



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: August 10, 2022  
Re: **Board of Adjustment Meeting – August 22, 2022**

**Applicants:**

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

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

**Neighbors:**

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

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

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

Additional information regarding the meeting will be provided on the Town's website no later than August 18, 2022.

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

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, August 22, 2022 at 4:00 at the Biltmore Forest Town Hall. The Biltmore Forest Town Hall is located at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

Those interested in viewing the meeting via Zoom may do so via the link provided at the bottom of this page.

1. The meeting will be called to order and roll call taken.
2. The minutes of the July 25, 2022 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 56 Cedar Hill Drive** – Special use permit request for new swimming pool in rear yard. Variance request for installation of fence and gate within side yard setback to enclose swimming pool.  
**Site Visit - August 22, 2022 at 2:15 PM**

**Case 2: 5 Brookside Road** – Special use permit request for carport construction attached to existing garage. Variance request to exceed maximum roof coverage for proposed additions.  
**Site Visit - August 22, 2022 at 2:30 PM**

**Case 3: 1 Stuyvesant Crescent** – Variance request to encroach into side and rear yard setbacks for hardscape landscaping project. Special use permit request includes boulder and brick retaining walls and 6-foot privacy fence inside setbacks. Additional special use permit requested for outdoor fireplace within rear yard.  
**Site Visit - August 22, 2022 at 3:00 PM**

**Case 4: 23 Eastwood Road** – Appeal request for variance to encroach into side yard setback with terraced retaining wall.  
**Site Visit – August 22, 2022 at 3:30 PM**

4. Adjourn

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

Meeting ID: 824 0558 6759

Passcode: 804985

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, JULY 25, 2022

The Board of Adjustment met at 4:00 p.m. on Monday, July 25, 2022.

Mr. Greg Goosmann, Ms. Lynn Kieffer, Mr. Robert Chandler, Mr. Lowell Pearlman, Ms. Martha Barnes, and Ms. Rhoda Groce were present. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, and Mr. William Clarke, Town Attorney were also present.

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

Chairman Goosmann swore in the following:

Mr. Jonathan Kanipe

Ms. Mary Ann James

Mr. Paul Foster

Ms. Sarah Caldwell

A motion was made by Mr. Robert Chandler to approve the minutes from June 27, 2022. Mr. Lowell Pearlman seconded the motion. Ms. Martha Barnes had a correction to the minutes. Roll call was taken, and the minutes were unanimously approved as amended. Mr. Billy Clarke stated that he was contacted by counsel for Susan Taylor and Rob Pew in regards to the matter at 23 Eastwood. Ms. Taylor and Mr. Pew are neighbors to this project and their counsel expressed concerns about possible *ex parte* communication. Ms. Taylor and Mr. Pew asked that this matter be continued from today's hearing. Mr. Howard McDill who is representing 23 Eastwood was made aware of this.

### HEARING (Evidentiary):

The first matter for consideration is for undeveloped parcel ID 9646-43-5152 (Cedar Hill Drive). This proposal is a revised application for a new, single-family home construction and request for a landscaping plan approval. Mr. Robert Chandler shepherded the matter. The purpose is to go over the landscaping plan. Ms. Kieffer verified the roof coverage was now in compliance. Ms. Caldwell, representing the owners, said yes. Ms. Caldwell showed the Board the landscaping plans. Ms. Caldwell said she is aware drainage issues were brought up by a neighboring property owner and she described how the drain flow would work and showed the Board the roof coverage of the proposed home. The home is also within the setbacks.

Ms. Mary Ann James, neighbor, is concerned about the silt fence on the west side and said this area is already extremely wet. Ms. James is concerned about the spillage from the house and suggested using French drains. Ms. Caldwell said since they have not dug into the ground yet, they do not know what to expect in regards to the soil conditions. Ms. Caldwell said if they run into issues, they will stop and have the landscape architect look at it and suggest further drainage options. Ms. Caldwell said this will be addressed if it becomes an issue. Ms. James suggested getting a drainage specialist to look at this. The tree removal is also in accordance with the ordinance.

### DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said the owners for the undeveloped parcel (9646-43-5152 (Cedar Hill Drive)) are requesting landscaping plan approval for a new, single-family home. All the removal and replacement of the trees have been reviewed by Town staff and follow the ordinance. The drainage issues will be addressed if a problem comes up. Ms. Lynn Kieffer moved that the landscape plan for parcel 9646-43-5152 (Cedar Hill Drive) tree removal and replacement complies and the drainage matter with the neighboring property owner, Ms. Mary Ann James and the parcel owner, Mr. Bill Ross will be addressed. Ms. Rhoda Groce seconded the motion. Roll call was taken and unanimously approved.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request for an accessory structure (ground-mounted solar array) within the side yard at 398 Vanderbilt Road. Mr. Lowell Pearlman shepherded the matter. Mr. Foster, applicant, said the solar array will be three yards in one direction and twenty-five yards in the other direction. There is a 4.2-acre lot, and they would like to have solar in their home. The adjoining property owners support the project. Mr. Pearlman asked if they would be willing to buffer if requested from neighboring property owners. Mr. Foster said yes, and they have already looked at possibly putting some landscaping in that area. Ms. Barnes asked if there are trees being removed. Mr. Foster said they may have to remove one or two trees, but they plan on planting more trees in the future. They do not plan on taking down the large evergreen trees near the golf course. Mr. Kanipe said neighboring property owners have approved of this project.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Mr. Paul Foster and Ms. Heather Hanks of 398 Vanderbilt Road are requesting a Special Use Permit for solar arrays. Mr. Pearlman said if further buffering is requested by neighboring property owners, the homeowners agreed to do buffer.

Ms. Rhoda Groce made a motion to have a Special Use Permit granted to Paul Foster and Heather Hanks at 398 Vanderbilt Road and the facts as recited by Lowell Pearlman and his summation be 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.

The motion was seconded by Ms. Martha Barnes. Roll call was taken and was unanimously approved.

Chairman Goosmann adjourned the meeting at 4:39 pm. The next Board of Adjustment meeting is scheduled for Monday, August 22, 2022 at 4:00pm.

ATTEST:

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Greg Goosmann

Chairman

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Laura Jacobs

Town Clerk

# BOARD OF ADJUSTMENT STAFF MEMORANDUM

August 22, 2022



## Case 1 – 56 Cedar Hill Drive

Variance request to Encroach Side Yard Setback with Fence and Gate Installation

Special Use permit request to construct swimming pool in rear yard and fence and gate within side yard

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Property Owner: Josh Shores  
Property Address: 56 Cedar Hill Road

### Project Description

The applicants request permission to construct a 16'x34' Gunite swimming pool within their rear yard. As part of this project, new aggregate concrete decking will be added for the pool. Additionally, a new fence and gate is requested to fence in the entirety of the rear yard and the pool. This portion of the fence and gate is within the side yard setback.

### Special Use Permit Request

The Town's Zoning Ordinance regulates swimming pools as accessory structures. Section 153.029 provides the guidelines for accessory structures and their installation. This ordinance is attached to this memorandum for your reference.

Additionally, the applicants request the installation of a small portion of fence and gate to fully enclose the rear yard and swimming pool. Section 153.049 of the Town's Zoning Ordinance governs fences and gates. This section is attached for your reference.

### Variance Request

The requested fence and gate is located within the side yard setback. Per the Town's Zoning Ordinance, fences and gates shall be constructed in compliance with setbacks unless a variance is issued by the Board of Adjustment. The applicant has provided a site plan showing the fence and gate location as well as their rationale for this variance request.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Josh Shores

**Property Address**

56 Cedar Hill Dr.

**Phone**

(828) 230-2855

**Email**

mark@medallionpool.com

**Parcel ID/PIN Number**

964632662400000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.48ac

**Maximum Roof Coverage**

5,500 square feet (Up to 1.5 acres)

**Proposed Roof Coverage Total**

na

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

14370sf (16,117 sf allowed)

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

na

**Description of the Proposed Project**

new swimming pool - 16x 34 Gunite inground w/ automatic cover. new hardscape to match existing exposed aggregate concrete. not change to current fence line except additional short section to make full enclosure

**Estimated Start Date**

9/8/2022

**Estimated Completion Date**

12/30/2022

**Estimated Cost of Project**

\$250,000.00

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

POOL EQ ENCLOSURE.jpg

REV\_SHORES\_POOL\_SITE\_PLAN.pdf

**Applicant Signature**

A handwritten signature in black ink, appearing to read "M. R. [unclear]". The signature is fluid and cursive, with a large loop at the end.

**Date**  
8/4/2022



# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Mark Dorsey

**Address**

56 Cedar Hill Dr.

**Phone**

(828) 230-2855

**Email**

mark@medallionpool.com

**Current Zoning/Use**

A

**Requested Use**

Fence in setback for pool enclosure

**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?**

(Submittal is being made on behalf of Josh Shores, subject property owner.) - previously a variance was approved for a fence on a portion of the side property line. we are making request for a variance to extend that fence back to the corner of the residence which a portion of which is in the setback.

**What does the ordinance require?**

"fence, gate or wall is constructed entirely within the setback and entirely in the rear yard."

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.**

the pool requires a complete barrier and since the previous variance which allowed the fence on the property line was granted, there is a need to either move the fence previously installed or grant a variance across the setback to connect.

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

as you are aware the lot is not a rectangle and the the side property line in question is somewhat in the rear when you consider visibility from the street. and there is no visibility from any neighboring property.

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

na

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

visibility of fencing is not an issue here, either from the street or from a neighboring property.

**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 several overlapping loops and lines, positioned below the 'Signature' label.

