

To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners

From: Jonathan B. Kanipe, Town Manager

Date: July 6, 2023

Re: Board of Adjustment Meeting – July 17, 2023

Applicants:

You or a representative <u>MUST</u> 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 <u>MUST</u> be present for this site visit.

Neighbors:

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

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

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

Additional information regarding the meeting will be provided on the Town's website no later than July 13, 2023.

PROPOSED AGENDA

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, July 17, 2023 at 4:00 p.m at the Biltmore Forest Town Hall at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

Remote viewing via Zoom at the link provided below.

- 1. The meeting will be called to order and roll call taken.
- 2. The minutes of the June 19, 2023 regular meeting will be considered.
- 3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: 305 Vanderbilt Road – Special Use permit request for Accessory Structure Installation in Rear Yard Site Visit – 2:45 PM

Case 2: 1 Hilltop Road – Approval of Tree Replanting Plan Site Visit – 3:05 PM

Case 3: 31 Cedar Hill Drive – Special Use permit request for driveway column installation Site Visit – 3:20 PM

4. Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT MEETING HELD MONDAY, JUNE 19, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, June 19, 2023.

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

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

Mr. Goosmann swore in the following:

Mr. Tony Williams Mr. Jonathan Kanipe Mr. Jerry Douglas Mr. Michael O'Buckley Mr. James Mullins Mr. Evan Remmes Mrs. Alexandra Remmes

A motion was made by Mr. Lowell Pearlman to approve the minutes from May 15, 2023. Mr. Robert Chandler seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter discussed is for a Special Use Permit request at 24 White Oak for fence installation in the rear yard and Variance request for intrusion into the setback. Ms. Rhoda Groce shepherded the matter. Mr. Douglas said it is a small house with a small yard less than 4/10 of an acre. They want to have a fence installed because they have a dog. Mr. Douglas is requesting a Variance because of the size of the lot. It will be a powder coated black fence that will connect to a preexisting fence. It is four feet tall. The lot was surveyed, and they have clear lines of where the edges of the property are. There will be a double gate on one side and a single gate on the other side. The neighbors are supportive of the project. Mr. Douglas agreed to buffer additionally if requested by neighboring property owners.

DELIBERATION AND DETERMINATION:

Ms. Groce restated the facts and said Mr. Jerry Douglas at 24 White Oak Road is requesting a Special Use Permit for fence installation in the rear yard and Variance for intrusion into the setback. The fence is four feet tall and will connect to an existing fence. The Variance is for encroaching into the side and rear yard setback. Ms. Martha Barnes said she will make the motion on the condition that if the trees get cut down that it be replaced so the neighbors don't complain. Mr. Douglas agreed.

Ms. Barnes made a motion that a Special Use Permit and Variance be granted to Mr. Jerry Douglas of 24 White Oak Road for a backyard fence with necessary screening as required and the facts as recited by Ms. Rhoda Groce and her summation be supported as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report

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

Further, she moved by 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. He 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. Lynn Kieffer seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is a Special Use Permit request for 4 Fairway Place and a Variance is requested for location within the front yard setback. Mr. Lowell Pearlman shepherded the matter. Mr. Michael O'Buckley said they would like a stone wall or border at the bottom landscape on the front of the property next to the stream to have a buffer or something to hold the bank back. They would like to stay in line with what Duke Power has installed with the power box and their materials. Mr. Pearlman said the Town told Mr. O'Buckley to cease building until he got approval for the project from the Board. Mr. O'Buckley said this was a correct statement. Mr. Pearlman said, a Special Use Permit is required to construct the wall and a Variance is requested because it does not meet the code. Mr. Pearlman asked what the hardship is to grant the Variance. Mr. O'Buckley said he is requesting a Variance to maintain the bank to keep falling into the right-of-way. Ms. Kieffer said the project would not be constructed near the Town's right-of-way. Ms.

