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. Site visit times listed are approximate.

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 January 17, 2024.

***PROPOSED AGENDA***

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, January 22, 2024 at 4:00 p.m. at the Biltmore Forest Town Hall at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

1. The meeting will be called to order and roll call taken.

2. The minutes of the December 18, 2023 regular meeting will be considered.

3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

   Case 1: 5 Brookside Road – Special Use permit request for driveway turnaround.
   Site Visit – 2:25 pm

   Case 2: 9 Brooklawn Chase – Tree Removal Request (Removal of More than 10 Protected Trees) and Landscape Plan Review
   Site Visit – 2:35 pm

   Case 3: 6 Fairway Place – Special Use Permit for swimming pool in rear yard.
   Site Visit – 3:15 pm

   Case 4: 7 Amherst Road – Variance request for encroachment into side yard setback.
   Site Visit – 3:30 pm

   Case 5: Cedar Hill Drive, Lot 1 - Parcel 9646-42-14-1900000
   Special Use permit request for retaining wall and fence in rear yard; variance request for fence location in front yard.
   Site Visit – 2:53 pm

   Case 6: 120 Stuyvesant Road – Special Use permit for Concrete Mounds in Front Yard and Sports Court in Side Yard; Variance Request for Concrete Mounds in Front Yard and Sports Court Intrusion into Rear and Side Yard Setbacks.
   Site Visit – 2:00 pm

5. Adjourn
The Board of Adjustment met at 4:00 p.m. on Monday, December 18, 2023.

Mr. Greg Goosmann, Ms. Martha Barnes, Ms. Lynn Kieffer, Ms. Rhoda Groce, and Mr. Robert Chandler were present. Mr. Jonathan Kanipe, Town Manager, and Mr. Tony Williams, Town Planner, and Town Attorney, Mr. Billy Clarke were also present.

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

Chairman Goosmann swore in the following:

Mr. Tony Williams
Mr. Jonathan Kanipe
Ms. Carol Jackson
Mr. George Renfro
Mr. Michael O’Buckley
Ms. Jessica Pishko
Mr. Phil Hardin
Mr. Jon Moore

A motion was made by Ms. Rhoda Groce moved to approve the minutes from November 20, 2023. Ms. Lynn Kieffer seconded and was unanimously approved.
HEARING (Evidentiary):

The first project is for a Special Use Permit at 100 Stuyvesant Road for a fence to screen utility structures. Mr. Robert Chandler shepherded the matter. Ms. Carol Jackson is the homeowner and said they want to have an area in the front to screen utility structures. Ms. Jackson said this is to enhance the house and the appearance from the street. Mr. Clarke said a Variance needs to be applied for this matter and in order to have fencing in the front yard, one would have to apply for a Variance and explain what the hardship is.

Mr. Clarke said this matter cannot be considered at this meeting since the fence request is in the front and she only applied for a Special Use Permit. She would need to withdraw her application and reapply for a Special Use and Variance. Ms. Kieffer said, if the fence were attached to the house, it wouldn’t need a Variance or a Special Use Permit.

DELIBERATION AND DETERMINATION

Ms. Jackson withdrew her application and the Board advised Ms. Jackson to speak to Mr. Williams about the fence connecting to the house which would not need a Special Use or Variance.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for a replacement fence at 15 Greenwood Road. The matter was shepherded by Ms. Rhoda Groce. Mr. George Renfro said he would like to have a deer fence installed. They have an existing fence that would go around the entire back part of their house. It was built in 1969 when the house was built. They would like to replace it with a ten-foot fence to prohibit deer from coming in. Mr. Renfro spoke with the neighbor behind his house and he was supportive of the project. Ms. Groce asked if any of the neighbors asked for additional buffering, would he be able to add this. Mr. Renfro said yes. The fence will be a metal wrought iron fence.
DELIBERATION AND DETERMINATION

Ms. Groce restated the facts and said Mr. George Renfro is applying for a Special Use Permit at 15 Greenwood Road. This would be for a replacement fence. It will be a deer fence up to ten feet and a metal PVC coated fence. He is willing to provide additional buffering if requested.

Mr. Chandler moved that a Special Use Permit be granted to Mr. George Renfro at 15 Greenwood 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. He 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 and unanimously approved.