**Date**

8/9/2022

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Josh Shores

**Address**

56 Cedar Hill Dr.

**Phone**

(828) 230-2855

**Email**

mark@medallionpool.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:**

add an in ground gunite(concrete) swimming pool and concrete on grade deck in back yard. add a minor length of fence to meet residential code for pools

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

there is no possibility of visibility of any portion of the pool and deck from adjoining lots

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

**Signature**

**Date**

8/8/2022

*Mark Dorsey*

## § 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*

## § 153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

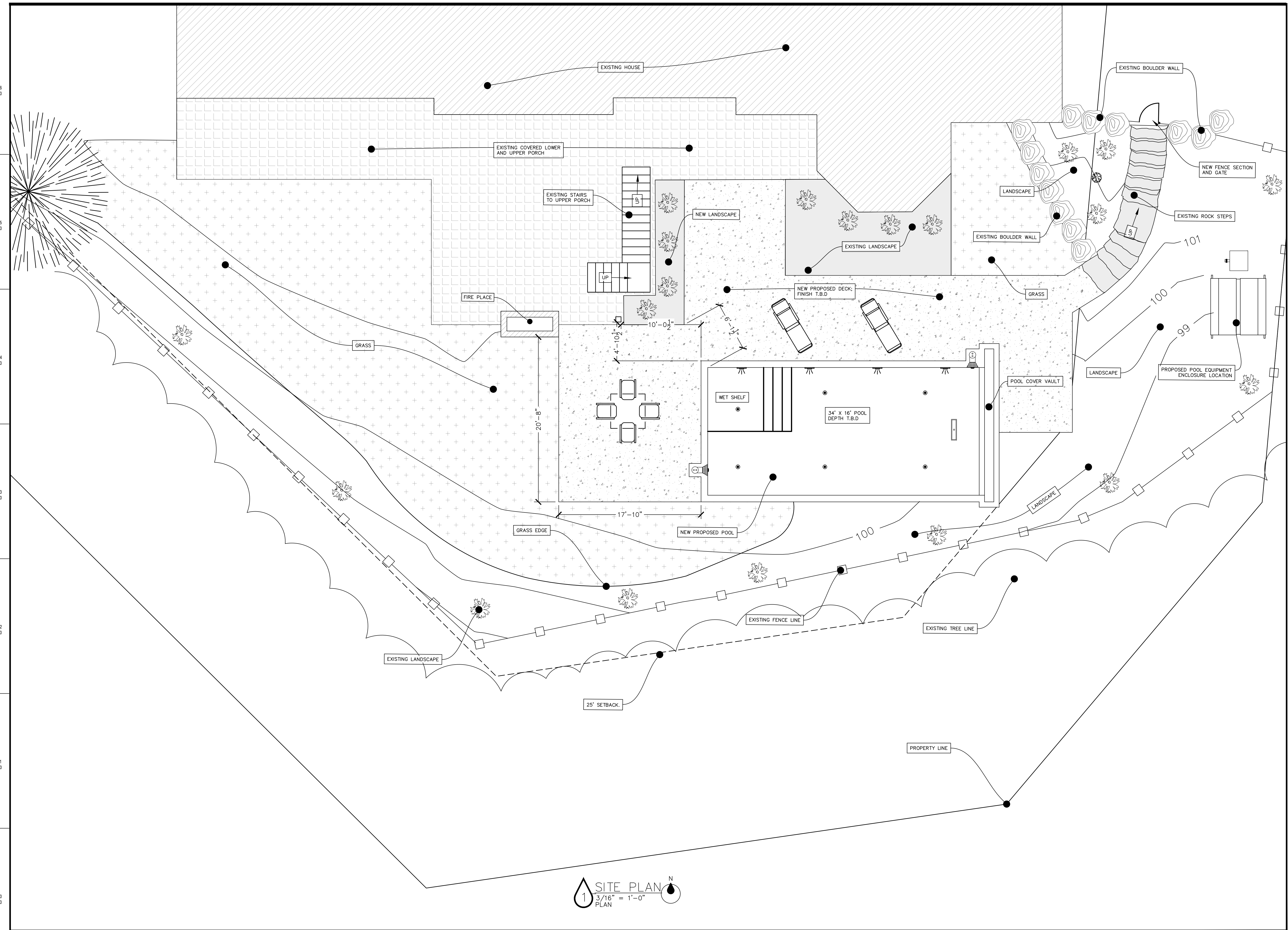
(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven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

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

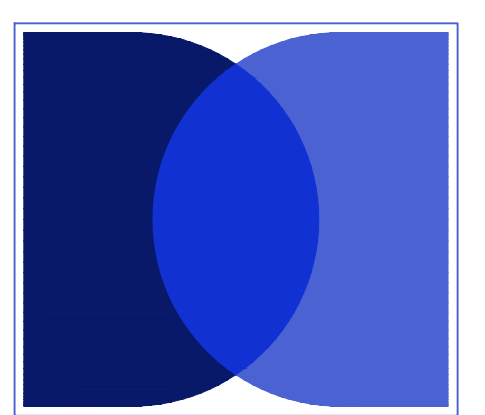
(6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails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

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

NOTE: IF THIS SHEET IS NOT 24" W X 36" L, THEN IT IS NOT THE INTENDED SIZE. IN ALL CASES, WORK TO FIGURED DIMENSIONS.



0 0.5 1' 2'



**DORSEY DESIGNS, PA**  
AQUATIC ARCHITECTURE & ENGINEERING

51 North Merrimon Ave., Suite 101  
Asheville, NC, 28804  
828 253 4594  
mark@medallionpool.com

THESE PLANS ARE COPYRIGHTED AND SUBJECT TO COPYRIGHT AS AN "ARCHITECTURAL WORK" UNDER SEC. 102 OF THE COPYRIGHT ACT, 17 U.S.C. AS AMENDED, DECEMBER 1990 AND KNOWN AS ARCHITECTURAL WORKS. COPYRIGHT PROTECTION ACT OF 1990. THE PROTECTION INCLUDES BUT IS NOT LIMITED TO THE OVERALL FORM AS WELL AS THE ARRANGEMENT AND COMPOSITION OF SPACES AND ELEMENTS OF THE DESIGN. UNDER SUCH PROTECTION, UNAUTHORIZED USE OF THESE PLANS, WORK OR HOME REPRESENTED, CAN LEGALLY RESULT IN THE CESSATION OF CONSTRUCTION OR BUILDINGS BEING SEIZED AND/OR MONETARY COMPENSATION TO DORSEY DESIGNS, PA  
© 2022 DD

**SWIMMING POOL DESIGN**  
**SHORES RESIDENCE**  
56 Cedar Hill Dr,  
Biltmore Forest, NC 28803

KEY PLAN

STAMP

NO	DATE	DESCRIPTION

NOT FOR CONSTRUCTION  
DRAWING TITLE

SITE PLAN

SCALE AS NOTED  
 PRINT DATE August 4, 2022  
 PROJECT NUMBER 22-08-03  
 DRAWING NUMBER

1 SITE PLAN  
 3/16" = 1'-0"  
 PLAN

# BOARD OF ADJUSTMENT STAFF MEMORANDUM

August 22, 2022



## Case 2 – 5 Brookside Road

**Special use permit request for carport construction attached to existing garage**

**Variance request to exceed maximum roof coverage for proposed additions**

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Property Owner: Claude Sheer  
Property Address: 5 Brookside Road

### Project Description

The applicants have several components to their zoning application. While typically additions to the home do not involve Board of Adjustment review and approval, this request does as there is an exceedance of the maximum roof coverage for the lot. As a result, this project is being presented to the Board of Adjustment in full for consideration.

### Special Use Permit Request

One component of this request is to construct a carport attached to an existing garage. Because the carport is not enclosed and/or connected via enclosed space, the Board is required to consider this as an accessory building. Section 153.029 (provided within your packet) provides guidance for accessory buildings.

### Variance Request

The overall project exceeds the Town's maximum roof coverage allowance. The maximum roof coverage allowed for this lot (1.34 acres) is 5,500 square feet. Mr. Sheer notes in his variance application that the home was constructed in 1966 and includes 3-foot overhangs. Mr. Sheer followed up in an email this week with specific numbers related to the amount of square footage that is comprised of overhangs. That information is provided below:

- House, garage, and walkway comprise 4495 square feet of "hardscape"
- Bearing in mind that there is a three-foot overhang, the total roof area currently is 6065 square feet. Therefore, the roof overhang alone is 1570 square feet
- The new roof area as indicated on the application remains 7549 square feet, or 5979 with the overhang removed

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Claude Sheer

**Property Address**

5 Brookside Road

**Phone**

(617) 968-4411

**Email**

claudesheer@gmail.com

**Parcel ID/PIN Number**

21-8156

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.34 acres

**Maximum Roof Coverage**

5,500 square feet (Up to 1.5 acres)

**Proposed Roof Coverage Total**

7,549'

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

10,904

**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**

20'0"

**Description of the Proposed Project**

There are several items in our project: 1) We would like to enclose the patio at the rear of the house; second, we would like to screen in the small patio off of the Principal Bedroom; third, we would like to add a second floor on the garage as a music studio and office for my wife and myself. We work from home and I need a music practice space; And finally, we would like to add a covered carport on the left side of the garage to accommodate our third vehicle.

**Estimated Start Date**

9/19/2022

**Estimated Completion Date**

12/30/2022

**Estimated Cost of Project**

\$150,000.00

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

Roof Area and Building Height.pdf

Front 07.29.pdf

Right 07.29.pdf



**Applicant Signature**

**Date**  
7/31/2022

A handwritten signature in black ink, consisting of a series of connected loops and a long horizontal stroke at the end.

