



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: February 9, 2023
Re: **Board of Adjustment Meeting – February 20, 2023**

Applicants:

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

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

Neighbors:

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

You may review applications & plans for the projects on this agenda at <http://www.biltmoreforest.org/board-of-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 February 16, 2023.

*****PROPOSED AGENDA*****

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, February 20, 2023 at 4:00 p.m 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 January 23, 2023 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: 18 Busbee Road

Tree Removal Request (Removal of More than 10 Protected Trees) and Replacement Landscape Plan Review
Site Visit – 3:30 PM

Case 2: 4 Southwood Road

Special use permit request for temporary deer fence and netting installation and variance request for front yard placement.
Site Visit – 3:00 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, JANUARY 23, 2023

The Board of Adjustment met at 4:00 p.m. on Monday, January 23, 2023.

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

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

Chairman Goosmann swore in the following:

Mr. Jonathan Kanipe

Mr. Frank Krenek

Mr. Christopher Kragel

Ms. Julie Simes

Mr. Tal Frankfurt

Mr. Don Minton

Mr. Kevin Ring

Ms. Amanda Ring

Mr. Rick Manheim

A motion was made by Ms. Rhoda Groce to approve the minutes from December 19, 2022. Mr. Robert Chandler seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use Permit request for an accessory structure, roof-mounted solar panels at 57 Chauncey Circle. Ms. Martha Barnes shepherded the matter. Frank Krenk represented the homeowner. There will be 33 panels and they will be roof mounted. They panels will be tilted at a five-degree angle. They are 395-watt panels. The size of the panels are 74 inches x 42 inches.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated the facts. Mr. Krist Barlas at 57 Chauncey Circle is applying for roof mounted solar panels. There will be 33 panels in total. They will be at an angle of 5 degrees. The panels are on all sections of the house. The racking is underneath the panels.

Mr. Robert Chandler moved that a Special Use Permit be granted to Krist Barlas at 57 Chauncey Circle for installation of solar panels and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for accessory structures within the rear yard at 5 Eastwood Road. This matter was shepherded by Mr. Lowell Pearlman. Mr. Christopher Kragel spoke about the matter. There is a two-tiered deck in the back. The top deck is concrete and will be repaired. Part of the deck is also wood and will be replaced with composite wood decking material. The bottom part of the deck will be torn down and there will be a retaining wall and the concrete slab will be replaced with a stone patio. There will be a firepit off to the side. There is a great deal of buffering, but several rhododendrons will have to be removed. If additional buffering is needed, the homeowner would be willing to do so.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Mr. Christopher Kragel of 5 Eastwood Road is applying for a Special Use Permit for accessory structures for replacement of a wood deck, a new retaining wall, patio, and fire pit. It will be fifty inches in diameter in the rear yard. It is well screened with existing vegetation.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Christopher Kragel of 5 Eastwood Road 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. further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report

to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town. Ms. Lynn Kieffer seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for accessory structures within the rear yard at 44 Forest Road. The matter was shepherded by Rhoda Groce. Ms. Julie Simes discussed the plans. The existing concrete will be removed in the rear yard and the brick wall will be removed. They are wanting to create a much larger patio. They will be adding pavers down the stairs. This will lead to the fire pit. The rock wall is about three feet in height. Additional buffering will be added to create privacy between the two properties.

DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Ms. Simes at 44 Forest Road are applying for a Special Use Permit to replace an existing retaining wall, replace an existing concrete patio with pavers, and add a fire pit with stone slabs leading to it.

Ms. Martha Barnes made a motion that a Special Use Permit be granted to Julie and Erik Simes of 44 Forest Road and the facts as recited by Rhoda Groce and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Further, she moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially

injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town. Ms. Kieffer seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The next matter is a Variance request for an addition to a home with encroachment into the side yard setback and exceedance of maximum roof coverage for an existing accessory building at 30 Cedarcliff Road. Mr. Don Minton discussed the case. Ms. Kieffer shepherded the matter. An outdoor living and dining space are being proposed. They would like to add eleven feet to the existing garage which is in the same architectural style as the existing house. The breezeway that encroaches into the side yard is next to an entry way to the kitchen and will add 8.5'. The purpose of this is to correct some drainage issues. The garage will be coming out twenty feet. The square footage is 850 and would increase to 1,032. This is still under the allowable maximum roof coverage. The outdoor living area goes over the setback 8.5 feet. Mr. Clarke said this house was built in 1925, which was before the Town had a Zoning Ordinance (1982) which would qualify as an unnecessary hardship. In addition, there has been a water issue and by doing this, it will be able to move to higher ground.

