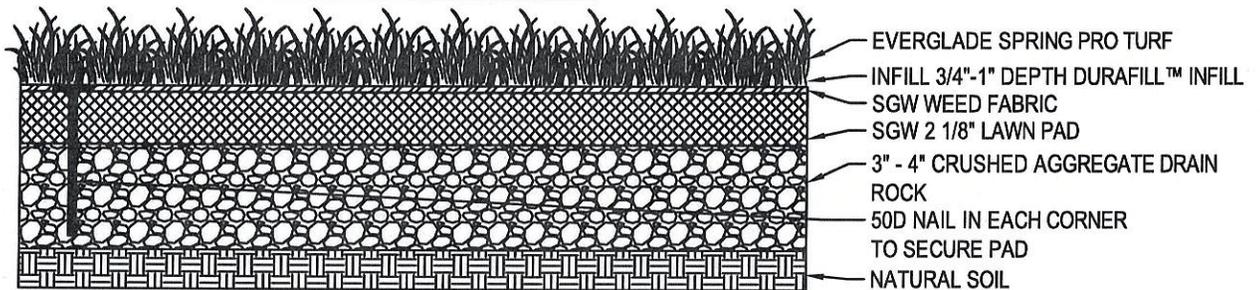
SHEET 7.0

9 Holly Hill Road

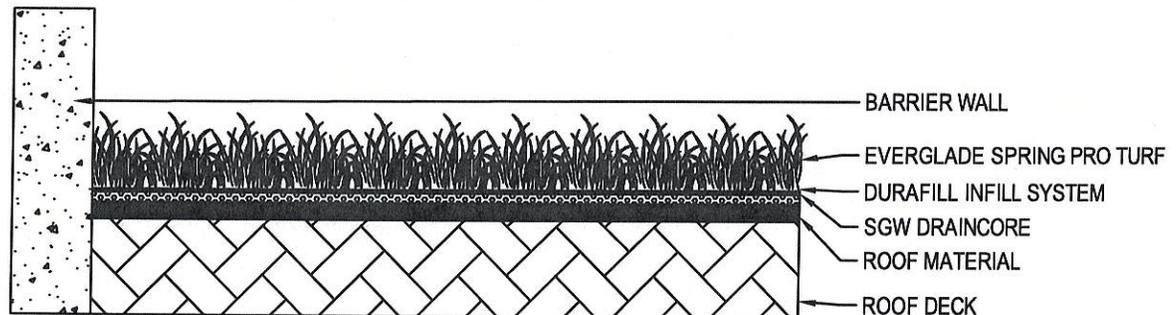




STANDARD INSTALL CROSS SECTION



PLAYGROUND INSTALL WITH PAD



ROOFTOP INSTALLATION SECTION

SPECIFICATIONS:

BRAND: TIGER EXPRESS

MODEL: EVERGLADE SPRING PRO

RECOMMENDED USE: MODERATE TO HEAVY TRAFFIC

YARN COLORS: FIELD GREEN / LIME GREEN WITH BROWN THATCH

YARN TYPE: MONOFILAMENT

YARN COMPOSITION: PE WITH THATCH

THATCH COLOR: BROWN

YARN DENIER: 9000 / 5000

FACE WEIGHT: APPROX. 75 OZ/YD

TOTAL WEIGHT: 102 OZ/YD

PILE HEIGHT: APPROX. 1 3/4"

GAUGE: 3/8"

ROLL WIDTH: 15'

ROLL LENGTH: 100'

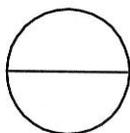
ROLL WEIGHT: 1155 LB

RECOMMENDED INFILL: 1.5 ~ 2.5 LBS/S.F.

WEIGHT/SQ.FT: 0.77 LB

NOTES:

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. DO NOT SCALE DRAWING.
3. THIS DRAWING IS INTENDED FOR USE BY ARCHITECTS, ENGINEERS, CONTRACTORS, CONSULTANTS AND DESIGN PROFESSIONALS FOR PLANNING PURPOSES ONLY. THIS DRAWING MAY NOT BE USED FOR CONSTRUCTION.
4. ALL INFORMATION CONTAINED HEREIN WAS CURRENT AT THE TIME OF DEVELOPMENT BUT MUST BE REVIEWED AND APPROVED BY THE PRODUCT MANUFACTURER TO BE CONSIDERED ACCURATE.
5. CONTRACTOR'S NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT www.CADdetails.com/info AND ENTER REFERENCE NUMBER 5028-008.