HEARING (Evidentiary):

The third matter is for a Special Use Permit request for a swimming pool in the rear yard and open-air outdoor living space at 4 Fairway Place. The matter was shepherded by Ms. Martha Barnes. Mr. Michael O’Buckley said they would like to add to the back of the house which would be approximately 400 square feet. They would like to install a 10’x20’ pool. The impervious area is 10,988 square feet. The total roof coverage is 3,221. The fence will be 48 inches. It will be glass panels. The open-air living space is attached to the house. It has a fireplace. There will be can lights shooting down. There will be two small lights in the pool. They will be on opposite ends of the pool. There is currently buffering. Ms. Barnes asked Mr. O’Buckley if a neighboring property owner asked for additional screening, would he be compliant with this. Mr. O’Buckley said yes.
DELIBERATION AND DETERMINATION

Ms. Barnes restated the facts and said Mr. O’Buckley at 4 Fairway Place is requesting a Special Use Permit for a 10’x20’ pool and has some concrete surround and grass surround. It meets the impervious surface requirement. The open-air living space is about 17’x22’ which abuts the pool. The open-air living space will also include a fireplace. The pool is going to be surrounded by a four-foot glass panel fence. He is open to screening if additional screening is needed. The lighting is minimal and is faced down.

Ms. Kieffer made a motion to grant a Special Use Permit to Mr. Michael O’Buckley at 4 Fairway Place for a swimming pool and outdoor living space in the rear yard 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. 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. The motion was seconded by Ms. Rhoda Groce and unanimously approved.

HEARING (Evidentiary):

The next matter is for a Special Use Permit for a fence within the rear yard and Variance request to encroach upon the rear setback at 44 Forest Road. Ms. Kieffer shepherded the matter. Ms. Jessica Pishko said they would like to install a four-foot-high fence. It will be coated black iron that will extend out on one side to encompass part of the patio. It will be in the back to connect to an existing chain link fence. It is within the setback. A Variance is requested so it could meet with the existing fence in the back. The lot was surveyed to make sure they were in the setbacks.
They spoke with the Cantrell’s next door and will put in screening so it will not be a problem. The fence has three gates. The fence will not be visible from the road either as buffering will be placed so it is not visible from the road.

**DELIBERATION AND DETERMINATION**

Ms. Kieffer restated the facts and said Ms. Jessica Pishko is requesting a Special Use Permit for fence installation in the rear yard and a Variance for the fence to attach to the existing fence in the backyard. It will be 261 linear feet and four feet tall.

Ms. Rhoda Groce moved that a Special Use Permit as requested be granted to Ms. Jessica Pishko of 44 Forest Road for a fence within the rear yard 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. 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. The motion was seconded by Ms. Rhoda Groce and unanimously approved.

Further she moved that by granting this Variance Further satisfies the applicable Sections of 153.110(D) and paragraphs one through four and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured, and substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning
Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Barnes seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Variance request to encroach the front yard setback for an addition and a Special Use Permit request for construction of a new accessory building (detached garage) in the rear yard at 27 Park Road. Mr. Robert Chandler shepherded the matter. Mr. Jon Moore said the house is a bit over the setback line on the corner (about nine feet over). They would like to square off, which would result in an addition of approximately 14’x16’. It would project into the front yard another fourteen feet at its maximum. It would run at an angle diagonally to the line. The house is a corner lot and built in 1954. The front and side setbacks were discussed. Mr. Phil Hardin said the plans are well presented.

Mr. Chandler restated the facts and said Ellen Farmer and Thomas Jennings of 27 Park Road are applying for a Variance request for encroachment. The applicant would like to expand a bedroom on the eastern side of the house with encroachment into the setback line. The reason is because of when it was built and the lot itself, they will fill in the corner 14’x16’ but no further out of the existing home parameters already. The hardship is when the rules were created and where the house is now positioned in this complicated lot. It doesn’t violate the impervious surface or roof coverage.

Ms. Barnes moved that a Variance as requested be granted to Ellen Farmer and Thomas Jennings of 27 Park Road for encroachment into the front yard setback due to a house expansion 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 that by granting this Variance further satisfies the applicable Sections of 153.110(D) and paragraphs one through four and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured, and
substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Lynn Kieffer seconded the motion and was unanimously approved.

Mr. Kanipe recommended tabling the second matter (the garage) so they can look further into this setback issue in terms of front, rear, and sides. Mr. Kanipe said he would feel more comfortable for the Town making sure the proposed site plan is compliant with the Ordinance.

The matter was tabled until the Town could verify the setbacks appropriately.