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Claude Sheer

**Address**

5 Brookside Rd

**Phone**

(617) 968-4411

**Email**

claudesheer@gmail.com

**Current Zoning/Use**

R

**Requested Use**

R1

**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 screen and roof one small patio off of the principal bedroom, build a room on the existing patio at the rear of the house, we would like to add a second floor to our garage and add a car port to the existing garage. The impetus behind our request is that we work from home and our work requires us to spend a great deal of time on Zoom calls. The current configuration of the house makes this inconvenient and often disruptive to others in the house. The additional space allows us to isolate office space and to provide more shared family space.

**What does the ordinance require?**

There is an apparent imbalance between roof coverage and lot size.

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.**

This would likely prevent us from enclosing at the patio at the rear of the home and perhaps the other small patio off the principal bedroom.

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

We believe the hardship result from the large overhang that is inherent in the design of the house. The home was constructed in 1966 and includes a 3+ foot overhand on the house, the covered walkway and the garage.

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

That is correct.

**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 hope and believe it is. We are trying to maintain the design created by architect Lawrence Kraber while providing us a the living space to accomodate our three sons and there soon to be expanding families. In addition, it will provide work space that won't be disruptive the rest of the household.

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

**Signature**

**Date**

8/12/2022

A handwritten signature in black ink, appearing to be 'Lawrence Kraber', written in a cursive style.

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Claude Sheer

**Address**

5 Brookside Road

**Phone**

(617) 968-4411

**Email**

claudesheer@gmail.com

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

Home Occupations

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:**

There are several items in our project: 1) We would like to enclose the patio at the rear of the house; second, we would like to screen in the small patio off of the Principal Bedroom; third, we would like to add a second floor on the garage as a music studio and office for my wife and myself. We work from home and I need a music practice space; And finally, we would like to add a covered carport on the left side of the garage to accommodate our third vehicle.

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

Other than the addition of the carport, which will not be visible from the street, the changes we propose do not involve changing the foot print of the existing home and patios.

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

**Signature**



**Date**

7/31/2022

**§ 153.043 MAXIMUM ROOF COVERAGE.**

(A) (1) (a) The **MAXIMUM ROOF COVERAGE** is defined as the total area(s) under roof of all structures (including detached garages and other accessory structures) on the lot.

(b) The maximum roof coverage standard assures that the size of structures is proportional to the lot size.

(2) The standards for the maximum roof coverage permitted are as follows:

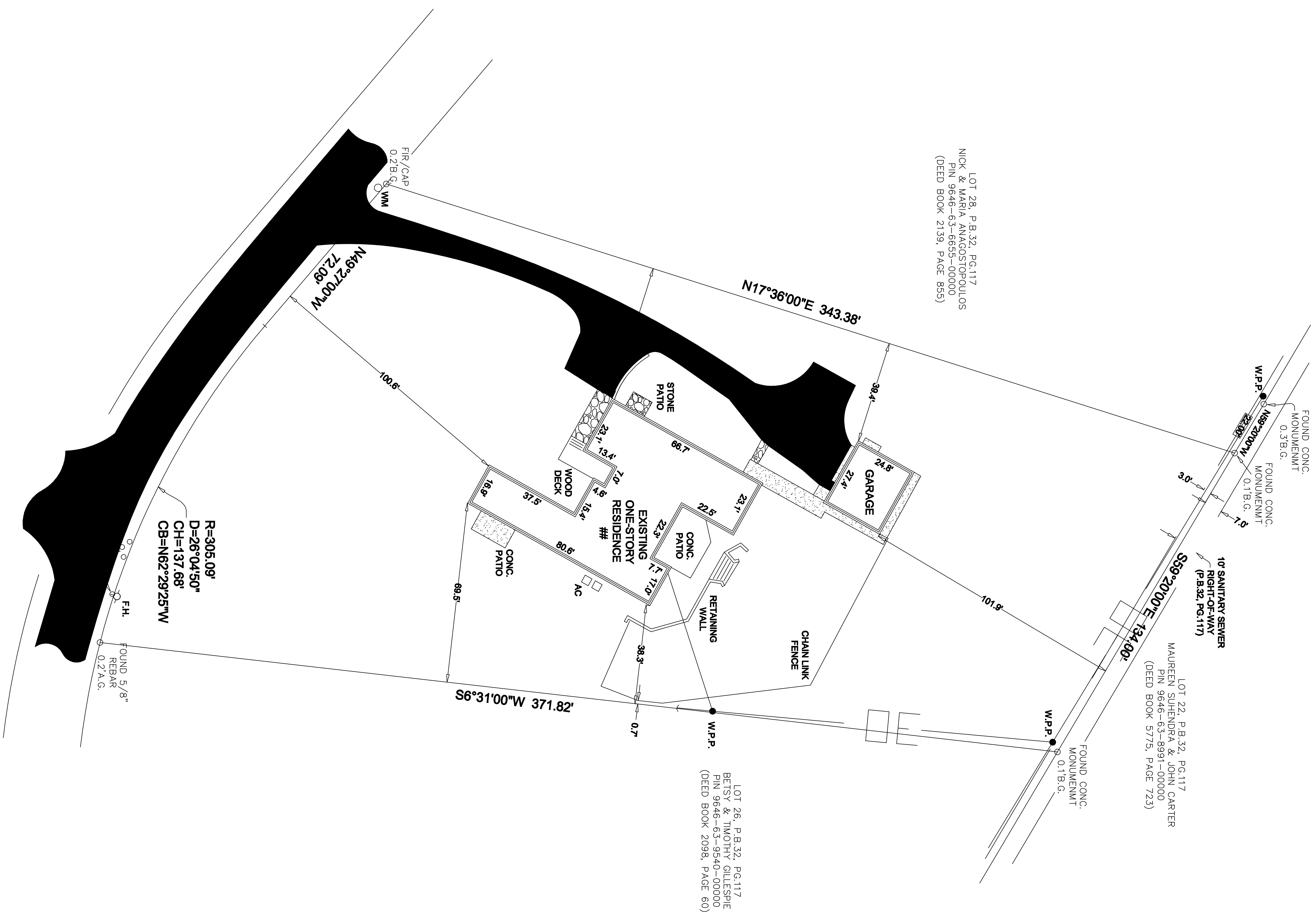
<b>Lot Size</b>	<b>Max Roof Coverage</b>
Up to 0.5 acres	2,874 square feet
Up to 0.75 acres	3,520 square feet
Up to 1 acres	4,682 square feet
Up to 1.2 acres	5,060 square feet
Up to 1.5 acres	5,500 square feet
Up to 2 acres	6,100 square feet
Up to 2.5 acres	6,700 square feet
Up to 3 acres	7,500 square feet
Up to 3.5 acres	8,200 square feet
Up to 4 acres	8,700 square feet
Up to 4.5 acres	8,900 square feet
Up to 5 acres	9,100 square feet
Up to 5.5 acres	9,300 square feet
Up to 6 acres	9,647 square feet

(B) (1) Lots exceeding 6 acres in size: Multiply the lot size by 43,560; multiply this number by 3.25% (0.0325); provided, that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet.

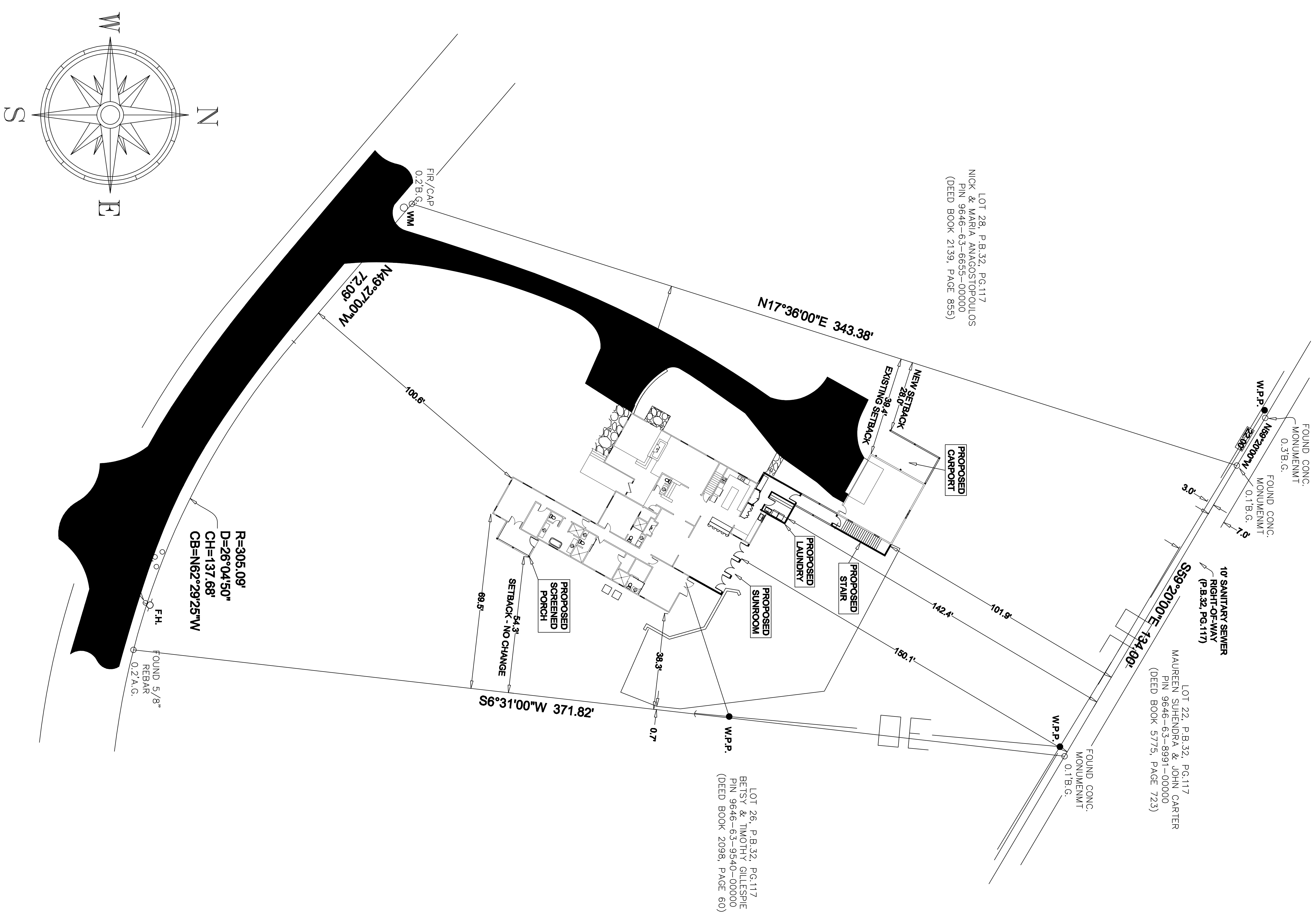
(2) If the result is greater than 9,647, structures on the lot may have maximum roof coverage equal to the result produced by the multiplication.