SYNTHETIC GRASS WAREHOUSE

EVERGLADE SPRING PRO

Attachment B

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner
Jonathan B. Kanipe,
Town Manager

November 12, 2021

Jesse M. Swords
Attorney at Law
jswords@asklawnc.com
[VIA EMAIL ONLY]

Re: Request for Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Swords,

I am writing in response to your letter of October 18, 2021, requesting, pursuant to N.C. Gen. Stats. Section 160D-403(b) that the Town of Biltmore Forest make a determination that the turf field at 9 Holly Hill Road is an “accessory structure” as defined in the town zoning ordinance. You further request that the town take appropriate action to ensure that the turf field is removed or brought into full compliance with the zoning ordinance.

On behalf of the Town of Biltmore Forest, your request is declined. The turf field is not a structure and does not qualify as an Accessory Structure as that term is defined in the Zoning Ordinance. Since the Town does not consider the turf field an accessory structure, the Town declines to take the additional actions requested in your letter of October 18, 2021. Please let me know if you have questions, or if you need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan B. Kanipe".

Jonathan B. Kanipe
Zoning Administrator

Copy: Mr. William Clarke, Biltmore Forest Town Attorney (via email)
Members of Biltmore Forest Board of Adjustment (via email)

Attachment C

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131
www.biltmoreforest.org



George F. Goosmann, III, Mayor
Doris P. Loomis, Mayor-Pro Tem
Fran G. Cogburn, Commissioner
E. Glenn Kelly, Commissioner

Jonathan B. Kanipe,
Town Manager

November 24, 2021

Jesse M. Swords
Attorney at Law
jswords@asklawnc.com
[VIA EMAIL ONLY]

Re: Request for Additional Information
Zoning Determination – Turf Field at 9 Holly Hill Road, Biltmore Forest, NC

Dear Mr. Swords,

I am writing in response to our conversation after the Biltmore Forest Board of Adjustment meeting on November 15, 2021 and subsequent email from November 16, 2021. The question, specifically, was to provide information regarding how the Town reached its conclusion about the turf field at 9 Holly Hill Road.

The Town deemed the turf field *not* an accessory structure because the existence of the turf is not regulated within the Town's Zoning Ordinance definition of accessory structure. The definition of accessory structure, from Section 153.004 of the Town's Zoning Ordinance, is as follows:

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

Specifically, each of the items listed above are *vertical structures* extending up from the ground. This is not the case with the turf field. The components of the turf field are artificial turf flush with the ground in the place of the lawn called out on the original plan.

Town staff spoke with the homeowner, Ben Lehman, in November 2019 after the field was installed. Mr. Lehman provided information regarding the installation. This information specifically provided installation details, including that the turf field was installed over a 3-inch subbase of gravel and stone dust with ½ inch perforated holes allowing drainage into the water table. This information led to staff determination that the artificial turf was pervious. These two

factors contributed to the Town's initial determination that the turf field was not an accessory structure. This information, as well as subsequent information from Mr. Lehman verifying that no drainage structure exists underneath the turf field, led the Town to its most recent re-determination that the turf field did not constitute an accessory structure and thereby did not require a special use permit.

I appreciate the opportunity to provide this information. Please let me know if you have any additional questions.

Sincerely,



Jonathan B. Kanipe
Town Manager

Copy: Mr. William Clarke, Biltmore Forest Town Attorney (via email)

(A) *Tense; singular and plural.* Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

(B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

ALLEY. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

APARTMENT. A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

APARTMENT, GARAGE. A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

BOARD OF ADJUSTMENT. The Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.

BOARD OF COMMISSIONERS. The Town of Biltmore Forest Board of Commissioners.