The meeting was adjourned at 4:52 pm. The next Board of Adjustment meeting is scheduled for Monday, January 22, 2024, at 4:00 pm.

ATTEST:

_________________________________         _______________________________
Greg Goosmann                   Laura Jacobs
Chairman                     Town Clerk
Case 1

Property Owner: Claude Sheer
Property Address: 5 Brookside Rd
Request: Special Use request for Addition to Existing Driveway.

Project Description

The applicant requests a special use permit from the Board of Adjustment for an addition to the existing driveway. The Town’s Zoning Ordinance considers driveways an accessory structure and permitted as a special use.

Special Use Permit Requirements

153.008 SPECIAL USES.

(A) Purpose. The following special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as special uses if the provisions of this and all other sections of this chapter have been met.

(B) Development plan/site plan requirement.

(1) All applications for special use permits shall include a development plan or site plan.

(2) If the special use request is for a subdivision or planned unit development, the development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

(a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

(b) Boundary lines of the proposed development, proposed lot lines, and plot designs;

(c) Proposed location and use of all existing and proposed structures;

(d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;
(e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);

(f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;

(g) Location and/or notation of existing and proposed easements and rights-of-way;

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

(j) Where applicable, the following written documentation shall be submitted:
   1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;
   2. The zoning district or districts in which the project is located;
   3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;
   4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;
   5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and
   6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) Special use standards.

(l) Generally, the following standards are applied to specific special uses. Before issuing a special use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.

Special Use Request

The applicant has filed a special use request to allow this installation within the front yard and not within the required setbacks.
Zoning Compliance

Zoning Compliance Application
Town of Biltmore Forest

Name
Claude  Sheer

Property Address
5 Brookside Road

Phone
617 968 4411

Email
claude_sheer@gmail.com
Parcel ID/PIN Number

ZONING INFORMATION

Current Zoning *
- R-1
- R-2
- R-3
- R-4
- R-5
- P-S

Lot Size *
1.36

Proposed Roof Coverage Total *
N/A
*Must not exceed maximum coverage allowed*

Proposed Impervious Surface Coverage *
12,046 SF 20.3%
*Must not exceed maximum coverage allowed*

Front Yard Setback *

Side Yard Setback *

Rear Yard Setback *

Building Height *

Description of the Proposed Project *
Add a "jump handle" to the existing driveway

Estimated Start Date *
1/15/24

Estimated Completion Date *
2/11/24

Estimated Cost of Project *
$54,135
Supporting Documentation (Site Plan, Drawings, Other Information)

Upload or drag files here.

Applicant Signature *

Date *

12/8/24

Submit

Save

Town of Biltmore Forest,
NC

355 Vanderbilt Rd.
Biltmore Forest, NC 28803
(828) 274-0824
© 2023 Town of Biltmore Forest, NC
# Estimate Details

**Bill to:**
Claude P. Sheer  
5 Brookside Road  
Biltmore Forest, NC  

**Estimate no.:** 1164  
**Estimate date:** 12/07/2023  

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</tbody>
</table>

**Total** $54,100.00

**Note to customer**

Payment Methods: Check, Cash, and Credit card (3%)  
We look forward to working with you!
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:
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 a "jug handle" turn around to our existing driveway.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
We propose to add a loop to our existing driveway to simplify deliveries of every type. Currently, when making a delivery such as USPS the driver has to either back out of our driveway or execute a "K" turn in the driveway. The property be used for the turn around is directly in front of our in what is now a very small front lawn.

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

Signature

Date
12/8/2023

Claude Sheer
I completed the Special Use Permit form online. Below is the Boundary Survey with an indication of the location of the Holly we are planning to remove in conjunction with the project. Our plan is to replace the Holly with a Weeping Red Bud.

Let me know if you need anything else from us.
CASE 2  
Property Address:  9 Brooklawn Chase  
Property Owner:  John Semanik  
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) trees that are considered as protected trees under the Town’s 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. The Towns Tree Preservation Ordinance is attached.
Zoning Compliance Application
Town of Biltmore Forest

Name
John Semanik

Property Address
9 Brooklawn Chase

Phone
(904) 365-5553

Email
jmckinstry@sedaconstruction.com

Parcel ID/PIN Number
964671083100000

ZONING INFORMATION

Current Zoning
R-1

Lot Size
3.93 acres

Proposed Roof Coverage Total
No structure being built

Proposed Impervious Surface Coverage
No structure being built

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
No structure being built

Description of the Proposed Project
Removing trees that are close enough to fall on the house, terrace, or driveway and replacing with natural landscaping, as well as Biltmore Estate inspired gardens that are being designed by a landscape architect.

