



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Zoning Administrator
Date: August 5, 2020
Re: **Board of Adjustment Meeting – August 17, 2020**

Applicants:

You or a representative **MUST** attend the Zoom 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 so, the visit will be conducted in a socially distant manner consistent with North Carolina state orders related to preventing the spread of Covid-19.

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>.

You are invited to attend the scheduled meeting via Zoom and make comment when called upon. Any additional information regarding the Zoom meeting will be provided on the Town's website no later than August 7, 2020.

The following items of business are scheduled to be addressed by the Biltmore Forest Board of Adjustment on Monday, August 17, 2020 at 4:00 pm in the Town Hall Board Room via Zoom. The format for the meeting and instructions for attending the meeting via Zoom can be found on the second page of this agenda. The link for the Zoom meeting can be found at the bottom of the second page.

1. The meeting will be called to order and roll call taken.
2. The minutes of the July 20, 2020 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: **9 White Oak Road** - A special use permit is requested for the installation of a playset in the rear yard, and a variance is requested for installation within the side and rear yard setback.

4. Adjourn

Process and Procedure for August 17, 2020 Board of Adjustment Meeting held via Zoom

- All participants attending will be held in the “waiting room” prior to admittance by Town staff. Once admitted into the meeting, please mute audio until called upon by the Board chair.
- The meeting will be called to order at 4:00 p.m. by the Chair. All interested parties and applicants will be virtually sworn-in at this time.
- Each matter will be called forward and Town staff will authorize video and audio for the applicants and any person with standing for that particular case. If an applicant would like to present visual evidence, they must provide this evidence to Town staff no later than Friday, August 14, 2020.
- The Board chair, or other Board of Adjustment member, will specifically ask questions to the applicant and ask for any evidence that they would like to present.
- The Board chair, or other Board of Adjustment member, will then specifically ask for any person with standing for that specific matter to provide comment. Town staff will moderate this comment period but will ensure each person who wishes to speak or provide evidence is able to do so.
- When all evidence and testimony has been provided, the Board will deliberate and render a decision, then move on to the next matter where the process will be repeated.

How to Access the August 17, 2020 Board of Adjustment Meeting via Zoom

In order to access the Board of Adjustment meeting, please visit <http://zoom.us> to sign up, for free, for a Zoom account. This will enable you to participate with your desktop or laptop computer as you see fit. The Zoom link and log-in credentials are at the bottom of this page.

You may also download the free Zoom app from the Apple Store or Google Play on your mobile iOS or Android device. This app will walk you through setting up a free account.

If you are unable to access the meeting through a web or app based format, but would still like to listen and participate in the meeting, you may do so by calling one of the phone numbers listed below and entering the meeting ID and password.

Dial by your location

+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Germantown)
+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: 892 4505 3380

Passcode: 497705

Join Zoom Meeting

<https://us02web.zoom.us/j/89245053380?pwd=RldabjBscHduNzdmOVVo4TFZ4RE11UT09>

Meeting ID: 892 4505 3380

Passcode: 497705

MINUTES OF THE BOARD OF ADJUSTMENT MEETING
HELD MONDAY, JULY 20, 2020

The Board of Adjustment met at 4:00 p.m. on Monday, July 20, 2020. The meeting was held virtually via Zoom.

Members present at the Town Hall: Mr. Greg Goosmann, Ms. Lynn Kieffer, Ms. Rhoda Groce, Mr. Lowell Pearlman, and Mr. Robert Chandler. Ms. Martha Barnes, alternate member, was also present. Mr. Jonathan Kanipe, Town Manager and Mr. Harry Buckner, Public Works Director, and Mr. William Clarke, Town Attorney were also present.

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

Chairman Goosmann thanked Dr. Richard Landau for his service to the Board. Ms. Martha Barnes has replaced Dr. Landau as the alternate to the Board.

Mr. Goosmann swore in the following:

Mr. Brad Hepner
Mr. Derek Weilbaeher
Ms. Angela Weilbaeher
Ms. Lydia Harrell
Mr. Jeremy Ledford
Mr. Art Kiser

A motion was made by Mr. Lowell Pearlman to approve the minutes from June 15, 2020. Ms. Rhoda Groce seconded the motion. Mr. Clarke informed the Board that a roll call needs to be taken for the minutes for remote meeting sessions. Mr. Robert Chandler voted aye, Ms. Lynn Kieffer voted aye, Ms. Rhoda Groce voted aye, and Mr. Lowell Pearlman voted aye. The minutes were approved as written.