BONA FIDE FARM. All land on which agricultural operations are conducted as the principal use, including the cultivation of crops, the husbandry of livestock and timber resources, and the management of open pasture land.

BUFFER STRIP. A strip of land together with some form of screening such as existing vegetation, planted vegetation, a landscaped earth berm or grade change, or combination of the above. The purpose of the **BUFFER STRIP** is to minimize the potential conflicts between adjoining land uses.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space.

BUILDING, ACCESSORY. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

BUILDING HEIGHT. The distance measured from the average ground level at the building foundation to the highest point of the roof, but in no event above 40 feet from the highest point in the foundation. A chimney that complies with the minimum the State Building Code requirements for height of a chimney shall not be included in the calculations for height of the building; provided, that the chimney shall not extend more than five feet above the immediately adjoining ridge line of the roof.

BUILDING, PRINCIPAL. A building used for the same purpose as the principal use of the lot.

BUILDING SETBACK LINE. A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.

CARETAKER. A person that maintains grounds or structures on a lot or cares for the well-being of person(s) residing in the principal dwelling on a lot, and resides on the premises without being charged a rental fee.

CLOTHING AND JEWELRY SALE. The sale to the public of clothes and jewelry that have been brought to the home for that purpose.

CLUSTERED HOUSING DEVELOPMENT. Grouping or concentration of housing units on lots smaller than permitted by the existing zoning to preserve open space without increasing the allowable density of the development.

COMMERCIAL SERVICE or **PROFESSIONAL SERVICE.** Establishments or professions charging a fee for providing a service to the public.

CONSUMER SERVICES. Businesses providing services to the public for profit, including dining and restaurant services (not to include fast food service restaurants), lodging and motel services, financial, real estate and insurance services, and other personal services. In addition to the above, **CONSUMER SERVICES** shall not include filling and gasoline service stations or auto repair shops as defined by this chapter.

DAY NURSERY and **PRIVATE KINDERGARTEN.** A use of land and buildings to provide group care for children.

DISTRICT. A section of the Town of Biltmore Forest in which zoning regulations are uniform.

DWELLING. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of G.S. Ch. 160D, Art. 12, the term does not include any manufactured home, mobile home, or

DWELLING, MULTI-FAMILY. A building or portion thereof used or designed as a residence for two or more families living independently.

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one family.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EASEMENT. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation, or persons.

ESTATE/AUCTION SALE. The one-time sale to the public of goods that is held at the home. The goods and items offered for sale at the auction must be personal property that has been owned by the resident(s) of the home. No goods or items to be sold shall be shipped or transported to the home from any other location. The sale shall be limited to no more than two consecutive days and the hours for the sale shall be between 10:00 a.m. and 8:00 p.m.

FAMILY. One or more persons occupying a single-dwelling unit; provided, that unless all members are related by blood or marriage or adoption, no such family shall contain over three persons, but further; provided, that domestic servants, caretakers, and security personnel employed or living on the premises may be housed on the premises without being counted as a **FAMILY** or **FAMILIES**.

GARAGE/YARD SALE. The sale to the public of typical household items that is held at the residence. The household items to be sold shall be items from the residence where the sale is to occur. Each residence is limited to one such sale per year. The sale shall not begin before 8:00 a.m. and shall end by 5:00 p.m.

GASOLINE SERVICE STATION/AUTO REPAIR SHOP. Buildings and premises where gasoline, automotive fuel, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made and no other. Sales and servicing as follows: spark plugs, batteries, and distributors and distributor parts; tire servicing and repair, but not recapping or regrooving; replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; radiator cleaning and flushing; washing and polishing, the sale of automotive washing and polishing materials; greasing and lubrication; providing and repairing fuel pumps, oil pumps, and lines; minor servicing and repair of carburetors; emergency wiring repairs; adjusting and repairing brakes, wheel balancing and alignment, minor motor adjustments not involving removal of the head or crankcase or racing the motor; sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operation; automobile body repair services; provision of road maps and other informational materials to customers; provision of restroom facilities.

GRADING. Any land-disturbing activity where the ground cover on or above the soil surface is removed and reconfigured, including trees, grasses, or pavements or other surfaces either natural or human-made.