DELIBERATION AND DETERMINATION:

Ms. Kieffer restated the facts. Mr. Tal and Paige Frankfurt of 30 Cedarcliff Road are applying for a Variance for addition to the home with encroachment into the side yard setback and exceedance of maximum roof coverage for an existing accessory building. The house will

not exceed the maximum roof coverage. Mr. Clarke said the homeowners did include written statements from adjoining property owners, and they approved the Frankfurt's plans.

Mr. Pearlman moved that a Special Use Permit and Variance be granted to Tal and Paige Frankfurt of 30 Cedarcliff Road and the facts as recited by Lynn Kieffer and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Further, he 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, he 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 and unanimously approved.

HEARING (Evidentiary):

The final matter is an appeal from a Notice of Violation regarding a fence re-installation within the side yard setback at 16 White Oak Road. The matter was shepherded by Mr. Robert Chandler.

A tree fell which damaged the existing fence at the residence. The fence that has been installed is seven feet tall. The fence is wooden and is replacing a lattice fence. The fence needs to be stained and will be stained once the weather improves. The fence also needs to be six feet tall and will be restored to six feet in height. The neighbor at 14 White Oak supported the project. Mr. Rick Manheim, another neighboring property owner, approved the project. Staining will take place when the weather gets warmer. The staining color will be dark brown.

DELIBERATION AND DETERMINATION:

Mr. Chandler restated the facts and said Kevin Ring and Amanda Diamond Ring of 16 White Oak Road received a notice of violation regarding fence reinstallation within the side yard setback. They had a tree fall which damaged the fence and they replaced it. They will now comply once the fence is lowered to six feet in height and stained. They would be willing to add buffering if needed.

Ms. Lynn Kieffer made a motion to grant a Special Use Permit to Kevin and Amanda Ring of 16 White Oak Road for a replacement fence. The fence has already been put up, and they have agreed to make the necessary changes in order to stay in compliance and the facts as recited by Robert Chandler and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Further, she 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 and unanimously approved.

The meeting was adjourned at 4:35 pm. The next Board of Adjustment meeting is scheduled for Monday, February 20, 2023 at 4:00pm.

ATTEST:

Greg Goosmann
Chairman

Laura Jacobs
Town Clerk



BOARD OF ADJUSTMENT MEETING
STAFF MEMORANDUM
FEBRUARY 20, 2023

CASE 1

Property Address: 18 Busbee Road

Property Owner: Bobby and Nikki Ingle

Request: Tree Removal Request (Removal of More than 10 Protected Trees) and Landscape Plan Review

Background

The property owners request permission from the Board of Adjustment to remove twelve (12) white pine trees that are considered as protected trees under the Town's tree protection ordinance. 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.

Supplemental Information

The applicants have provided the tree removal request stating the reason for the removal and a landscape plan showing the existing location of trees to be removed. The application also includes the proposed landscaping plan for the property.

Request for Tree Removal

Request for the Town Administrator to Inspect Trees to Authorize Removal

Name

Nicki and Bobby Ingle

Address

18 Busbee Road, Biltmore Forest, North Carolina 28803

Phone

(828) 242-2940

Alt Phone

(828) 242-2941

Email

nickiingle15@gmail.com

Alt Email

Description of Trees to be Inspected (please note type of tree(s), location of tree(s) and reason for removal)

White Pine trees bordering the above property at Forest and Busbee Road. The larger trees were planted a number of years ago as a privacy border on the property. They were topped when younger and many of them have split crotches which can pose a danger. They are also planted too close together (2'-4').

Are the trees to be inspected marked?