Barnes asked Mr. Kanipe if he has seen Duke Energy built a wall like what is at this project location. Mr. Kanipe said no he has not seen them do this before. He assumed they did this for the pads on the power box and to make it look more decorative. Duke Power did not ask Mr. Kanipe or Mr. Buckner about putting this wall up. Ms. Barnes also asked if he knows of any other front walls that have been installed due to sloping. Mr. Kanipe said there was one at 12 East Forest Road which the boulders were larger and more substantial. It was a boulder not stacked. It ran the length of East Forest for a little bit. The purpose of that particular project was they had trees that were on the bank and the stumps were disintegrating in the ground and eroding. Mr. Clarke read § 153.110 Section (D) which explains when Variances can be granted. Mr. Clarke said the Board needs to be comfortable they can find these things written in the Variance to grant this request. This is in the front yard setback and needs a Variance.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Mr. Michael O'Buckley at 4 Fairway Place is requesting a Special Use Permit and Variance to build a stone wall in the front yard which would be approximately two feet high. The request for a Variance is there will be mulch which would wash down from the bank into the abutting area to the street. He wants it to match the stone structure which was put up by Duke Energy to enhance the appearance of one of the transmission boxes.

Ms. Lynn Kieffer moved that a Special Use Permit and Variance be granted to Mr. Michael O'Buckley at 4 Fairway Place for a stone wall in the front yard and the facts as recited by Lowell Pearlman and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above

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

Further, she moved by 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. He 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.

The motion was seconded by Ms. Rhoda Groce. Each member was polled separately, and Ms. Kieffer said aye, Mr. Chandler said aye, Ms. Groce said aye, Mr. Pearlman said nay, and Ms. Barnes said nay. Four votes in favor of the project were needed for the Variance. The Variance did not pass.

Mr. Pearlman asked to change his vote to aye. Ms. Barnes voted no because the angle of the slope is not unique.

Chairman Goosmann repolled the Board. Ms. Kieffer voted aye, Mr. Chandler voted aye, Mr. Pearlman voted aye, Ms. Groce voted aye, and Ms. Barnes voted nay.

The project was approved.

HEARING (Evidentiary):

The third matter is a for a Special Use Request for fence installation and Variance request for intrusion into the rear yard setback at 13 Cedar Chine. Mr. Chandler shepherded the matter. This is for construction of a deer fence in the rear yard. The setback for the rear yard is 25 feet. The posts are 170 feet long and 8-10 feet tall depending on the ground topography.

Mr. James Mullins said he apologized to the Board and got distracted by the conversations of the electric fence on the site visit. The deer fence is an all-natural wood. It would come back under the canopy but not in the side setbacks so it would be supported. The fence is to keep the deer and help reduce the deer coming in and destroying the vegetation. It is also to discourage coyotes. It would make it a safer environment and would not cause any drainage issues for the neighbors but in fact would help the drainage issues. Mr. Chandler asked why the fence has to be so close to the property line. Mr. Mullins said because when they moved here for the forest environment and when the neighbor's rear setback is cleared, that only leaves their forest in the view. They will not get to see and enjoy the beautiful views. Ms. Kieffer said this fence we are looking at is not actually what the Board approved as a deer fence. Mr. Clarke read the fencing requirements and the deer fence Mr. Mullins is proposing is not an actual deer fence. The wooden fence material does not qualify as deer fencing material. Mr. Clarke also said with Mr. Mullins' application, there is a dangerous above ground electric fence next to their property line. The Board has investigated this and the fence that is there is not electric. Mr. Mitchell Watson who used to live there installed this but they were told it could not be electrified. The Board cannot base their Variance decision on this.

Mr. Kanipe said the current fencing ordinance does not refer to electrified fencing anymore and states the type of fencing is allowable. Mr. Kanipe read from the Wildlife Commission that wood paneling is an acceptable material for deer fencing. It could be an 8-10foot-high wooden fence. The Board said Mr. Mullins hasn't presented a hardship for the Variance request and an electric fence wouldn't be a hardship since it is not an electric fence. There doesn't seem to be a hardship 18 inches from the boundary line. Chairman Goosmann asked Mr. Mullins if he would be willing to put the fence outside the setback. Mr. Mullins said outside the setback removes all the wooded area in the yard and they would not enjoy the wooded area.

DELIBERATION AND DETERMINATION:

The matter was tabled until Mr. Mullins could get accurate measurements of the fence with the encroachment.

Ms. Groce said they cannot approve a fence that is 12-18 inches from the property line. Mr. Mullins is going to withdrawal the application for the deer fence.