HOME BUSINESS ACTIVITY. A business conducted from the home such as internet enterprise, professional office, or the making of crafts or items where no one is employed that does not live in the home and no one comes to the home for a business transaction as part of the activity.

HOME OCCUPATION. An occupation providing a service carried on by the occupants of a dwelling; provided, that certain conditions are met as listed in § 153.008(C)(5).

HOME STAY. Rental of a part of a dwelling unit or accessory structure for consideration, including in kind compensation, to a transient person or persons for a period of less than 90 days. Advertising and renting a room or rooms in a dwelling unit of accessory structure on Airbnb or similar internet web sites would be an example of a **HOME STAY**. **HOME STAYS** are not allowed in any zoning district in Biltmore Forest.

IMPERVIOUS SURFACE. Any paved, hardened, or structural surface, including, but not limited to, buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, tennis courts, and other structures and surfaces, that substantially reduces or prevents the infiltration of stormwater into the ground.

INCOMPATIBLE LAND USE. A land use requiring a special use permit from the Board of Adjustment in property zoned R-4 or R-5 adjacent to land zoned R-1, R-2, R-3, Public Service, or land zoned R-4 or R-5 in residential use.

INDIVIDUAL SEWER SYSTEM. Any septic tank, ground absorption system, privy, or other facility serving a single source or connection and approved by the County Sanitarian.

INDIVIDUAL WATER SYSTEM. Any well, spring, stream, or other source used to supply a single connection.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of G.S. Ch. 160D, Art. 10. Legislative decisions for development regulations shall be approved on first reading by simple majority vote.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LIVING AREA. Includes the area inside the dwelling walls of each particular floor, but shall not include basements, utility rooms, laundry rooms, storage rooms (other than closets), pantries, garages, and attics. **LIVING AREA** shall, however,

include living rooms, dens, studies, kitchens, bedrooms, breakfast rooms, bathrooms, and closets in any of said rooms, foyers, entrance ways, and hallways connecting any of these rooms.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words **PLOT** or **PARCEL**.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

LOT OF RECORD. Any lot for which a plat has been recorded in the Register of Deeds Office of Buncombe County, or described by metes and bounds, the description of which has been so recorded.

LOT WIDTH. The distance between side lot lines measured at the front building line.

MAY. The word **MAY** is permissive.

MOBILE HOME. A factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, to be used without permanent foundation and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.

NONCONFORMING USE. Any parcel of land, use of land, building, or structure existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

ORDINANCE. The Zoning Ordinance of the Town of Biltmore Forest.

PARKING SPACE. An area for parking a vehicle, plus the necessary access space. **PARKING SPACE(S)** shall always be located outside the dedicated street right-of-way and shall be provided with vehicular access to a street or alley.

PARKS. Includes those areas developed either for passive or active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, and the like. The term **PARK** shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

PERSON or **APPLICANT.** Includes a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.

PLANNED UNIT DEVELOPMENT. A development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a **PLANNED UNIT DEVELOPMENT (PUD)**. Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

PLANNING COMMISSION. The Town of Biltmore Forest Planning Commission.

PROTECTIVE BARRIER. A protective barrier is either:

- (a) A temporary fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails;
- (b) A temporary fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or
- (c) A temporary fence using an equivalent material.

PUBLIC SEWER SYSTEM. Any sewer system owned and operated by a local government in Buncombe County, or other sewage treatment facility serving two or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Natural Resources and Community Development, or a ground absorption system serving two or more connections when approved by the County Sanitarian.

PUBLIC WATER SYSTEM. Water systems serving 15 or more residential connections or serving more than 25 year-round residents are classified as public water supplies, and plans and specifications must be approved by the State Department of Human Resources, Division of Health Services. Also, water supply systems serving from two to 14 connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.

RECREATION USER NONPROFIT. An indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of North Carolina.

RECREATION USER PROFIT. An indoor or outdoor recreation facility operated on a profit basis.