No

Please identify type of marker (tape, ribbon, etc)

Please let me know if you would like me to mark

Would you like to be present during the inspection?

No

Estimated date of Removal (If Approved)

February/March 2023

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 § 153.034 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 § 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 trees 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:

<i>Minimum size of existing tree</i>	<i>Replacement of protected tree</i>	<i>Replacement of unprotected tree</i>
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 § 10.99.

(B) (1) A violation of §§ 93.30 through 93.41 is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ 93.30 through 93.41 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 §§ 93.30 through 93.41 including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. 160A-175.

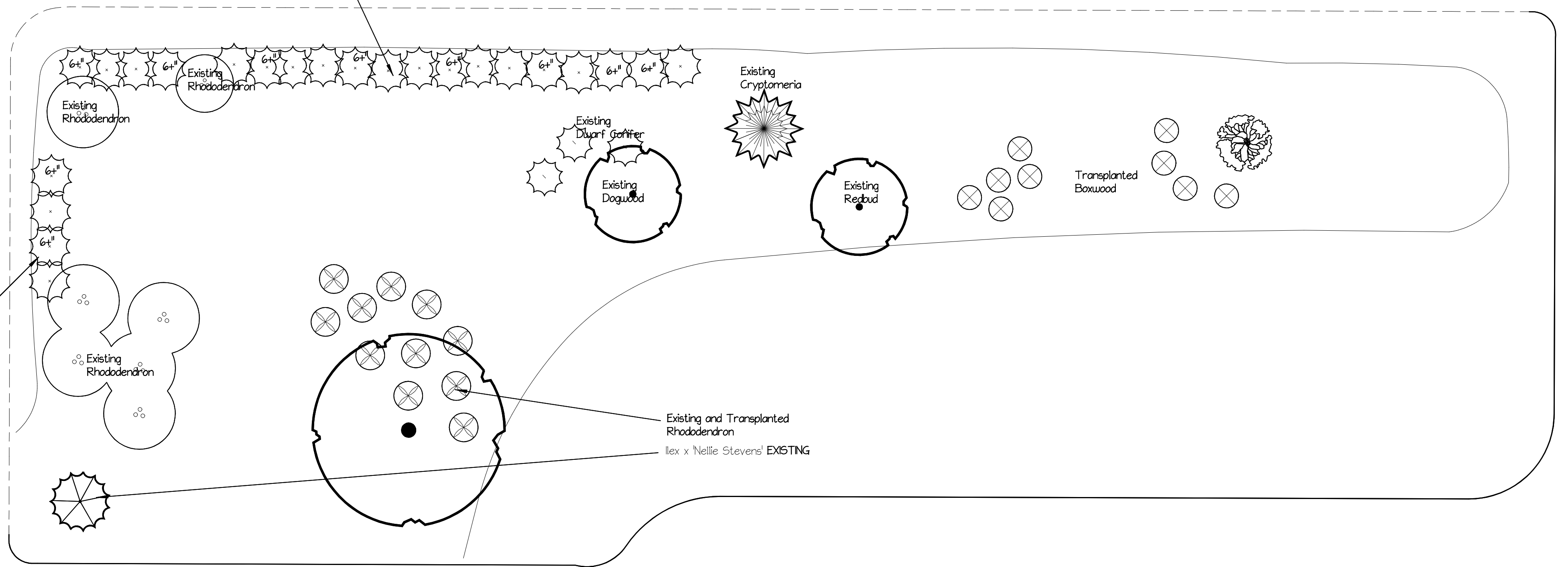
(2) Upon determining that a violation of §§ 93.30 through 93.41 has occurred, the Town Manager shall record the nature of the violation and send a notice of violation to the responsible person or entity by regular and certified mail or by hand delivery. The responsible person or entity shall have 30 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 §§ 93.30 through 93.41.