(C) All structures exceeding the maximum roof coverage for the lot on which they are located shall require approval of a variance by the Board of Adjustment in accordance with the procedures and standards set forth in § 153.110(D).

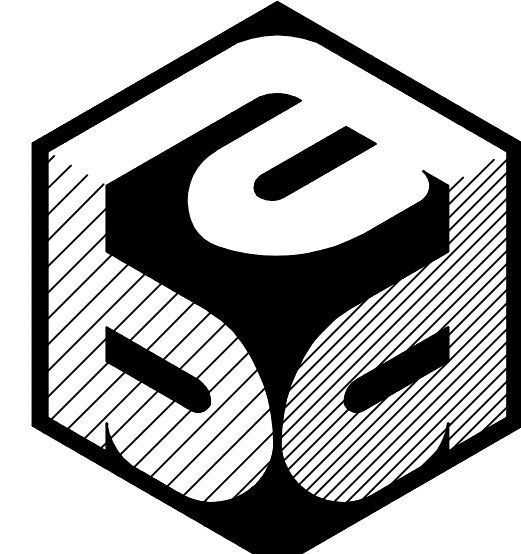
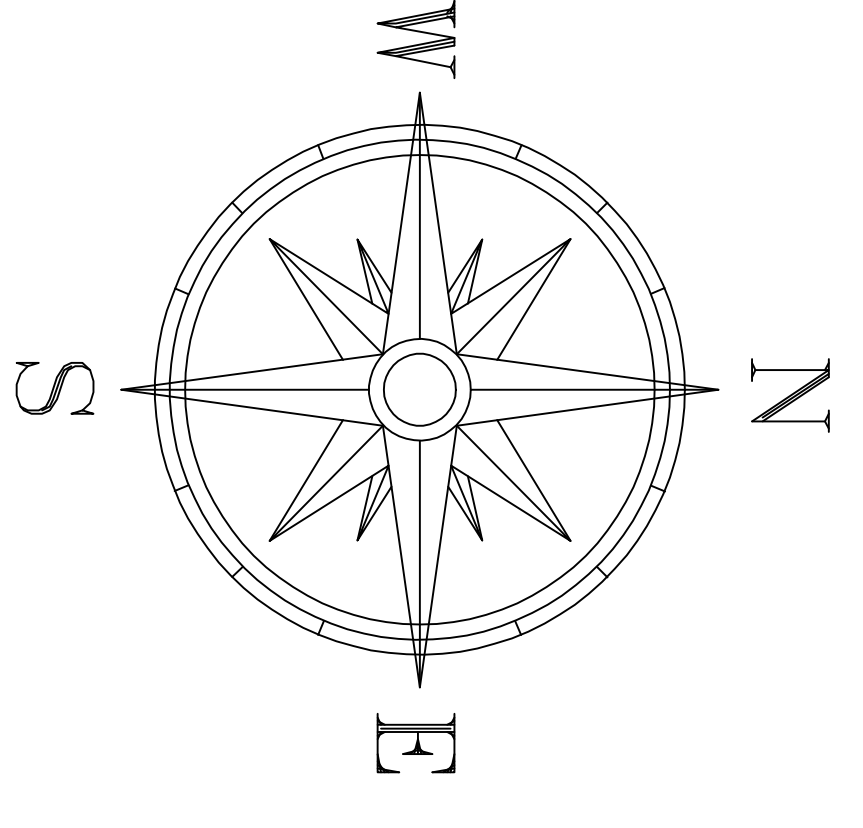
(Ord. passed 10-19-1983; Ord. passed 6-8-2021)



2 EXISTING SITE PLAN  
SCALE: 1"=20'



1 PROPOSED SITE PLAN  
SCALE: 1"=20'



**A. Bailey Design**  
 CUSTOM DESIGN & DRAFTING SERVICES  
 (828) 400-3882      ab@andybaileydesign.com  
 594 Owens Road    Waynesville NC 28785  
 www.andybaileydesign.com

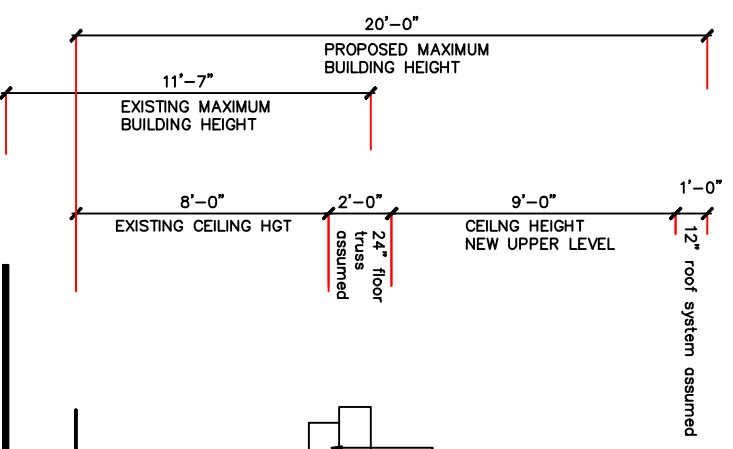
**ADDITION/REMODEL**  
**SHEER & GOODWIN RESIDENCE**  
 5 Brookside Rd, Biltmore Forest, NC

**USE OF DRAWING**  
 THIS DRAWING IS THE SOLE PROPERTY OF ANDY BAILEY DESIGN, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DRAWING IS TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN PERMISSION OF ANDY BAILEY DESIGN, INC.

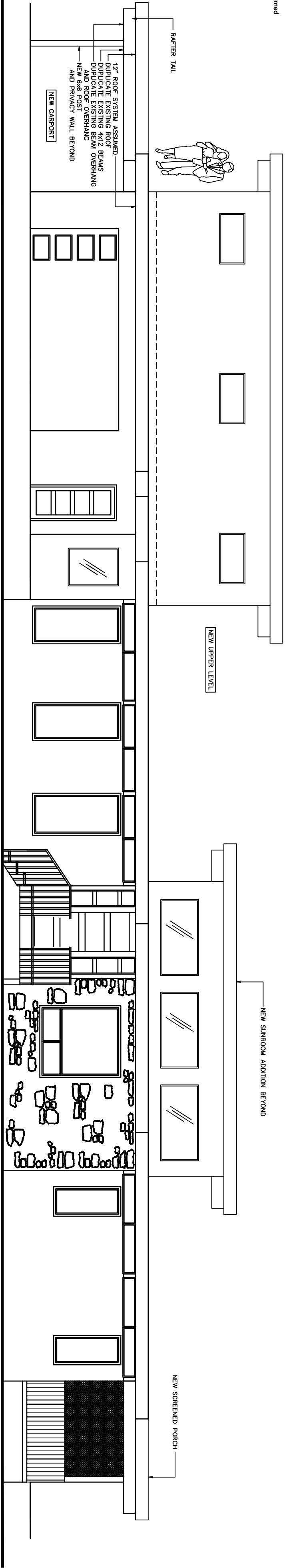
**REVISIONS:**

**FILE NAME:** SHEER/GOODWIN  
**DATE:** 06/22/22  
**DRAWN:** A. BAILEY DESIGN  
**CHECKED:** ANDREW BAILEY  
**APPR.:**