RESIDENTIAL DENSITY. The number of dwelling units per acre devoted to residential buildings, accessory uses, and open spaces within the site, but excluding land for streets and street right-of-ways. **RESIDENTIAL DENSITY** shall be

Attachment 6
calculated by first subtracting the land area required for streets and rights-of-way from the total or gross land area of the tract to derive a net land area, and then dividing the number of dwelling units proposed to be built by the net land area.

RETAIL BUSINESS. Establishments selling commodities directly to the consumer. Fast food service restaurants, gasoline service stations/auto repair, or the dispensation of gasoline as an ancillary service to a retail use shall be prohibited.

ROOF COVERAGE. For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter dealing with roof coverage), **ROOF COVERAGE** shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above-grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed spaces or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above-grade impervious surface (such as a deck, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**.

ROOT PROTECTIVE ZONE. A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances:

(a) A one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or

(b) A measurement of the furthest or most outward branch or limb from the main trunk when that distance is then drawn as a circle around the remaining portion of the tree or shrub, commonly referred to as the 'drip line'. The minimum **ROOT PROTECTION ZONE** in any case is a radius of eight feet measured from the tree trunk.

SHALL. The word **SHALL** is mandatory.

SHORT TERM RENTAL. Rental of a dwelling unit or accessory structure for consideration, including in kind compensation, for a period of less than 90 days. **SHORT TERM RENTALS** are not allowed in any zoning district in Biltmore Forest.

SPECIAL USE. A use permitted in specified zoning districts only after review by the Board of Adjustment and found to meet specific conditions and procedures as set forth in this chapter to maintain the safety and general welfare and orderly development of the community.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties. **STREET** also includes the words **ROAD** and **HIGHWAY**.

STREET LINE. The edge of the roadway pavement.

STRUCTURE. Anything constructed or erected, including, but not limited to, buildings, which requires location on the land or attachment to something having permanent location on the land.

SUBSTANTIAL COMPLETION. For the purpose of building construction; the completion of all exterior work on the building; the completion of all plumbing, electrical, and HVAC work; the completion of all window installation; the completion of all interior and exterior door installation, the completion of all wall construction, painting, and/or covering, the completion of all floor installation and/or covering; and the completion of all other work necessary to receive a certificate of occupancy from the Buncombe County Inspections Department. Minor work typically noted on a punch list may be incomplete and the structure shall be deemed to be substantially completed.

SUBSTANTIAL PROGRESS. For the purpose of building construction, it is expected that construction of the building is continuous and that progress is obvious and observable with inspections as required under the State Building Code occurring on a regular basis.

VARIANCE. As defined in G.S. § 160D-705(d) together with any amendments thereto.

WHOLESALE BUSINESS. The sale of goods in large quantities usually for resale.

YARD. A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

YARD, FRONT. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard. In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the **FRONT YARD**; however, in the consideration and determination of applications for special use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the **FRONT** and side yards to the street and adjoining properties in any determination.

YARD, REAR. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

YARD, SIDE. An open, unoccupied space on the same lot with a principal building extending the full width of the lot and being situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. Notwithstanding the above definition, for the purposes of determining compliance with minimum yard setback

of § 153.007, the **SIDE YARD** shall be the entire length of each side lot line extending from the front lot line to the rear lot line and shall equally apply to lots with a principal building, lots without a principal building and vacant lots. Driveways shall not be located in the side yard setback.

ZONING ADMINISTRATOR. An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

ZONING MAP or BILTMORE FOREST ZONING MAP. The official zoning map of the Town of Biltmore Forest.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

§ 153.005 ESTABLISHMENT OF ZONING DISTRICTS AND MAP.

(A) *Use districts.* For the purpose of this chapter, the town is hereby divided into the following use districts:

- (1) R-1 Residential District;
- (2) R-2 Residential District;
- (3) R-3 Residential District;
- (4) R-4 Residential District;
- (5) R-5 Residential District; and
- (6) P-S Public Service District.

(B) *Establishment of district boundaries.* The boundaries of these districts are hereby established as shown on the official zoning map of the town.

(C) *Establishment of zoning map.* A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this zoning ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the map and post any changes thereto as they may be made.