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

WHITE PINE TO BE REMOVED

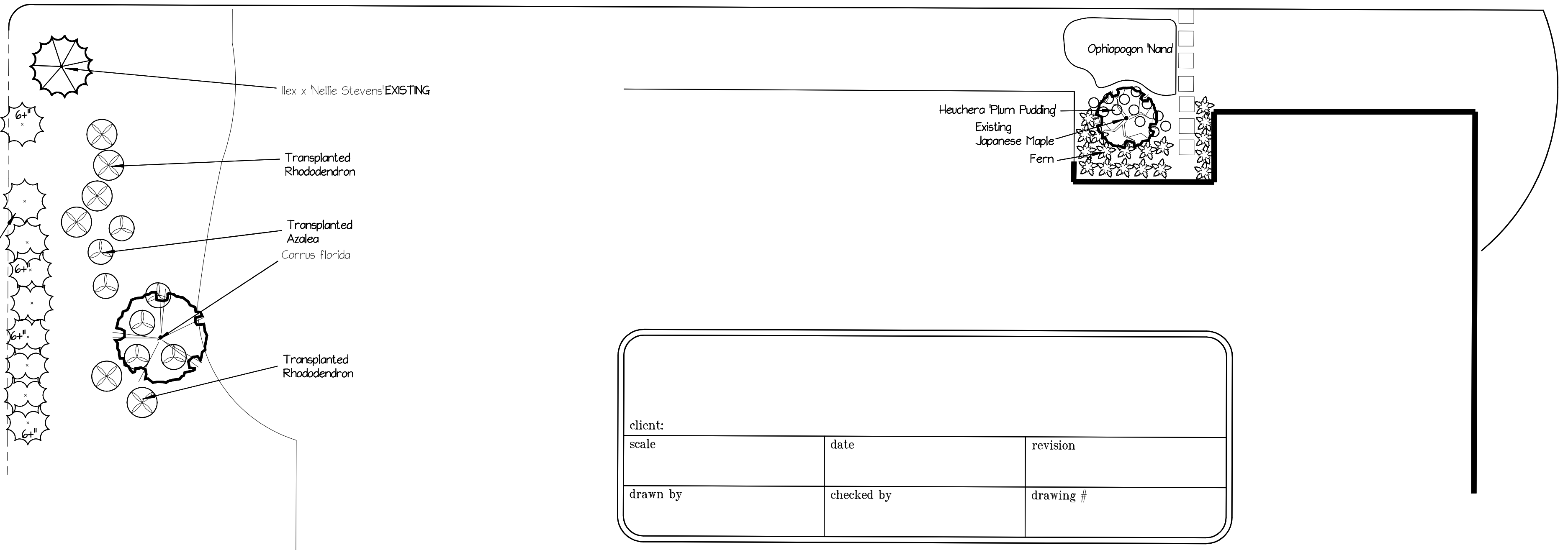