DELIBERATION AND DETERMINATION:

The meeting was adjourned at 5:12pm. The next Board of Adjustment meeting is scheduled for Monday, July 17, 2023 at 4:30 pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk



BOARD OF ADJUSTMENT MEETING STAFF MEMORANDUM

July 17, 2023

CASE 1	
Property Address:	305 Vanderbilt Rd
Property Owner:	Brad Freeman
Request:	Special Use Permit request for Accessory Structure

Background

The property owners request permission to construct an outdoor fireplace on an open-air patio. The proposed fireplace would be in the rear yard of the home and complies with all setbacks.

Special Use Permit

Section 153.029 (attached) of the Town's Zoning Ordinance regulates accessory structures and requires a special use permit from the Board of Adjustment.

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 $\frac{153.008}{5}$;

(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 $\frac{153.043}{153.043}$ and $\frac{153.048}{153.048}$; and

(h) Solar collectors shall be regulated in accordance with G.S. § 160D-914.

Zoning Compliance Application

Town of Biltmore Forest

Name Brad Freeman

Property Address 305 Vanderbilt Road

Phone (828) 242-1230 Email BRAD@SULLIVANCHASE.COM

Parcel ID/PIN Number 964774266500000

ZONING INFORMATION

Current Zoning R-1

Maximum Roof Coverage 5,500 square feet (Up to 1.5 acres) Lot Size 1.42 ac

Proposed Roof Coverage Total 4,200 (includes wooded deck sf)

Maximum Impervious Surface Coverage 1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage 8,061 (12.69%)

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 approx 40ft

Description of the Proposed Project

Remove existing elevated wooden deck. Replace with new elevated wooden deck and landscaping. Addition of stone seating patio area and stone fireplace.

Estimated Start Date 4/1/2023

Estimated Completion Date 8/1/2023

Estimated Cost of Project \$175,000.00

Supporting Documentation (Site Plan, Drawings, Other Information) VDC-305 VANDERBILT - SITE PLAN.pdf VDC-305 VANDERBILT - GRADING PLAN.pdf VDC-305 VANDERBILT - EXISTING CONDITIONS.pdf Image10.png Image1.png Image9.png Image9.png Image7.png Image7.png Image5.png Image11.png Image3.png

Image6.png

Image14.png

Image13.png

Applicant Signature

Date 12/1/2022

Special Use Permit Application

Town of Biltmore Forest

Name Brad Freeman

Address 305 Vanderbilt Road

Phone (828) 242-1230 Email brad@sullivanchase.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:

Outdoor fireplace.

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

The project will be in keeping with the design and use standard of the neighborhood.

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

Signature

Date 7/8/2023



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	EXISTING STORAGE BUILDING
1 WOOD DECK - ENTRY STOOP	
 WOOD DECK - DINING AREA WITH GRILL RAISED PLANTER - HERBS AND VEGETABLES (ALLOWS ACESS TO ELEVATOR BELOW) 	
4 WOOD DECK - SEATING AREA	
5 COFFEE TABLE (PRODUCT) BUILT-IN SEATING	
6 (STORAGE IN SEATING) (7) EVERGREEN SCREENING	
 LOWER LEVEL WOOD DECK with AT-DECK LEVEL PLANTERS & POTTED PLANTS. 	
9 IN- DECK HOT TUB (PRODUCT) with AREA FOR CHAISE LOUNGE CHAIRS	
10 PAINTED BRICK WALL (TO MATCH HOUSE) WITH MASONRY CAP	
 (11) RANDOM FLAGSTONE PAVERS (sand set on compacted gravel) WOOD BURNING FIREPLACE WITH WOOD STORAGE (12) SIDE SEAT WALLS 	
 13 RECTANGULAR STONE PAVERS WITH GROUNDCOVER JOINTS 	



PROPERTY	
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	EXISTING STORAGE BUILDING
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 WOOD DECK - DINING AREA WITH GRILL RAISED PLANTER - HERBS AND VEGETABLES (ALLOWS ACESS TO ELEVATOR BELOW) 	
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visiondesign collaborative, P.A.