HEARING (Evidentiary):

A Special Use Permit was requested for construction of a detached garage at 28 Cedarcliff Road. A Variance was requested for the relocation of an existing stone wall within the side yard setback. Mr. Robert Chandler shepherded the matter. Mr. Brad Hepner, architect, represented the homeowners. Mr. Hepner stated the proposed wall has moved from the side property line so now it will be at the top of the existing wall. Mr. Hepner said his clients have reviewed plans with the neighbors and received a letter of non-objection from the neighbors. Chairman Goosmann said they have not received the resubmitted plans, which includes the buffering. Mr. Hepner will email the plans to Mr. Kanipe immediately so it can be addressed during the meeting.

Ms. Kieffer asked if one would be able to enter the new garage from the side or the front. Mr. Hepner said from the side. The new retaining wall extends further back than the existing retaining wall. The new retaining wall will be placed closer to the property line when comparing it to the existing one. Chairman Goosmann verified the extension of the retaining wall would be where the existing garage is. Mr. Hepner said this statement is correct. Mr. Clarke said given the fact the house, retaining wall, and garage were constructed before the Zoning Ordinance was enacted that it is reasonable to allow the encroachment in the setback.

In terms of buffering, Mr. Clarke said the neighbor's fence is on the property line, which is a bit disingenuous for the neighbors to want buffering when their fence is sitting on the property line. Ms. Martha Barnes asked if the garage could be moved over. Mr. Hepner said it decreases mobility to get around the garage if it is moved over. Mr. Pearlman asked if the adjacent property understands the buffering changes where the auto court enlarges to the side of the garage, which will be the neighbor's responsibility to buffer. This was part of the discussion and they understood this.

DELIBERATION AND DETERMINATION:

Mr. Chandler recited the facts and said the applicant at 28 Cedarcliff Road are requesting a Special Use Permit for construction of a detached garage and a Variance for location of the retaining wall within the side yard setback. The homeowners have agreed to put in buffering and landscaping and will review this proposal for agreement with their neighbors at 30 Cedarcliff Road once plans are finalized.

There were no additional questions or comments regarding this project.

Ms. Lynn Kieffer moved that a Special Use Permit and Variance as requested be granted to Mr. & Mrs. Weilbaeher of 28 Cedarcliff Road for construction of an accessory building and a Variance for reduction of the side yard setback. 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 property owner has objected.

Ms. Kieffer 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. Kieffer 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.

Ms. Rhoda Groce seconded the motion. Roll call was taken by Chairman Goosmann and the motion was unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested for property located at 16 Westwood Road for construction of a deer fence. A Variance is requested for location of the deer fence within the side and rear yard setbacks.

DELIBERATION AND DETERMINATION:

The resident and/or representative was not present. The applicant indicated during the site visit that she would like to withdraw this proposal.

HEARING (Evidentiary):

A Special Use Permit was requested for property located at 20 White Oak Road for accessory structures as part of a landscaping plan. A Variance was requested for a parking area in the front yard setback and extension of the driveway into the side yard setback. Ms. Rhoda Groce shepherded the matter. Ms. Lydia Harrell was present and said they would like to withdraw the variance request for the front yard. The applicant is asking for a new accessory structure, which is a fire pit and extension of the new driveway on the side. There will be no buffering needed.

DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Lydia Harrell of 20 White Oak Road is applying for a Special Use Permit for an accessory structure as part of her landscaping plan. It will be a fire pit in her back yard. Ms. Groce said she is also looking for an extension of the driveway in the backyard. Neither of these will be in violation of the setbacks. There were no additional comments or questions.

Ms. Lynn Kieffer moved that a Special Use Permit be granted to Ms. Lydia Harrell of 20 White Oak Road for a Special Use of an accessory structure of a fire pit in the backyard and widening of the driveway in the backyard. The facts as recited by Rhoda Groce and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no property owner has objected.

Ms. Kieffer 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. Lydia Harrell was sworn in by Chairman Goosmann.