SHEET NO. **S-1.1** OF 8

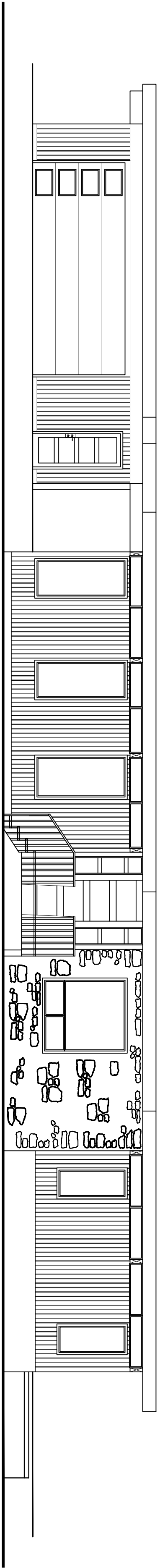


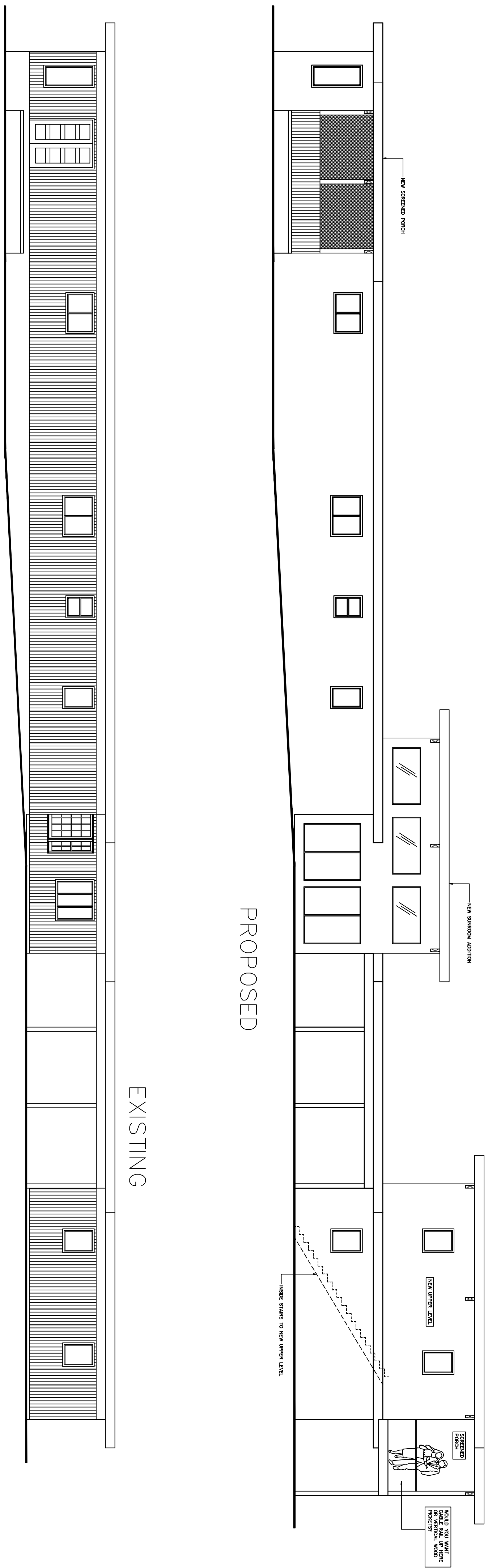
[ ASSUMED THAT YOU WOULD WANT THE NEW UPPER SPACE AT 9' CEILING HEIGHT SO THAT IT WOULD BE BRIGHT AND AIRY. THE REMAINDER OF THE SPACE WOULD BE USED AS AN OFFICE UP TO TEN. YOU CAN HAVE EIGHT UP HERE OF COURSE, IF YOU FEEL AS THOUGH THIS IS TOO TALL.



PROPOSED

EXISTING





PROPOSED

EXISTING

NEW SCREENED PORCH

NEW SHINGLED ADDITION

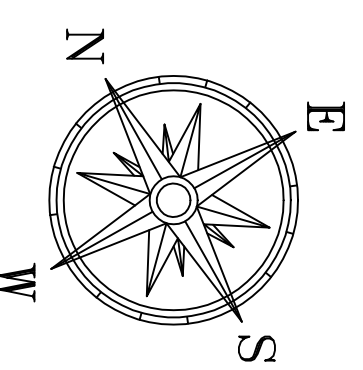
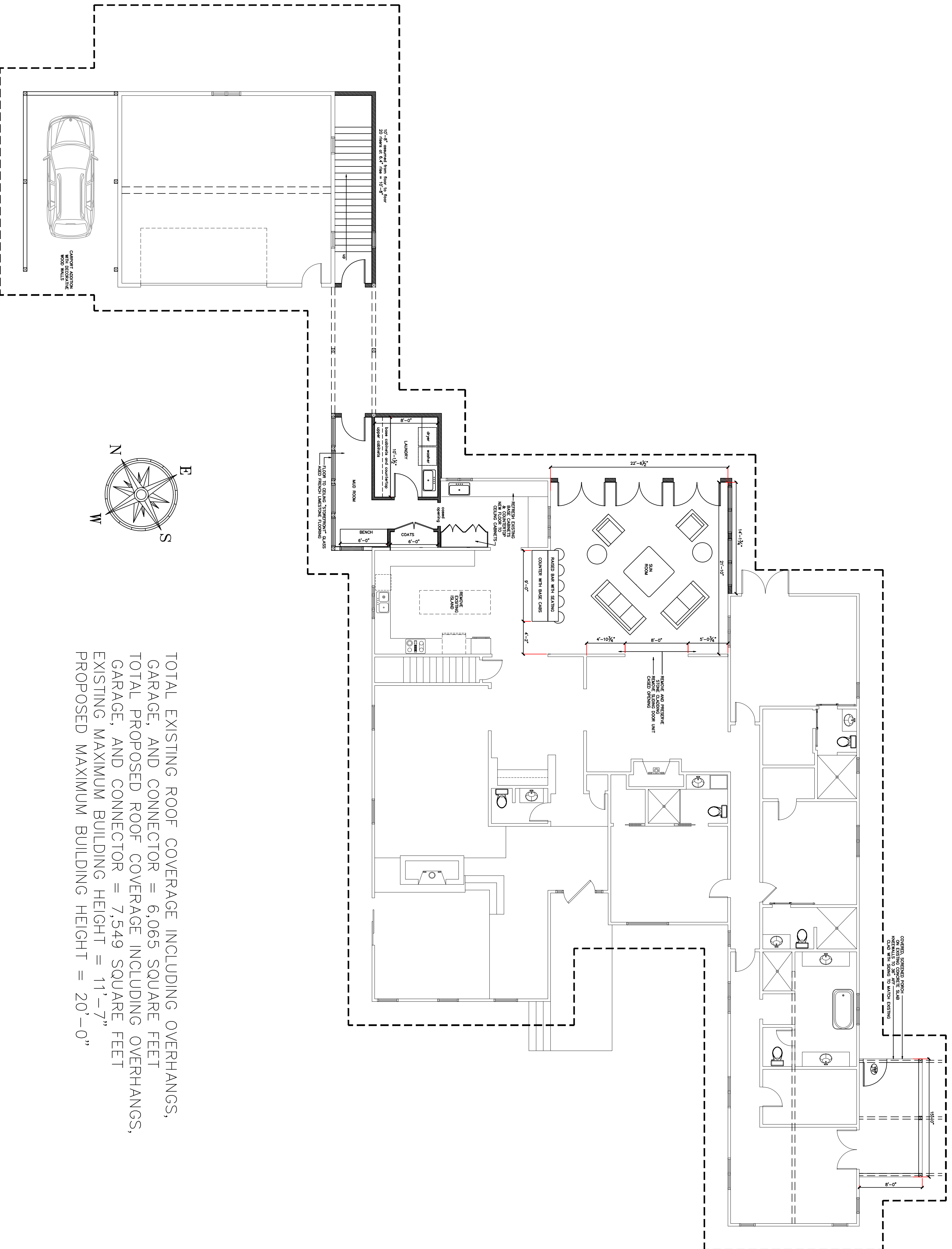
NEW UPPER LEVEL

SCREENED SCREEN

SOULD YOU WANT GRAB RAIL UP HERE FOR ACCESSIBLE WOOD STAIRS?

WOOD STAIRS TO NEW UPPER LEVEL





TOTAL EXISTING ROOF COVERAGE INCLUDING OVERHANGS,  
 GARAGE, AND CONNECTOR = 6,065 SQUARE FEET  
 TOTAL PROPOSED ROOF COVERAGE INCLUDING OVERHANGS,  
 GARAGE, AND CONNECTOR = 7,549 SQUARE FEET  
 EXISTING MAXIMUM BUILDING HEIGHT = 11'-7"  
 PROPOSED MAXIMUM BUILDING HEIGHT = 20'-0"

# BOARD OF ADJUSTMENT STAFF MEMORANDUM

August 22, 2022



## Case 3 – 1 Stuyvesant Crescent

**Variance request to encroach into side and rear yard setbacks for hardscape landscaping project.**

**Special use permit request includes boulder and brick retaining walls and 6-foot privacy fence inside setbacks.**

**Special use permit for outdoor fireplace within rear yard.**

---

Property Owner: Chuck and Mika Edwards  
Property Address: 1 Stuyvesant Crescent

### Project Description

This project is a hardscape and landscaping project focused on the rear yard. The applicants request permission to install boulder and brick retaining walls, a six-foot privacy fence, and outdoor fireplace within the rear yard. As part of this project, the applicants would remove an existing swimming pool from the rear yard.

The accessory structures requested for approval all fall within the side yard or rear yard setbacks. As such, the applicant requests a variance for this installation in conjunction with the special use permit requests.

### Special Use Permit Requests

The applicant has two distinct special use permit requests. The first includes several boulder and brick retaining walls, none to exceed four feet, and the installation of a six-foot privacy fence. Each of these installations would occur within the side and/or rear yard setbacks.

The second special use application is for an accessory structure. This accessory structure is an outdoor fireplace that will be in the rear yard. The proposed outdoor fireplace does extend into the rear yard setback.