Phone 828.989.0618 Fax 206.424.0712 82 Patton Avenue, Suite 213 Asheville, NC 28801

landscape architecture

illustrations visioning

planning

FOR REVIEW ONLY

	OCTOBER 31, 2022
REVISIONS DATE	DESCRIPTION
DRAWN: SJW	REVIEWED: RTB

NOT FOR CONSTRUCTION

SHEET TITLE







Tisiondesign collaborative, P.A. landscape architecture illustrations visioning planning

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BOARD OF ADJUSTMENT MEETING STAFF MEMORANDUM

July 17, 2023

CASE 2	
Property Address:	1 Hilltop Road
Property Owner:	Kenneth King
Request:	Tree Removal Request (Removal of More than 10 Protected Trees) and Landscape Plan Review

Background

The property owners are submitting a landscaping plan for approval from the Board of Adjustment for the removed trees considered as protected trees under the Town's tree protection ordinance (Section 93). This ordinance is attached to the memorandum for the Board's review and requires the Board of Adjustment's approval before more than ten (10) protected trees may be removed.

The applicant began this project prior to applying for a permit from the Town, and the Town subsequently stopped work and required the applicant to file an application and submit a landscape plan for approval. A total of nineteen (19) trees were removed and Town staff has required replacement for all these based on approximate sizes measured when the stop work order was issued.

Supplemental Information

The applicant has included the proposed landscaping plan for the property to the Board of Adjustment for approval. Town Staff has reviewed this landscaping plan and deemed it acceptable per the Town's landscaping and tree replanting requirements.

TREE PROTECTION

§ 93.30 PURPOSE.

(A) In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the quality and flavor that form so much of the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to § <u>153.034</u> of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot.

(B) Preservation of trees is the intent of this subchapter. This subchapter shall apply to all properties within the Town of Biltmore Forest except properties owned, leased or controlled by the town. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the town. Trees provide buffer and a natural canopy, and are a hallmark of the town requiring protection. Damage to and removal of trees requires regulation and control.

(2013 Code, § 19-1) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.31 IDENTIFICATION.

(A) For the purpose of this subchapter, a protected tree ("protected tree") is any tree six inches or more in diameter at a height of four and a half feet from the ground (DBH-diameter at breast height), that is in sound, healthy condition. A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard, is an "unprotected tree." This subchapter does not apply to trees that are less than six inches in diameter, regardless of the height of the tree.

(2013 Code, § 19-2) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.32 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without first filing an application for removal, receiving approval from the Town Manager or Town Arborist for the removal, and paying any applicable fee. The Town Manager, in his or her discretion, may allow the removal of up to three protected trees on the perimeter of a property or lot within the front, side or rear yard setbacks, as such setbacks are defined in the town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the Town Manager, in his or her discretion, may allow up to ten protected trees to be removed. Any protected trees removed shall be replaced as outlined in $\S 93.38$ below.

(B) If the Town Manager concludes that the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this subchapter, he or she may refuse to approve such removal, or permit the removal of a lesser number of protected trees. Further, in his or her discretion, the Town Manager may require that the applicant provide a survey showing the location, size and type of protected trees on a property, including common scientific names. The survey shall clearly indicate which protected trees are indicated for removal and which will be left undisturbed. In the case of new construction, the site plan must show the location of building, driveways, terraces and other structures on the property. All protected trees must be clearly tagged as to retention or removal. The Town Manager may also require an applicant to provide documentary evidence, in the form of a survey or other documentation sufficient, in the opinion of the Town Manager, to confirm that the protected tree(s) are on the applicant's property. An applicant has the right to appeal a decision of the Town Manager to the Board of Adjustment within five days of the Town Manager's decision.

(2013 Code, § 19-3) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.33 APPLICATIONS FOR REMOVAL OF PROTECTED TREES IN EXCESS OF TEN.

(A) An application for a permit to remove more than ten protected trees on a property must be presented directly to the Board of Adjustment. A fee of \$50.00 shall accompany the application.

(B) An application for the removal of 30 or more protected trees on a property must be submitted to the Board of Commissioners for review and approval. A non-refundable fee of \$100.00 plus \$5.00 for each protected tree requested for removal shall accompany the application. Such applications will be considered on case-by-case basis. The cumulative removal of 30 or more protected tees from a single property in one year will result in a formal review and must be approved by the Board of Commissioners. As a part of its review, the Board of Commissioners shall have the authority to require replacement and replanting of trees as the Board determines is necessary, including the specific location of replacement trees. The decision of the Board of Commissioners shall be final.