BUSBEE ROAD

WHITE PINE TO BE REMOVED

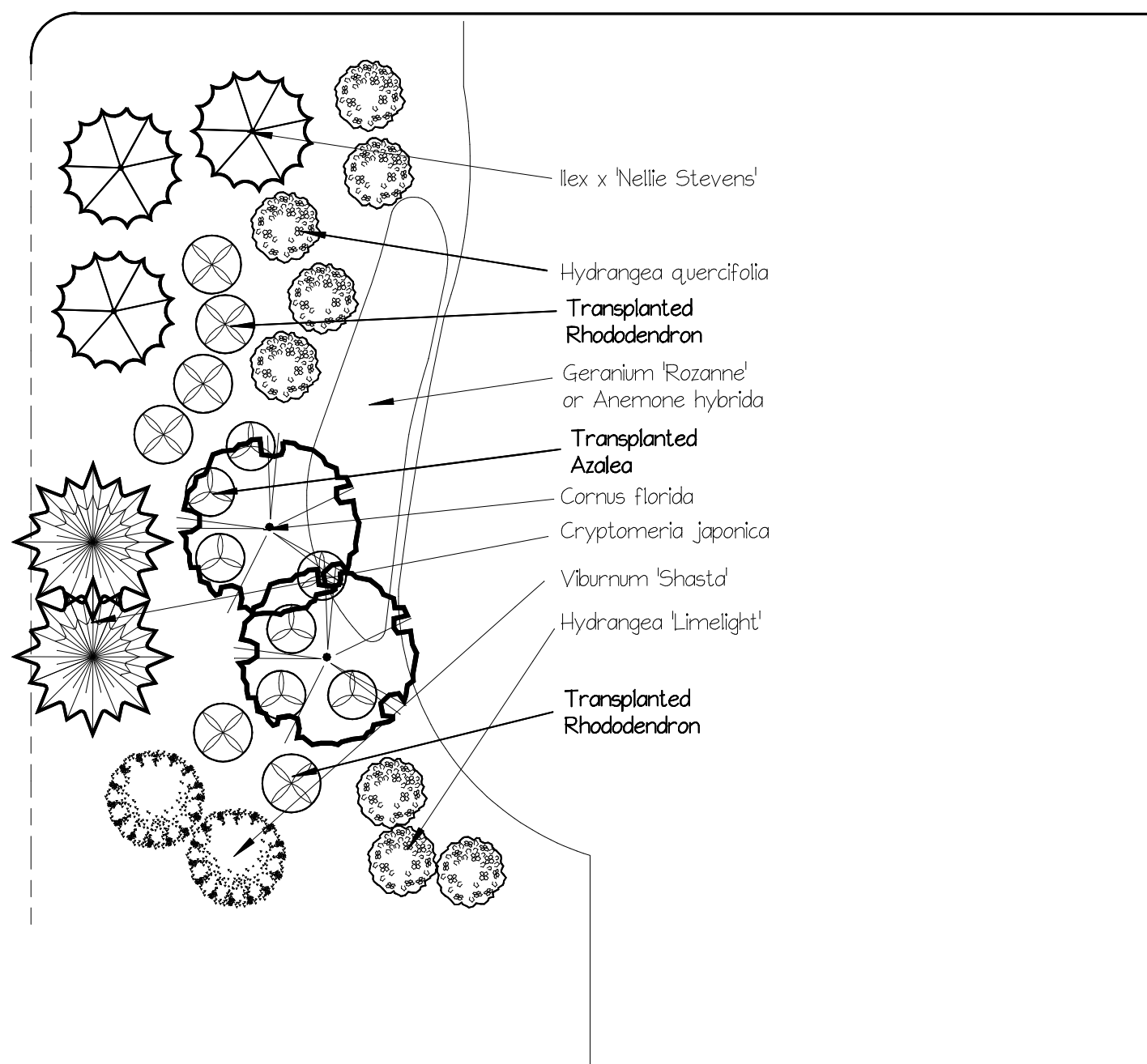
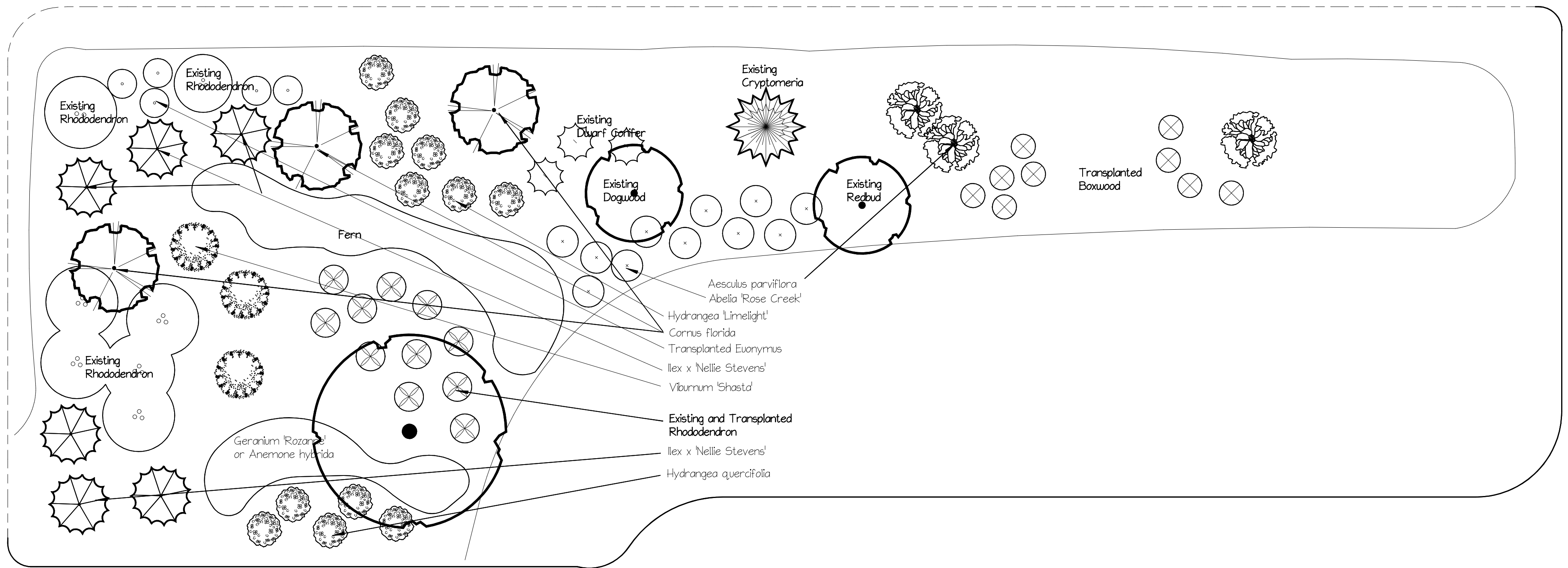