### Variance Requests

The above accessory structures, fence, and wall installations are all located within the side and rear yard setbacks. The Town's accessory structure ordinance (153.029) is attached and provides specific language regarding the location of these structures. Section 153.049 governs fence, gate, and wall installation and provides guidance for where these structures are to be constructed.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Chuck & Mika Edwards

**Property Address**

1 Stuyvesant Crescent

**Phone**

(865) 603-6200

**Email**

chuck@yeehawbrewing.com

**Parcel ID/PIN Number**

964683876900000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

.9 acra

**Maximum Roof Coverage**

4,682 square feet (Up to 1 acres)

**Proposed Roof Coverage Total**

same

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

less than existing

**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**

existing

**Description of the Proposed Project**

remove existing pool and patios, walls  
replace with new patio, retaining walls, outdoor fireplace, wood privacy fence 6' HT max. along part of rear property, remove hazard trees as needed replace trees and new landscaping

**Estimated Start Date**

9/6/2022

**Estimated Completion Date**

10/21/2022

**Estimated Cost of Project**

\$150,000.00

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

Preliminary Landscape Plan\_071422.pdf

568022 Tree & Topo 5-25-2022Edwards.pdf

**Applicant Signature**

**Date**  
7/15/2022

Tom Cole

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Chuck & Mika Edwards

**Address**

1 Stuyvesant Crescent

**Phone**

(865) 603-6200

**Email**

chuck@yeehawbrewing.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?**

Remove swimming pool , patios, walls, trees replace with new retaining walls Maximum Ht.4' , patios, outdoor fireplace, lawn, 6' wood privacy fence along part of rear property line, and new landscaping

**What does the ordinance require?**

allowing tree removal, 6' Wood fence, retaining walls within setbacks, outdoor fireplace within setbacks

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.**

trees are hanging over house, there is no lawn area trees need to be removed for safety and to create usable lawn space, rear setback would not allow removal of existing walls/patios and their replacement

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

no usable outdoor space without removal of pool and trees

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

Existing pools,patios and walls

**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.**

This will improve the property and blend better with the natural andscape

**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 "Todd Cook". The signature is written in a cursive style with a large, sweeping initial "T" and a long horizontal stroke extending to the right.

Date

7/15/2022

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Chuck & Mika Edwards

**Address**

1 Stuyvesant Crescent

**Phone**

(865) 603-6200

**Email**

chuck@yeehawbrewing.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:**

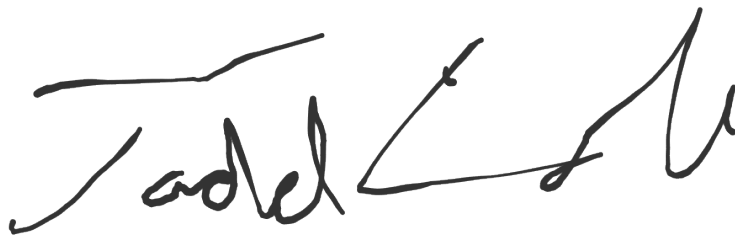
remove existing pool,patios and walls. Replace with new patio, outdoor fireplace, retaining walls, 6' wood privacy fence along part of rear property line, remove hazard trees replant new trees as required and new landscaping

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

we will be replacing trees as needed, creating more lawn and the owners will have more lawn area

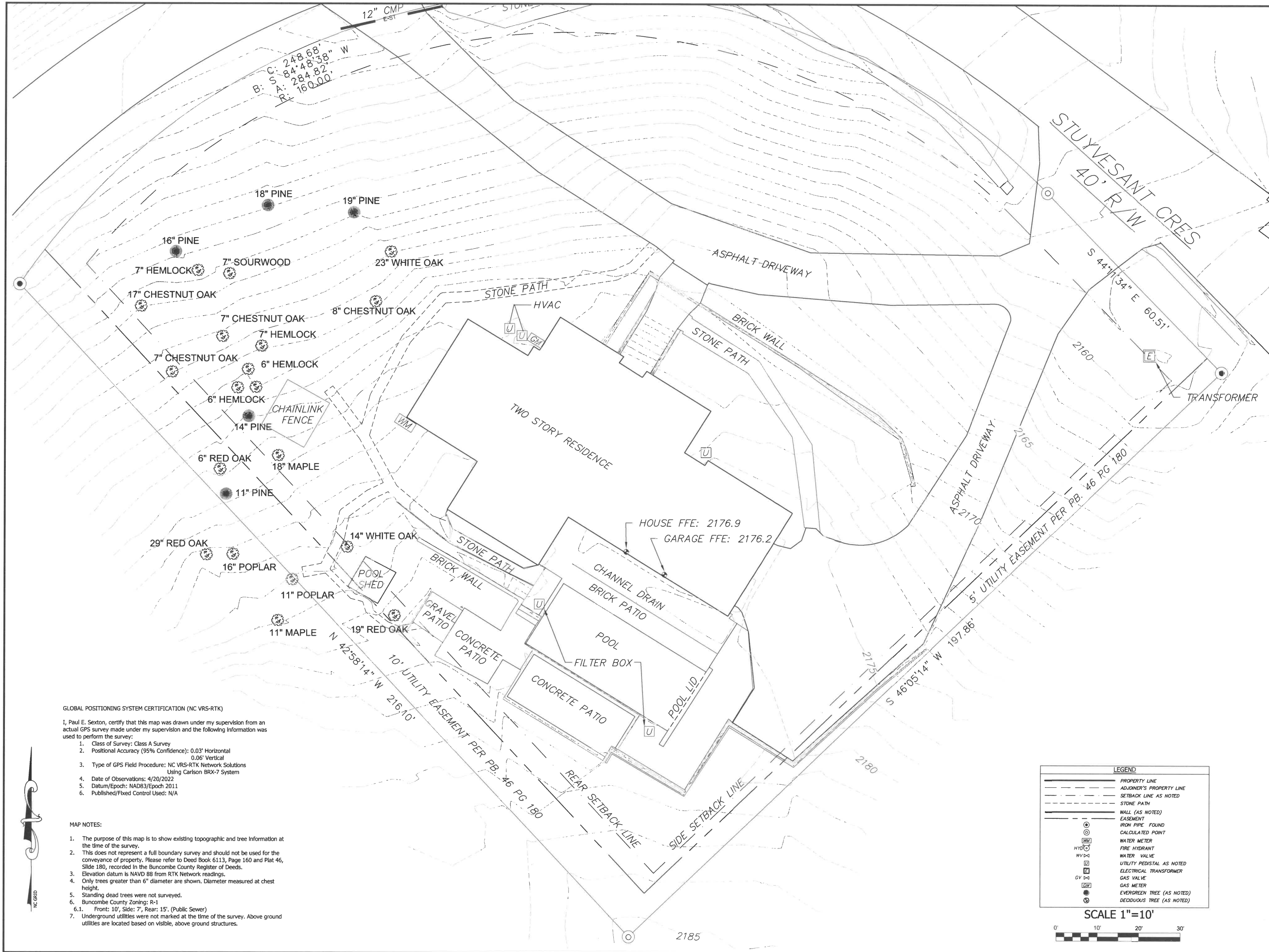
**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**



**Date**

7/15/2022



**GLOBAL POSITIONING SYSTEM CERTIFICATION (NC VRS-RTK)**

I, Paul E. Sexton, certify that this map was drawn under my supervision from an actual GPS survey made under my supervision and the following information was used to perform the survey:

1. Class of Survey: Class A Survey
2. Positional Accuracy (95% Confidence): 0.03' Horizontal  
0.06' Vertical
3. Type of GPS Field Procedure: NC VRS-RTK Network Solutions  
Using Carlson BRX-7 System
4. Date of Observations: 4/20/2022
5. Datum/Epoch: NAD83/Epoch 2011
6. Published/Fixed Control Used: N/A

**MAP NOTES:**

1. The purpose of this map is to show existing topographic and tree information at the time of the survey.
2. This does not represent a full boundary survey and should not be used for the conveyance of property. Please refer to Deed Book 6113, Page 160 and Plat 46, Slide 180, recorded in the Buncombe County Register of Deeds.
3. Elevation datum is NAVD 88 from RTK Network readings.
4. Only trees greater than 6" diameter are shown. Diameter measured at chest height.
5. Standing dead trees were not surveyed.
6. Buncombe County Zoning: R-1  
6.1. Front: 10', Side: 7', Rear: 15', (Public Sewer)
7. Underground utilities were not marked at the time of the survey. Above ground utilities are located based on visible, above ground structures.