(D) *Rules governing district boundaries.* Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, or other bodies of water, shall be construed to follow such lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines;

(4) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefor as indicated on the zoning map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said zoning map; and

(5) Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (D)(1) through (D)(4) above, the Board of Adjustment shall interpret the district boundaries.

(E) *Statement of district intents.*

(1) *R-1 Residential District.*

(a) The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to preserve and enhance the character of existing neighborhoods and generally to provide a pleasant living environment. These neighborhoods consist of single-family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low-density residential environment.

(b) Nonresidential uses, including home occupations, have been limited in this District as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community.

(c) Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods. Therefore, structures should be compatible in materials, height, siting, color, texture, scale, and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.

(d) Consistent with, and to protect the existing character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(2) *R-2 Residential District.*

(a) The R-2 Residential District is established to protect and maintain existing neighborhoods, which are characterized by single-family residences with smaller lots, and thus greater residential densities than found in the R-1 District.

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(3) *R-3 Residential District.*

(a) The R-3 Residential District is intended to provide locations that will accommodate future residential growth south of the Blue Ridge Parkway. This District is intended to provide locations for future subdivisions and for planned unit residential developments as special uses when design plans show that such developments will be compatible with the surrounding development and available public services.

(b) This District is primarily a low-density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a conditional use at a maximum density of eight dwelling units per acre. Nonresidential uses, including home occupations, will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(4) *R-4 Residential District.*

(a) The R-4 Residential District provides areas for residential uses, and for special uses professional offices and commercial services. Urban sprawl, strip commercial development, and congestion will be discouraged by promoting good design and clustered development. These areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid traffic congestion and safety hazards.

(b) Land uses in this District, other than single-family detached dwelling units, will require a special use permit as a means of assuring and promoting safety and good design. The integrity of residential uses in this zone will be preserved by requiring a 20-foot wide buffer strip between residential and nonresidential uses.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(5) *R-5 Residential District.*

(a) The medium-density district is established as a district where both residential and business uses are accommodated. In addition, a wide range of community facilities and services are also available. It is intended that nonresidential uses, including business uses, shall be compatible with and exist in harmony with the community in which they are located and that adequate standards will be maintained pertaining to the public health, safety, and welfare.

(b) In addition, these areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid congestion and safety hazards. Most land use in this District will require a special use permit as a means of assuring and promoting safety and good design.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(6) *P-S Public Service District.*

(a) This District is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction.

(b) It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development.

(c) It is expressly intended that any structures and/or buildings shall be prohibited except as associated with a public park or recreational area. Any land-disturbing activity such as driveway connections or landscaping shall be approved by the Board of Adjustment.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

(A) *Table.* The following tables show the land uses permitted in each zoning district and the dimensional requirements for each zoning district, including minimum lot sizes, minimum lot widths, and minimum setback requirements.

Zoning Districts					
USE	R-1	R-2	R-3	R-4	R-5
Zoning Districts					
USE	R-1	R-2	R-3	R-4	R-5
Accessory buildings, structures and uses (does not include rental units by other than a family member)	S	S	S	S	S
Banks				S	S
Bone fide farms	S		S	S	P
Business or special schools (art, craft, dance, and the like)				S	S
Churches/religious assembly				S	S
Clothing and jewelry sales*	P	P	P	P	P
Country, athletic and social clubs	S	S	S	S	S
Commercial business					S
Commercial services (excluding retail trade)				S	S
Day nurseries/day care				S	S
Estate auction sale**	P	P	P	P	P
Fundraising events for nonprofits or political campaigns****	P	P	P	P	P
Garage/yard sales***	P	P	P	P	P
Home business activity*****	P	P	P	P	P
Home occupations				S	S
Libraries				S	S
Medical and dental services				S	S
Planned unit development*****			S	S	S
Professional and business offices				S	S
Public recreational facilities - nonprofit (parks, playgrounds, scenic parkways and open space)	P	P	P	P	P
Public utility station and substations	S	S	S	S	S
Retail businesses					S
Schools, public and private	S	S	S	S	S
Single-family residential dwelling unit	P	P	P	P	P
P = permitted S = allowed as a special use (approval required by Board of Adjustment) Blank space = not permitted Use not listed = not permitted zoning districts					

(B) *General provisions.* The following are general provisions applicable to the table in division (A).