FOREST ROAD

WHITE PINE TO BE REMOVED



client:		
scale	date	revision
drawn by	checked by	drawing #



Ophiopogon Nand

Heuchera 'Plum Pudding'

Existing Japanese Maple

Fern

Nicki and Bobby Ingle

18 Busbee Road
Biltmore Forest

client:		
scale	date	revision
1" = 8'	January 2023	
drawn by	checked by	drawing #
Mary Hiers		



BOARD OF ADJUSTMENT MEETING
STAFF MEMORANDUM
FEBRUARY 20, 2023

CASE 2

Property Address: 4 Southwood Road
Property Owner: Melissa and Scot Hollman

Request: Variance Request to Allow Installation of Temporary Deer Fencing/Netting within Front Yard and Special Use Permit

Background

The property owners request permission to continue utilizing temporary deer fencing/netting within their front yard. The applicants installed the fencing in November 2022 and have worked with Town staff in terms of evaluating the potential options for establishing appropriate ground cover along this sloping front yard. The information provided within the application includes the rationale and hardship to request the variance from the Zoning Ordinance regulation on front yard fencing.

Special Use Permit

Section 153.049 (attached) of the Town's Zoning Ordinance regulates fences within the Town limits. These regulations require an special use permit for any fence, including temporary fencing.

Variance Request

This ordinance also regulates the placement of fences and states that fences may not be within the front yard. The applicants have provided their variance application with rationale for hardship and purpose for the temporary fence/netting installation.

Zoning Compliance Application

Town of Biltmore Forest

Name

Melissa and Scot Hollmann

Property Address

4 Southwood Rd, Biltmore Forest, NC

Phone

(828) 216-0702

Email

afahmy@siteworkstudios.com

Parcel ID/PIN Number

9646-75-8739

ZONING INFORMATION

Current Zoning

R-1

Lot Size

4.687 Acres

Maximum Roof Coverage

9,100 square feet (Up to 5 acres)

Proposed Roof Coverage Total

NA

Maximum Impervious Surface Coverage

3-6 acres (20 percent of lot area)

Proposed Impervious Surface Coverage

NA

Front Yard Setback

60 feet (R-1 District)

Side Yard Setback

20 feet (R-1 District)

Rear Yard Setback

25 feet (R-1 District)

Building Height

NA

Description of the Proposed Project

The proposed project is to maintain in place a temporary deer fence (black netting and green metal posts) to protect a new planting of English Ivy on an excessively steep front yard slope (2,552 square feet) facing Southwood from February 1st thru October 31st while the newly planted English Ivy roots are established. This protects an investment of +/- \$8,000 in soil amendments, plants, mulch and labor on a very difficult site.