Chairman Goosmann took roll call. All Board members were in favor and the motion was unanimously approved.

HEARING (Evidentiary):

A Variance is requested for a porte cochere to be constructed within the rear and side yard setbacks at 375 Vanderbilt Road. Ms. Lynn Kieffer shepherded the matter. Mr. Jeremy Ledford was sworn in by Chairman Goosmann. The porte cochere will go over the existing asphalt in the back. It will extend by one foot in the side yard setback and eight feet into the rear property line. Mr. Kanipe said the back yard neighbor agreed to the project but asked for replacement of trees or shrubs if any be removed. Mr. Art Kiser, 377 Vanderbilt Road, was on the call and Mr. Kanipe asked if he had any questions or comments about the project. Mr. Kiser was sworn in by Chairman Goosmann. Mr. Kiser had no objections. Mr. Kiser asked if there will be any exterior lighting added to the porte cochere. Mr. Ledford said there will be no exterior lighting added. Mr. Chandler asked if Mr. Ledford would be open to buffering if needed. Mr. Ledford said yes.

DELIBERATION AND DETERMINATION:

Ms. Lynn Kieffer recited the facts and said Mr. Jeremy Ledford of 375 Vanderbilt Road request a Variance for a port cochere within the rear and side yard setbacks. They agree to additional buffering if requested by the side and rear neighbor.

Ms. Rhoda Groce moved that a Variance as requested for a port cochere be granted to Dr. Jeremy Ledford of 375 Vanderbilt Road and the facts as recited by Lynn Kieffer 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 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 that 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. Roll call was taken by Chairman Goosmann and unanimously approved.

Chairman Goosmann adjourned the meeting at 5:02 pm. The next Board of Adjustment meeting was scheduled for Monday, August 17, 2020 at 4:00 pm.

ATTEST:

Greg Goosmann
Chairman

Laura Jacobs
Town Clerk

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

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

To: Board of Adjustments Members
From: Jonathan Kanipe, Town Manager
Re: Board of Adjustments Case Number 1 (9 White Oak Road)
Date: August 7, 2020

Request for Installation of a Playset within Rear and Side Yard Setback
Variance Request for Placement within Rear and Side Yard Setback
Special Use Permit Request for Accessory Structure Placement

A variance is requested for the construction of a playset within the rear and side yard setback. The applicants are new owners who indicate the dimensions of the lot, along with topography, house location, and large trees in the rear yard make it difficult to site the playset completely within compliance of setbacks.

The proposed variance places the playset 5 feet inside the side yard setback and 7 ½ feet inside the rear yard setback. The applicants have included a site plan showing the dimensions for the proposed location, as well as the design of the playset itself.

The special use permit request is for the installation of the playset as an accessory structure.

Zoning Compliance Application

Town of Biltmore Forest

Name

Melissa Ryan

Property Address

9 White Oak

Phone

(720) 724-8777

Email

Melissa.martin.ryan@gmail.com

Parcel ID/PIN Number

Lot 35, Block D, Plat 2-119

ZONING INFORMATION

Current Zoning

R-2

Lot Size

0.36 acres

Maximum Roof Coverage

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

Proposed Roof Coverage Total

100 square feet

Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Proposed Impervious Surface Coverage

5 square feet (negligible)

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

10ft 3 inches

Description of the Proposed Project

Build a playset for our boys in the backyard.

Estimated Start Date

8/29/2020

Estimated Completion Date

8/30/2020

Estimated Cost of Project

\$1,500.00

Supporting Documentation (Site Plan, Drawings, Other Information)

imageService.jpeg

Special Use Permit Application

Town of Biltmore Forest

Name

Melissa Ryan

Address

9 White Oak

Phone

(720) 724-8777

Email

Melissa.martin.ryan@gmail.com

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

Accessory Structures

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

Please provide a description of the proposed project:

Hello! We would like to put a new play structure in the backyard of our house for our two boys to play on during this pandemic. It is a nice cedar playset with swings and slide. Please let me know if you would like the playset drawings sent over to get approval.

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

It will be in our backyard and keep the children entertained

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

Signature

Date

7/30/2020

A handwritten signature in black ink, appearing to read 'Melissa Ryan', written over a light blue horizontal line.