Estimated Start Date
1/29/2024

Estimated Completion Date
2/29/2024

Estimated Cost of Project
$150,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
Proposed Tree Removal.pdf
9 Brooklawn Chase w Trees.pdf
9 Brooklawn Chase w Gardens.pdf
Trees_at_9_Brooklawn_Chase.pdf
Applicant Signature

Date
12/18/2023
9 Brooklawn Chase Tree Removal Map

Norway Spruce
White Pine
White Oak
White Pine
White Oak
White Oak
Sourwood
Yellow Pine
White Pine

11/13/2023

1:776

NC CGIA, Maxar, Microsoft
<table>
<thead>
<tr>
<th>Tree #</th>
<th>Tree Name</th>
<th>Protection</th>
<th>Diameter (Inches)</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>14</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>2</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>12</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>3</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>14</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>4</td>
<td>Pinus echinata</td>
<td>Unprotected</td>
<td>11</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>5</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>16</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>6</td>
<td>Quercus cocinea</td>
<td>Unprotected</td>
<td>12</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>7</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>9</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>8</td>
<td>Picea abies</td>
<td>Unprotected</td>
<td>14</td>
<td>Uprooting - root sprung/too close to building</td>
</tr>
<tr>
<td>9</td>
<td>Ilex 'Nellie R Stevens'</td>
<td>Unprotected</td>
<td>7</td>
<td>Nellie Stevens holly too close to building</td>
</tr>
<tr>
<td>10</td>
<td>Ilex 'Nellie R Stevens'</td>
<td>Unprotected</td>
<td>8</td>
<td>Nellie Stevens holly too close to building foundation</td>
</tr>
<tr>
<td>11</td>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>10</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>12</td>
<td>Acer rubrum</td>
<td>Unprotected</td>
<td>14</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>13</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>10</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>14</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>19</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>15</td>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>22</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>16</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>11</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>17</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>13</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>18</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>8</td>
<td>Suppressed/too close to building</td>
</tr>
<tr>
<td>19</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>19</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>20</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>17</td>
<td>Sap ooze and trunk crack</td>
</tr>
<tr>
<td>21</td>
<td>Pinus echinata</td>
<td>Unprotected</td>
<td>20</td>
<td>Shortleaf pine - Lower trunk damage and fruiting body on trunk</td>
</tr>
<tr>
<td>22</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>9</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>23</td>
<td>Pinus echinata</td>
<td>Unprotected</td>
<td>17</td>
<td>Poor live crown ratio- shortleaf pine</td>
</tr>
<tr>
<td>24</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>14</td>
<td>Phototropic lean toward house, prune low branches</td>
</tr>
<tr>
<td>25</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>10</td>
<td>Mostly dead</td>
</tr>
<tr>
<td>26</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>8</td>
<td>Suppressed</td>
</tr>
<tr>
<td>27</td>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>7</td>
<td>Too close to building</td>
</tr>
<tr>
<td>28</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>12</td>
<td>Too close to building</td>
</tr>
<tr>
<td>29</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>13</td>
<td>Leaning toward and too close to building</td>
</tr>
<tr>
<td>30</td>
<td>Pinus strobus</td>
<td>Unprotected</td>
<td>18</td>
<td>Too close to building</td>
</tr>
<tr>
<td>31</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>9</td>
<td>Too close to building</td>
</tr>
<tr>
<td>32</td>
<td>Quercus cocinea</td>
<td>Unprotected</td>
<td>19</td>
<td>Base has internal decay</td>
</tr>
<tr>
<td>33</td>
<td>Ilex opaca</td>
<td>Unregulated</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>8</td>
<td>Too close to gate and driveway</td>
</tr>
</tbody>
</table>
35 Pinus strobus Unprotected 18 Too close to gate and driveway
36 Oxydendrum arboreum Unprotected 12.5 Too close to gate and driveway
37 Quercus alba Unprotected 7.5 Dead top
38 Pinus strobus Unprotected 9.5 Too close to gate and driveway
39 Quercus alba Unprotected 8 Too close to gate and driveway