**LEGEND**

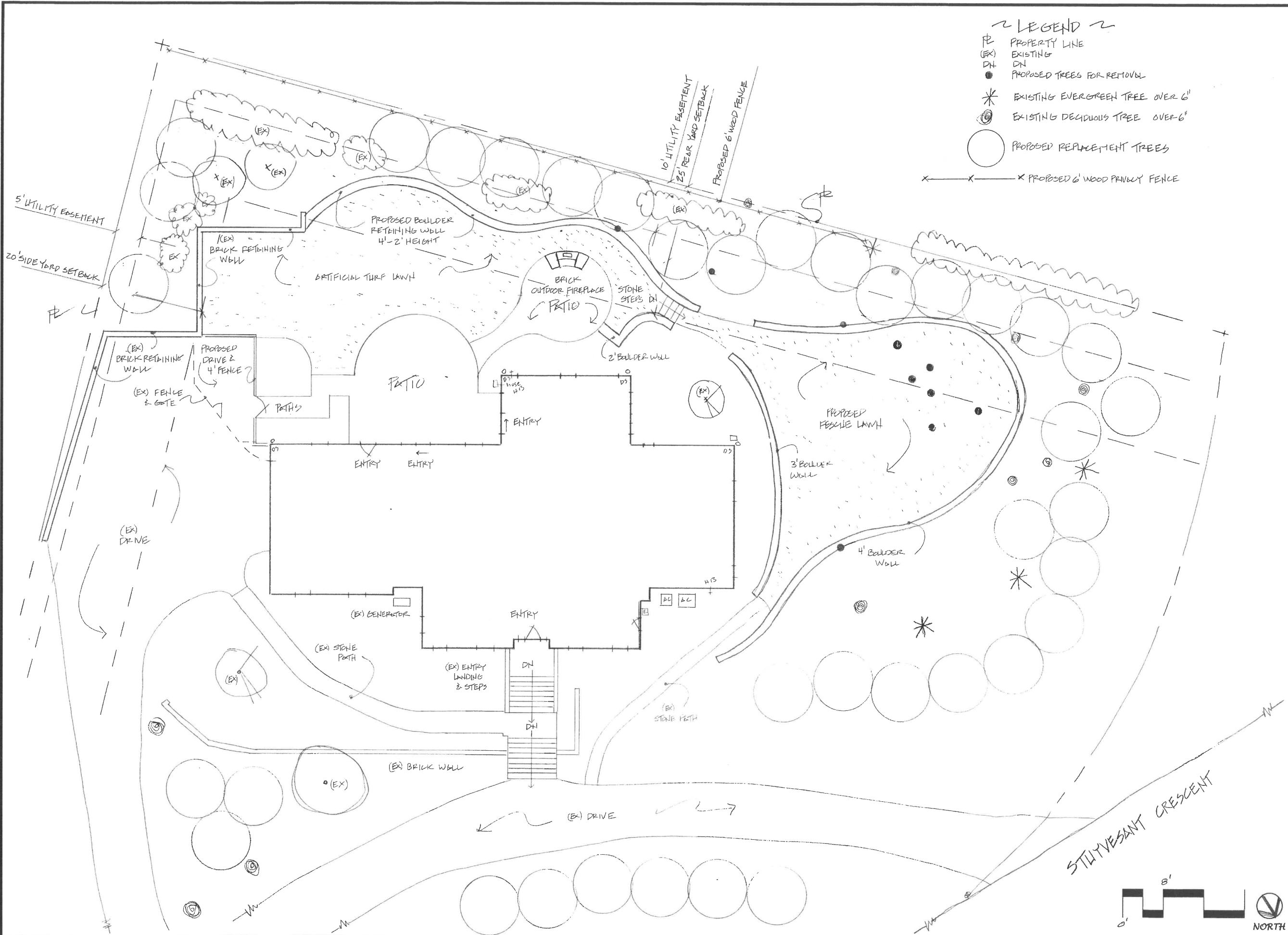
- PROPERTY LINE
- - - ADJOINER'S PROPERTY LINE
- - - SETBACK LINE AS NOTED
- - - STONE PATH
- WALL (AS NOTED)
- EASEMENT
- IRON PIPE FOUND
- CALCULATED POINT
- WATER METER
- HYD ○ FIRE HYDRANT
- WV ○ WATER VALVE
- UT ○ UTILITY PEDISTAL AS NOTED
- ET ○ ELECTRICAL TRANSFORMER
- GV ○ GAS VALVE
- GM ○ GAS METER
- EVERGREEN TREE (AS NOTED)
- DECIDUOUS TREE (AS NOTED)

SCALE 1"=10'



Project No: <b>568022</b>	Drawing Title: <b>E-1 TOPOGRAPHIC AND TREE SURVEY</b>	BUNCOMBE COUNTY NORTH CAROLINA	 <b>BROOKS ENGINEERING ASSOCIATES</b> Planning • Engineering • Surveying • Environmental Services •	Reviewed: TAS Scale: AS NOTED Drawn: BLG Check: PES	Date: 5-25-22
				17 Arlington Street Asheville, N.C. 28801 Phone: 1-828-232-4700 Fax: 1-828-232-1331 www.brooksea.com	5/25/2022 NORTH CAROLINA PROFESSIONAL LAND SURVEYOR NO. 1-4447 PAUL E. SEXTON PAUL E. SEXTON
SURVEY FOR EDWARDS FAMILY 1 STUYVESANT CRES				Designed: N/A Drawn: BLG Check: PES	REVISIONS/SUBMISSIONS No. 1 SUBMISSION TO CLIENT



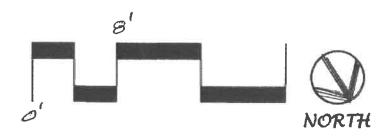
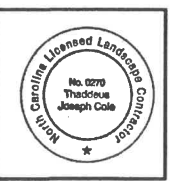


- ~ LEGEND ~
- PROPERTY LINE
  - (EX) EXISTING
  - DN PROPOSED TREES FOR REMOVAL
  - \* EXISTING EVERGREEN TREE OVER 6"
  - ⊙ EXISTING DECIDUOUS TREE OVER 6"
  - PROPOSED REPLACEMENT TREES
  - X — PROPOSED 6' WOOD PRIVACY FENCE



PRELIMINARY LANDSCAPE PLAN FOR  
 THE EDWARDS RESIDENCE  
 1 STUYVESANT CRESCENT  
 BILTMORE FOREST, NC 28803

DATE: 07-14-22  
 SCALE: 1/8" = 1'-0"  
 DRAWN BY: [Signature]  
 SHEET 1 OF 1



# BOARD OF ADJUSTMENT STAFF MEMORANDUM

August 22, 2022



## Case 4 – 23 Eastwood Road

### Variance request to Encroach Side Yard Setback with Retaining Wall Deviating from Previously Approved Plan

Property Owner: Tom and Char Hand  
Property Address: 23 Eastwood Road

#### **\*\*Note\*\***

This project was withdrawn from the June 27, 2022 Board of Adjustment agenda after the meeting was changed to being held remotely.

This project was tabled by the Board of Adjustment at the July 25, 2022 meeting due to concerns expressed by an adjoining property owner.

No additional information has been provided from either the applicant or any adjoining property owners since June 2022.

#### Project Description and Background

In December 2019, the applicants received approval for a large renovation project for the existing home. As part of this project, the applicants applied for and received special use permits for retaining walls and a driveway entrance plan in compliance with the Town's setback requirements. The Board of Adjustment also approved tree removal associated with the project during this initial hearing.

At a subsequent meeting in July 2021, the applicant requested an amendment to the previously approved landscaping plan that showed a reduction in the overall pavement for the project. The Board of Adjustment approved this revised landscaping plan at that time. Subsequently, the applicant provided a final revision that included keeping the existing driveway in its existing location. This revision did not require any Board of Adjustment action as there were no changes resulting in greater impervious surface coverage and no change to the current driveway. In each of these iterations, the retaining walls shown (and previously approved) on the western side property line did not change and were not encroaching within the setback.

Upon receiving information from the neighbor immediately west of the property, Town staff investigated and found that the retaining wall was located within the side setback. In addition, the planned single retaining wall was replaced with a constructed two-tiered retaining wall.

### Variance Request

Upon staff investigation, it was determined the now constructed two-tiered retaining wall is 8 feet from the property line. The side setback for this parcel is 20 feet from the property line. The applicant was informed they could appeal for a variance or relocate the parcel back to the 20-foot side setback line. Additionally, staff investigated tree removal that had occurred and found it complied with previously approved landscaping plans and tree removal approvals from the Board of Adjustment.

### Appeal from Neighboring Property Owner

The neighboring property owner, Susan Taylor, has appealed the location of the constructed retaining wall within the side yard setback. Correspondence from her attorney is attached to this memorandum for the Board's review.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Howard McDill

**Property Address**

23 Eastwood

**Phone**

(828) 691-0960

**Email**

howard@mayhewnc.com

**Parcel ID/PIN Number**

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

2

**Maximum Roof Coverage**

6,100 square feet (Up to 2 acres)

**Proposed Roof Coverage Total**

na

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

na

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

25

**Description of the Proposed Project**

adding 2 tier retaining wall that is in the 20' side setback

**Estimated Start Date**

6/8/2022

**Estimated Completion Date**

6/9/2022

**Estimated Cost of Project**

\$25,000.00

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

update 21758 Steven Shillinglaw 12x18 Print.pdf

**Applicant Signature**

**Date**  
6/8/2022



---

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a thin horizontal line.

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

Howard McDill

**Address**

201 WESTON WAY

**Phone**

(828) 691-0960

**Email**

howard@mayhewnc.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?**

At rear of long driveway on left side of the home install a two tier boulder retaining wall with plantings for buffer to neighbor that support the use of the driveway that accesses the lower garage and the rear of the home.

**What does the ordinance require?**

Approval to enter the setback

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.**

Having the retaining wall allows the existing driveway to be truly functional for cars, also will allow the owner to safely access the rear of the home better.

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

At the lower left side of the home there is a 2 car garage and the slope of the topography sends all the storm water to the end of the driveway and creates erosion concerns as well as making the driveway not functional.

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

The current plan shows a retaining wall at the lower end of the driveway, during construction it became apparent that a 2 tier boulder retaining wall would be needed to achieve the slope desired as well as allow for a more visually attractive buffer to the side of the house and driveway/garage area.

**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 existing lower driveway originally adjoined a retaining wall comprised of small rocks. The idea was to replace this former retaining wall with a different, improved one. In the approved plan a portion of the new retaining wall is within the setback on the approved plan. Given the location of the existing lower driveway, we must have some sort of retaining wall within the setback area to get from the corner of the lower driveway to an area outside the setback line (20' from the property line). Also to maintain a slope lesser than 2:1. In this case, we were really pushing that degree of slope and additionally compromising the desirable, mature oaks below the wall.

The walls allowed us a stronger drainage solution (with subsurface inlets/piping that we install) to control the erosion that was being exacerbated by the downhill driveway above to the lower garage.