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Melissa Ryan

Address

9 White Oak Road

Phone

(720) 724-8777

Email

melissa.martin.ryan@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?

We would like to put a playset in our backyard for our two boys to play on during their at-home schooling during this pandemic and beyond.

What does the ordinance require?

Putting the playset in the northwest corner, 10ft from the side neighbors plot, and 12.5ft from the back neighbors plot.

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.**

Due to the recent Covid-19 pandemic, we will be homeschooling our two boys. There is a need for a playset for them to safely spend time in the outdoors enjoying their childhood being physically active. With local playgrounds closed and our mindfulness of helping to lessen the spread of Covid-19, we would like to install a playset of our own. Our goal is to provide for our children the most normal at-home school environment, including recess and physical education outside.

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

The dimensions of the lot, topography, house location, and large trees it would be difficult to site the playset in any other area of the yard and have it sit level, as well as have safety sightlines from the deck and house windows. With small children this is an extremely important safety factor.

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

We have planned to place the playset on the property in a spot that is safest for our children, while also being considerate of the neighbors and their lots. The trees, slope of land, and narrow lot combined with

how the house is located on the plot has presented the need to request a variance. This is in order for the playset to sit level, as well as in sight lines of the house.

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.

We appreciate your consideration with this request. Our goal is to provide the best at-home schooling environment for our boys during this pandemic and beyond. Our children's safety as well as the satisfaction of the board's decision on this matter is of utmost concern to us.

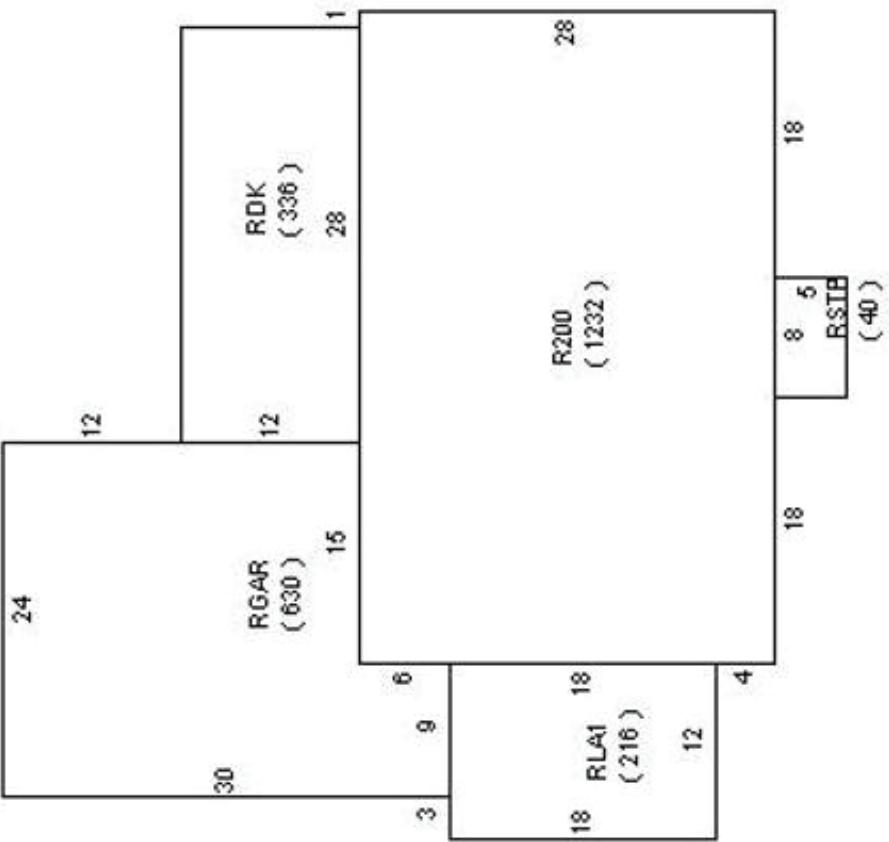
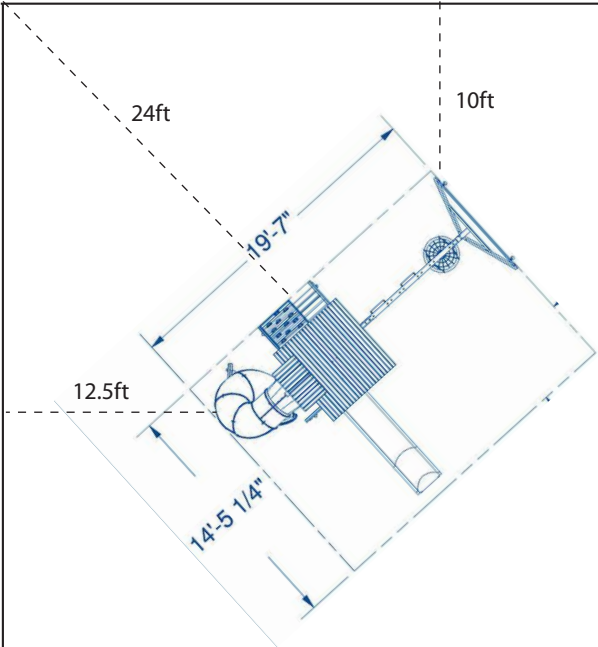
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