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.34 REMOVAL OF UNPROTECTED TREES.

(A) An unprotected tree may be removed by the property owner after notifying the Town Manager of the plans to remove the tree(s) and receiving approval to do so from the Town Manager or Town Arborist.

(B) The Town Manager may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report the findings, in writing, to the town before final approval is given. The town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

(C) Any unprotected trees removed shall be replaced as defined in § 93.38 below.

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.35 PRE-CONSTRUCTION CONFERENCE AND SUPERVISION.

(A) Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between a responsible representative of the town and the applicant to review procedures for protection and management of all protected trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the Town Manager that such activity is taking place.

(B) The Town Manager shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter.

(C) Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer/contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this subchapter. At the option of the town, a compliance bond may be required.

(2013 Code, § 19-4) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.36 ENFORCEMENT.

If any unauthorized removal, cutting or damage to trees takes place, the Town Manager may issue a stop-work order which shall remain in effect until all corrections are made to bring the property in compliance with this chapter.

(2013 Code, § 19-5) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.37 DRIP LINE PROTECTION.

The health of protected trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Landscape plans, to the extent feasible, shall protect this area around the tree.

(2013 Code, § 19-6) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.38 REPLACEMENT OF TREES.

(A) Any protected or unprotected tree removed shall be replaced in that general area of the property within 50 feet of the trunk of the former tree as follows:

Minimum size of existing tree	Replacement of protected tree	Replacement of unprotected tree
6-12" DBH	2 trees	1 tree
13-18" DBH	3 trees	1 tree
19-30" DBH	4 trees	2 trees
30" DBH or greater	5 trees	3 trees

(B) Any replacement tree shall be in the ground within six months of removal of the original tree. The Town Manager or Board of Adjustment may, for good cause shown, and in their sole discretion, extend this period for up to six months.

(C) Subject to the approval of the Town Manager or the Board of Adjustment, replacement tree(s) may be planted in advance of any tree removal.

(D) The minimum size for replacement is two inches diameter (measured from one foot above ground level) for a large-maturing deciduous tree, and one and one-half inch diameter for a small- maturing deciduous tree, or eight feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance in § 153.070.

(E) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Manager or by the Board of Adjustment (in the case of an appeal from the town) or the Town Manager may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive.

(F) In the event any tree dies or falls due to any condition whatsoever, including acts of God, each such tree shall be replaced as provided in division (A) above. By way of illustration and not limitation, this replacement is required as to each dead or fallen tree caused by one or more of the following conditions: disease, fire, drought, water, ice, sleet, snow, flood, hurricane, tornado, wind, storm of any type, lightning, earthquake or other earth movement. This division (F) shall apply only to properties within the town in excess of five acres.

(2013 Code, § 19-7) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.39 INSPECTIONS.

All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the Town Manager or his or her designee six months following any construction and/or replacement trees, to ensure the trees are in a healthy condition. The Town Manager can require replacement or replanting of replacement trees.

(2013 Code, § 19-8) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.40 APPEALS.

Any person aggrieved by a decision made under this subchapter by the Town Manager or his or her designee may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be subject to review by the Board of Commissioners.

(2013 Code, § 19-9) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.41 BOND.

At the option of the town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the town.

(2013 Code, § 19-11) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of $\S 10.99$.

(B) (1) A violation of §§ <u>93.30</u> through <u>93.41</u> is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ <u>93.30</u> through <u>93.41</u> shall be \$250 per day. Each day of continued violation shall be a separate offense. The town shall also have the right to pursue civil remedies for a violation of §§ <u>93.30</u> through <u>93.41</u> including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. 160A-175.

(2) Upon determining that a violation of §§ <u>93.30</u> through <u>93.41</u> has occurred, the Town Manager shall record the nature of the violation and send a notice of violation to the responsible person or entity by regular and certified mail or by hand delivery. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Manager may proceed with criminal charges pursuant to G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purpose of §§ <u>93.30</u> through <u>93.41</u>.