(1) Only two clothing or jewelry sales may be held per year at each dwelling, not to exceed five consecutive days for each sale. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See § 153.004.

(2) Only one estate auction sale may be held during a resident's ownership of the property. Property owners are required to contact the Zoning Administrator prior to holding the estate/auction sale so that the date of the sale may be noted. See § 153.004 for additional limitations.

(3) Only one garage/yard sale may be held per year at each dwelling. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See § 153.004.

(4) Only four fundraising events may be held per year at each dwelling. No such event shall last longer than five hours in a single day and any such event must end by 11:00 p.m. There shall be no sales of goods or services at any such event. Parking for such an event must not impede the normal flow of traffic and must not be upon any other property without permission from the other property owners.

(5) No home business activity shall employ any person who does not live in the home. No person shall come to the

home for a business transaction of any nature as part of the home business activity, including, but not limited to, retail or commercial sales or fee for service transactions. See § 153.004. Attachment 8

(6) Where there is proposed more than one principal building per lot or where there is proposed any building with a gross floor area of 50,000 square feet or more, a planned unit development must be sought. See § 153.004 for additional requirements.

(C) Home stays and short term rentals are not allowed in any district. There may be only two rentals of a dwelling unit or accessory structure in any calendar year.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

§ 153.045 SITE DESIGN AND BUILDING FORM AND MASS FOR RESIDENTIAL DWELLING UNITS.

(A) (1) The town is a unique community and it is within the public interest and general welfare of the town to regulate the site design and building form and mass encompassing all residential structures.

(2) Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features, including drives, walks, patios, freestanding walls, fencing, and plantings.

(B) Of particular concern is preservation of the streetscape, signs, lighting, trees, and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the residential structures.

(1) *Site materials and features.* The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, e.g., native flora and curvilinear roadways.

(a) *Built of planted landscape elements*

1. *Permitted.* All native flora and materials, (e.g., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units); and

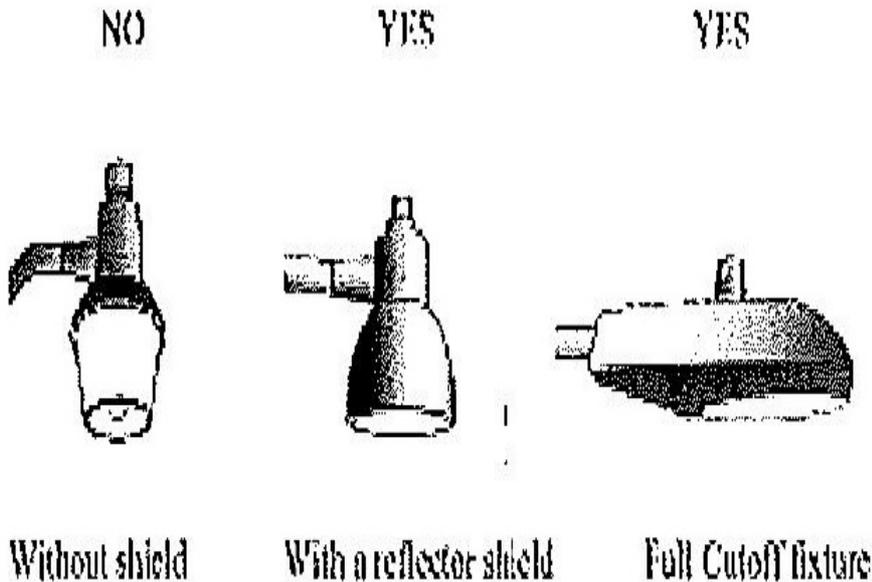
2. *Prohibited.* Abrupt physical configurations, (e.g., site revisions causing excessive tree removal, land slope revisions greater than natural repose).

(b) *Site lighting.* Permitted; low-intensity security or decorative lighting, up to two street lamps in front yards not to exceed eight-feet in height and located a minimum of ten feet from the edge of the road.

(2) *Prohibited.*

(a) High-intensity flood or spot lighting of either the buildings or landscape features, neon. No flickering or flashing lights and all lighting shall be shielded such that light is not directed toward adjacent residential properties; and

(b) Examples of shielding should be as follows.