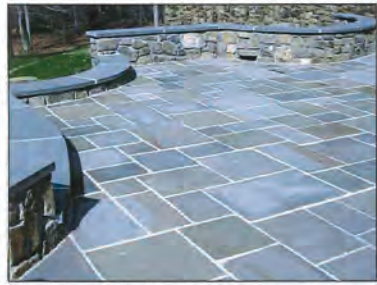
**I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.**

**Signature**

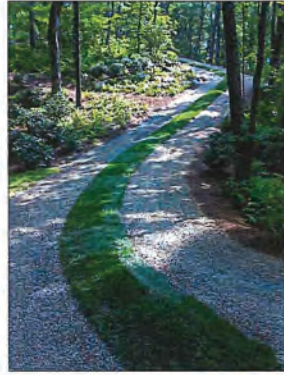
A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a thin horizontal line.

**Date**

5/9/2022



BLUESTONE TERRACE AND WALKS



TWO-TRACK DRIVEWAY



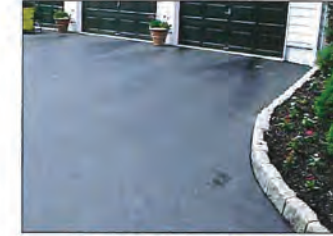
CUTSTONE STONE STEPS



CUTSTONE STEPS



STONE VENEER WALLS  
BLUESTONE CAP



CRAB ORCHARD  
CURB STONE



DRIVEWAY PAVERS



BLACK METAL RAILING  
WITH STONE COLUMNS



IMPERVIOUS SURFACE CALCULATION  
 TOTAL ACREAGE = 1.69 ACRES  
 25% X 1.69 = 18,404 SF IMPERVIOUS ALLOWED  
 HOUSE ROOF = 6,228 SF  
 HARDSCAPE = 8,473 SF  
 TOTAL IMPERMEABLE PROPOSED = 14,701 SF

■ TREES REMOVED "UNPROTECTED"  
-DEAD/DISEASED/POOR STRUCTURE  
■ TREES REMOVED "PROTECTED"

1. MITIGATE GREATER THAN 2:1 SLOPE.
2. TERRACE TO SCREEN W/ LANDSCAPE PLANTINGS.
3. PROTECT- 24" POPLAR - 28" W. OAK

SIZE OF TREES	REPLACEMENT OF PROTECTED TREES PER TREE REMOVED	QTY OF TREES REMOVED	TOTAL QTY OF TREES TO BE REPLACED
6-12" DBH (A)	2	0	0
13-18" DBH (B)	3	0	0
19"-30" DBH - C	4	2	8
30" DBH or greater (D)	5	2	10
TOTAL REPLACEMENT TREES REQUIRED =			18

SIZE OF TREES	REPLACEMENT OF UNPROTECTED TREES PER TREE REMOVED	QTY OF TREES REMOVED	TOTAL QTY OF TREES TO BE REPLACED
6-12" DBH (A)	1	25	25
13-18" DBH (B)	1	2	2
19"-30" DBH - C	2	0	0
30" DBH or greater (D)	3	0	0
TOTAL REPLACEMENT TREES REQUIRED =			27

NO.	REVISIONS	REMARKS	DATE

NOT FOR CONSTRUCTION  
 DATE: 6 JULY 2021  
 SHEET TITLE:  
 SITE DEVELOPMENT PLAN  
 SHEET NO. **L-100**





McGUIRE  
WOOD &  
BISSETTE  
LAW FIRM

June 20, 2022

**Re: Susan Taylor's Objection to Variance Application for 23 Eastwood Road**

Dear Town of Biltmore Forest Board of Adjustment:

Please be advised that the McGuire, Wood & Bissette, P.A. law firm represents Susan Taylor, resident and owner of 24 Eastwood Road (the "Taylor Property"), and, on her behalf, I have been asked to object to the variance application for 23 Eastwood Road (the "Hands Property").

Request to be Recognized as Having Standing

When the proposed use of land is unlawful pursuant to a valid ordinance, the owner of adjoining or nearby lands have standing in hearings regarding the proposed use when that owner has or will sustain special damage distinct from the rest of the community. *See Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 643, 669 S.E.2d 279, 282 (2008); *see also Casper v. Chatham Cty.*, 186 N.C. App. 456, 458, 651 S.E.2d 299, 301 (2007). Further, in order to have standing, the aggrieved party must allege "the manner in which the value or enjoyment of [her] land has been or will be adversely affected." *Id.* Examples of circumstances that North Carolina courts have deemed to adversely affect value or enjoyment of property include, without limitation, increases in noise level, increases in water runoff, etc. *Id.*; *see also Randall L. v. Cty. of Watauga*, 260 N.C. App. 704, 817 S.E.2d 496 (2018).

As an abutting landowner who has suffered special damages distinct from the rest of the community, Ms. Taylor has standing as an aggrieved party to be heard before the Board of Adjustment (the "Board") regarding the variance application submitted by Howard McDill on behalf of Tom and Char Hand (herein referred to as the "Hands" and the "Hands' Application"). In this case, the Hands are not requesting permission for significant intrusion into their 20-foot side setback area. Instead, they have already built the structures in question and are now asking the Board's forgiveness. The walls at issue intrude twelve (12) feet into the setback. To achieve this, the Hands have removed a significant portion of the dense tree barrier that formerly existed between the Taylor Property and the Hands Property.

A combination of the intrusion into the setback and the removal of the tree barrier has increased the noise and light level on the Taylor Property while significantly reducing the visual barrier that these trees provided. Additionally, due to the Hands significantly altering the slope of their Property in order to construct the walls at issue, the water and erosion Mr. McDill alleges as occurring on the Hands Property are now diverted to the Taylor Property. Photographs depicting the same are attached for your review.

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As such, Ms. Taylor respectfully requests the Board recognize her as an aggrieved party with standing to be heard, through counsel, regarding the Hands' Application.

#### Summary of Objection to the Hands' Application

In order for the Board to grant the Hands' Application, the Board must make specific findings of fact that: (1) unnecessary hardship would result from the strict application of the regulation; (2) the hardship results from conditions that are peculiar to the property, such as location, size, topography; (3) the hardship did not result from actions taken by the applicant or the property owner; and (4) the requested variance is consistent with the spirit, purpose, and intent of the regulations. *See* N.C. Gen. Stat. § 160D-705. Additionally, “[h]ardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis from granting a variance. *Id.*

The Hands' Application does not meet the burden of proof for any of the four standards above. The Hands' Application purports that this variance is necessary as it will allow use of the driveway, “better” access to the rear of the home, “to achieve the slope desired,” and to “allow for a more visually attractive buffer to the side of the house and driveway/garage area.” As the Board is aware, the driveway at issue is the same driveway that existed and was in use for many years without any issue prior to the Hands' purchasing the lot and beginning construction. Additionally, neither the Town of Biltmore Forest nor North Carolina General Statutes provide for remedying stormwater and erosion control issues by conveying it, without express permitting, approved planning, and/or permission, to an abutting or adjacent landowner's property. *See* BILTMORE FOREST, N.C. ORDINANCES § 152.56-57; § 52.01-99; *see also* N.C. Gen. Stat. § 143-214.7. The remaining reasons Mr. McDill cites as reasons that this variance is allegedly necessary are all subjective – “better,” “desired,” “more visually attractive.” These are all personal circumstances created by what the Hands may or may not prefer, and the Board is bound by statute not to allow a variance based on these personal circumstances.

Additionally, the Board is bound by the purpose, intent, and values enumerated in the Town of Biltmore Forest's Ordinances. “The town has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits.” BILTMORE FOREST, N.C. ORDINANCES § 153.060(A). In fact, the landscaping and buffering requirements in the Ordinances are in place to: (1) encourage the preservation of existing trees and vegetation and replenish removed vegetation; (2) protect and improve the visual quality of the town and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities, and mechanical systems and buildings; (3) provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat; (4) provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy; and (5) improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of the town while allowing flexibility to promote well-designed and creative landscape plantings. BILTMORE

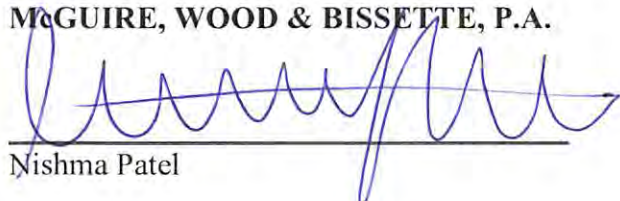
FOREST, N.C. ORDINANCES § 153.060(B). Biltmore Forest is so dedicated to the preservation of the trees, natural habitat, and aesthetic provided by natural vegetation that the Town passed a Tree Protection Ordinance on January 12, 2021, to specifically reduce and regulate damage and removal of trees. BILTMORE FOREST, N.C. ORDINANCES § 93-30 to 93-41, as amended.

The Hands have cleared their lot of the vast majority of trees, including but not limited to, along the property line they share with Ms. Taylor in order to build retaining walls that intrude twelve (12) feet into the setback along the Taylor Property line. Now, every time Ms. Taylor wants to enjoy a morning coffee in her backyard, an afternoon in her back garden, or dinner with friends on her back patio, she is met with a reduced visual barrier creating little to no privacy due to the diminished visual barrier, increased noise, increased light, and a view of the Hands' retaining walls which are in stark contrast to the aesthetic value the Town of Biltmore Forest Ordinances seek to preserve. This is precisely the kind of intrusion that setbacks and required buffers and yards are meant to prevent.

For those reasons, Ms. Taylor requests that you deny the Hands' Variance Application submitted by Howard McDill as the Hands' Application fails to meet the burden of proof on any of the four standard criteria that must be met. If the Board is inclined to grant the variance, Ms. Taylor would respectfully request that, as a special condition of the variance, the Hands' be required to restore the tree and vegetation barrier that existed between the property with the same or substantially equivalent vegetation that existed previously.

Sincerely,

**McGUIRE, WOOD & BISSETTE, P.A.**

  
Nishma Patel

Enclosures