A handwritten signature in black ink, appearing to read "Melina Rivas", written over a horizontal line.

Date

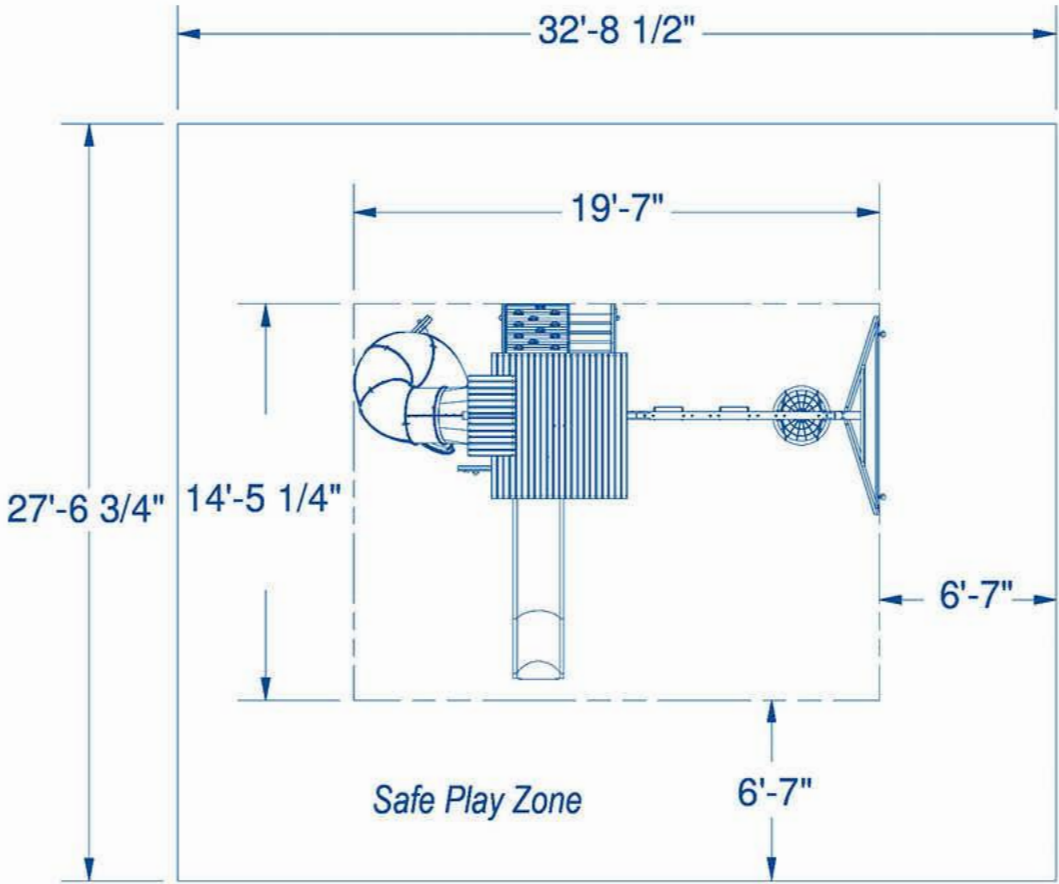
8/5/2020



White Oak Road



playset location



TACOMA FALLS