(3) *Building forms and mass.*

(a) *Intent.* The intent of these provisions is to encourage exterior building forms which blend with the majority of existing residential structures and natural features of the town.

(b) *Roof form.*

1. *The following roof forms are encouraged.* Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, and arch; and

2. *The following roof forms are discouraged as inconsistent with existing structures in the town* Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

(A) *Types of appeals and applications.*

(1) *Appeals.* The Board shall hear and decide all appeals from any decision or determination made by the Zoning Administrator.

(2) *Applications.* All applications for variances and special use permits shall first be presented to the Zoning Administrator, who in turn shall refer the application to the Board of Adjustment. Applications for variances and special use permits must be made by a person with a property interest in the property or a contract to purchase the property.

(B) *Appeals.*

(1) The Board of Adjustment shall hear and decide appeals from decisions of the Town Manager.

(2) The following apply to all appeals heard by the Board of Adjustment:

(a) Any person who has standing under G.S. § 160D-406(d) or the town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Manager. The notice of appeal shall state the grounds for the appeal.

(b) The Town Manager shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owners. The written notice shall be delivered by personal delivery, first-class mail, or other electronic forms. If provided via electronic form, the file must be protected from further editing.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from the receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "zoning decision" or "subdivision decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided, the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The Town Manager shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from are taken. The Town Manager shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) 1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Town Manager certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

2. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Town Manager a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed.

3. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(g) Subject to the provisions of division (B)(2)(f) above, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(h) 1. During the conduct of a hearing, any party may appear in person or by agent or by attorney at the hearing.

2. The order of business for the hearing shall be as follows:

a. The Chair, or such person as he or she shall direct, shall give a preliminary statement of the case;

b. The applicant shall present the argument in support of the appeal or application;

c. Persons opposed to granting the appeal or the application shall present their argument against the application;

d. Both sides will be permitted to present rebuttals to opposing testimony; and

e. The Chair or such person as he or she shall direct shall summarize the evidence which has been presented, giving the parties the opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to only consideration of only such evidence as would be admissible in a court of law. The Board may place parties and witnesses under oath and the opposing party may cross-examine them. The Town Manager, or other town official who filed the notice of violation, shall be present at the hearing as a witness. The appellant

shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Town Manager.

(i) When hearing an appeal pursuant to G.S. § 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160A-393(k).

(j) The parties to an appeal that has been made under this division (B) may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(C) *Hearings.*

(1) *Time.* After receipt of notice of an appeal or an application, the Board Chairperson shall schedule a time for a hearing which shall be within 36 days from the filing of such notice of appeal or application. Any additional appeal or application shall be received not less than two weeks prior to a scheduled meeting.

(2) *Notice.* In any application for projects involving planned unit developments, the Board shall give notice of the hearing in a newspaper having general circulation in the county five days prior to the date of the hearing. For all other applications and appeals, the Board shall send by first class mail notices of the hearing to the affected parties and to such other persons as the Zoning Administrator shall direct, at least ten days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.

(3) *Re-hearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions of the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.

(D) *Decisions.*

(1) *Time.* A decision by the Board shall be made within 30 days from the time of hearing.

(2) *Form.*

(a) Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the Secretary as soon as practical after the case is decided. In addition, written notice shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Secretary and the Chairperson upon approval of the minutes by the Board.

(b) 1. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist.

2. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.

3. Where a special use permit is granted, the record shall indicate, by reference to the appropriate sections of the ordinance, that all requirements and standards for the particular special use have been met.

(3) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board in granting a variance or a special use permit shall expire if a building permit for such use is not obtained by the applicant within six months from the date of the decision.

(4) *Voting.* The concurring vote of four-fifths of the members of the Board shall be necessary to reverse any decision or determination of the Zoning Administrator, or to grant a variance or to approve a special use permit.

(5) *Public record of decisions.* The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(6) Variance and special use approvals run with the land.

(7) Revocations of previously approved variance and special use approvals must follow the same process as used for the approval.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021)

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014