Estimated Start Date

2/1/2023

Estimated Completion Date

10/31/2023

Estimated Cost of Project

\$500.00

Supporting Documentation (Site Plan, Drawings, Other Information)

4 Southwood Steep Slope 1.pdf

4 Southwood Steep Slope2.pdf

4 Southwood Steep Slope3.pdf

4 Southwood Steep Slope4.pdf

4 Southwood deer netting.pdf

Applicant Signature

Date

1/31/2023

Amy Fahmy

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Melissa Hollmann

Address

4 Southwood Road

Phone

(817) 991-4463

Email

hollmannfamily@sbcglobal.net

Current Zoning/Use

R

Requested Use

R

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

What would you like to do with your property?

Maintain an existing temporary deer fence (black netting and green metal posts from (February 1 thru October 31st on an excessively steep front yard slope (2,552 square feet) facing Southwood Rd. while the newly planted English Ivy roots are established.

What does the ordinance require?

Section 153.049 states that new fencing can only be 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.

Deer are eating the emerging, small fresh leaves of English Ivy on a newly planted slope. The hardship lies with the slope steepness. Spraying a deer repellent on this slope is absolutely dangerous to the applicator. Climbing across the slope on loose soil on a 2:1 slope above a hard surfaced driveway, with a sprayer is an unacceptable risk. Any attempt to do so would damage the mulch, the small plants, and contribute to slope failure. Temporary fencing is a safe way to protect the new plants until they are rooted and have large leaves. Adult Ivy is unappetizing to deer, but they are climbing up the slope to get to the small green shoots, cause erosion and ripping out plants.

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

This slope is peculiar in that it has extreme topography. The slope is very steep (2:1)above a wall, and a driveway. It requires a very tough, fast growing groundcover that can tolerate both sun and shade. It requires a low maintenance plant that can establish quickly, before erosion can take hold. It is extremely dangerous to walk on this slope and it cannot be managed with a string trimmer.

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

This slope existed prior to the Hollmann's purchasing the property. It was subject to erosion. landscapers applied mulch, herbicides, and hand weeding to maintain it at significant risk to safety.

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.

Landscape Architect, Amy Fahmy has advised the Hollmanns that English Ivy would be a responsible and ornamental choice of ground cover. Ivy is widespread throughout Biltmore Forest and survives deer browsing once established. Given the difficult steep slope environment (and with the significant deer pressure) this plant is one of few groundcover that can look neat (evergreen) year round, reduce erosion, and be deer proof with very minimal maintenance. It will add significantly to both the ecological and aesthetic appearance when viewed from Southwood Rd. A variance to allow temporary net fencing from February 1st thru October 31st would allow the plants time to get established without being eaten, thereby ensuring safety of landscape workers, reduced chemical runoff from spraying, and a long term beautiful planting for 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

1/31/2023

Amy Fahmy, PLA

Special Use Permit Application

Town of Biltmore Forest

Name

Melissa and Scot Hollmann

Address

4 Southwood Rd, Biltmore Forest, NC 28801

Phone

(828) 216-0702

Email

afahmy@siteworkstudios.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:

The proposed use is to maintain an existing temporary deer fence (black netting and green metal posts) from February 1 thru October 31st on an excessively steep front yard slope (2,552 square feet) facing Southwood, while the newly planted English Ivy roots are established. Deer are eating the young shoots and damaging the slope. Spraying deer repellent on this slope is absolutely dangerous to the applicator. Climbing across the slope on loose soil on a 2:1 slope above a hard surfaced driveway, with a sprayer, is an unacceptable risk. Further, any attempt to do so would damage the mulch, small plants, and contribute to slope failure. Temporary fence is a safe way to protect the new plants until they are rooted and have large leaves. Adult Ivy is unappetizing to deer.

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

The gain for the neighbors will be an attractive, stable evergreen slope. The condition of this slope in past years has been very weedy because it is so difficult to maintain. Roundup and brushkiller were used repeatedly in past years to keep weeds down on this slope, which is not ideal for walkers passing by or for the quality of stormwater runoff. Our goal is reduce the need to for chemicals, prevent erosion, and improve the appearance of the slope, as well as to avoid the safety risk to landscape workers.

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

Signature

Date
1/31/2023

Amy Fahmy, PLA









2,552 SQUARE FEET

STEEP
SLOPE



§ 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)