(2013 Code, § 19-10) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)



Tree Replacement Plan

er @ 1 ft above ground level)	3
ter @ 1 ft above ground level)	4
r@1ft above ground level)	6
orm)	5
er @ 1 ft above ground level)	4
oud (1.5 in trunk diameter @ 1 ft above ground level)	8
k form)	3
gwood (1.5 in trunk diameter @ 1 ft above ground level)	6
er @ 1 ft above ground level)	4
lar evergreen (8 ft height)	4
lar evergreen (8 ft height, sheared to maintain size	
and driveway. These 2 trees can be placed in the driveway	
y from the road if the Town prefers.)	2
Total New Trees:	49

Plan boundaries lines represent the property lines.



BOARD OF ADJUSTMENT MEETING STAFF MEMORANDUM

July 17, 2023

CASE 3	
Property Address:	31 Cedar Hill Drive
Property Owner:	Larissa Pollack
Request:	Special Use Permit request for Stone Columns at Driveway
	within Front Yard Setback

Background

The applicant requests approval from the Board of Adjustment for the installation of two (2) driveway columns. The applicants proposed material will be stone to match the front of the house and topped with cap stones.

The Town's Zoning Ordinance governs new fences, gates, and walls in Chapter 153.049.

Special Use Permit Requirements

Section 153.007 (Footnote 4) allows the Board of Adjustment the ability to approve driveway entrance columns without regard to the setback. This footnote is specifically stated as follows:

Footnote 4. Accessory structures, including driveways, shall meet all setback requirements. Notwithstanding the foregoing, setback requirements for driveway entrance columns or driveway entrance walls may be waived or modified by the Board of Adjustment with the granting of a special use permit in accordance with § 153.110(C), without the need for a variance pursuant to § 153.110(D).

Special Use Request

The applicant has filed a special use request to allow this installation within the front yard setback. The proposed location of the columns are not within the Town's right of way and are located (21) and (22) feet from the edge of pavement. Specific information regarding the columns dimensions and location are noted on the following page.

Column Dimensions

Front Setback for R-1 District = 60 feet

Distance from Cedar Hill Dr. = 21' and 22' from edge of pavement (Town right of way is 10')

Column height = 5 feet

Column Length = 3 feet

Column Depth = 2 feet

Zoning Compliance Application

Town of Biltmore Forest

Name Larissa Pollack

Property Address

31 Cedar Hill Drive

Phone (480) 261-7603

Parcel ID/PIN Number 964643438900000

Email larissa.pollack@gmail.com

ZONING INFORMATION

Current Zoning R-1

Maximum Roof Coverage 5,500 square feet (Up to 1.5 acres) Lot Size 1.29

Proposed Roof Coverage Total Less than 5,500 square feet

Maximum Impervious Surface Coverage 1-3 acres (25 percent of lot area)

Proposed Impervious Surface Coverage 12 square feet

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 5 ft.

Description of the Proposed Project

A 5 foot column (2 ft. wide by 3 ft. long) on each side of driveway entry where plain concrete meets stamped concrete (21 ft. 3 in. from roadway.) Columns will be covered with stone to match house and topped with capstones. This project is in lieu of the masonry columns project proposed and approved last year. The earlier would have involved an excessive removal of existing desirable vegetation.

Estimated Start Date 7/20/2023

Estimated Completion Date 7/31/2023

Estimated Cost of Project \$1,500.00

Supporting Documentation (Site Plan, Drawings, Other Information) image.jpg **Applicant Signature**

Date 6/5/2023

Larissa Pollack

Special Use Permit Application

Town of Biltmore Forest

Name Larissa Pollack

Address 31 Cedar Hill Drive

Phone (480) 261-7603 Email larissa.pollack@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:

A 5 foot tall by 2 feet wide by 3 feet long column on each side of entry driveway at 21 ft. 3 in. from roadway, where plain concrete changes to stamped concrete.

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

No conceivable impact on those living in neighborhood. Totally consistent with columns as seen throughout the neighborhood.

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

Signature

Date 6/5/2023

Larissa Hollack



approximately 12-24 cu feet of soil, and this will be replaced by concrete footings for the columns and, of course, the columns themselves.







https://gis.buncombecounty.org/buncomap/#

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