40 Oxydendrum arboreum Unprotected 8
41 Oxydendrum arboreum Protected
42 Oxydendrum arboreum Unprotected 7.5 Sourwood mostly dead
43 Oxydendrum arboreum Unprotected 6 Too close to building
44 Pinus strobus Unprotected 11 Remove to give maple room
45 Pinus echinata Unprotected 14 Poor live crown ratio - shortleaf pine
46 Kalmia latifolia Unprotected 7 Too close to building
47 Acer rubrum Unprotected 7.5 Too close to building
48 Acer rubrum Unprotected 8 Red maple structure is poor
49 Quercus coccinea Unprotected 10 Scarlet Oak - Base is girdled with chain/Too close to building
50 Oxydendrum arboreum Unprotected 7 Sourwood dead top
51 Oxydendrum arboreum Unprotected 12 Too close to building
52 Acer rubrum Protected 10.5
53 Oxydendrum arboreum Protected 14
54 Oxydendrum arboreum Protected 16
55 Quercus coccinea Unprotected 15.5 May have internal decay
56 Acer rubrum Protected 9
57 Acer rubrum Protected 13
58 Quercus coccinea Unprotected 21 Old Stem crack may have internal decay
59 Quercus coccinea Unprotected 21 Decay at base- likely to damage other trees - tree has character
60 Quercus coccinea Unprotected 21 Base not solid
61 Pinus strobus Protected 26
62 Kalmia latifolia Protected 8
63 Pinus echinata Protected 17
64 Pinus enchinata Unprotected 22 Poor crown
65 Quercus alba Unprotected 9 Suppressed/too close to building
66 Oxydendrum arboreum Unprotected 12 Too close to building
67 Quercus alba Unprotected 19 Too close to building
68 Acer rubrum Protected 13 Red maple
69 Pinus strobus Unprotected 11 Poor crown ratio/Too close to driveway
<table>
<thead>
<tr>
<th>Tree Type</th>
<th>Status</th>
<th>Diameter</th>
<th>Reason for Concern</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>17</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>18.5</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>Quercus coccinea</td>
<td>Unprotected</td>
<td>16</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>17</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>13</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>15.5</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>17</td>
<td>Too close to building and driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>11</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>17</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Acer rubrum</td>
<td>Protected</td>
<td>7</td>
<td>Red Maple</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>17</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>19</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>22</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>18</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>23</td>
<td>Too close to driveway</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>19</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>13</td>
<td>Heavy lean toward house, lifting root plate</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>25</td>
<td>Very Hollow at base and fungus present</td>
</tr>
<tr>
<td>Quercus coccinea</td>
<td>Unprotected</td>
<td>17</td>
<td>Trunk hollow</td>
</tr>
<tr>
<td>Oxydendrum arboreum</td>
<td>Unprotected</td>
<td>14</td>
<td>Poor crown</td>
</tr>
<tr>
<td>Ilex opaca</td>
<td>Unregulated</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>21</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>21.5</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus coccinea</td>
<td>Protected</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>22</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>27</td>
<td>Too close to building</td>
</tr>
<tr>
<td>Quercus alba</td>
<td>Unprotected</td>
<td>20</td>
<td>Too close to building</td>
</tr>
</tbody>
</table>
ORDINANCE 2023-06

AN ORDINANCE TO AMEND THE
TOWN OF BILTMORE FOREST ZONING ORDINANCE BY ADDING CHAPTER
153.050 AND DELETING CHAPTERS 93.30 THROUGH 93.41 OF THE TOWN OF
BILTMORE FOREST TOWN CODE

WHEREAS, the Town of Biltmore Forest has adopted a Zoning Ordinance which regulates
the use of land within its corporate limits; and

WHEREAS, the Town of Biltmore Forest desires to revise a chapter of its existing zoning
ordinance;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF
COMMISSIONERS OF THE TOWN OF BILTMORE FOREST THAT:

Section 1. Chapter 153.050 shall be added to the Biltmore Forest Zoning Ordinance as
follows:

Chapter 153.050 Tree Preservation

TREE PRESERVATION
153.050 Purpose
153.051 Definitions
153.052 Removal of protected trees
153.053 Applications for removal of more than ten (10) protected trees
153.054 Removal of unprotected trees
153.055 Enforcement
153.056 Drip line protection
153.057 Replacement of trees
153.058 Inspections, Appeals, Bond, and Penalty
TREE PRESERVATION

§ 153.050 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 traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Trees provide buffer and a natural canopy, and are a hallmark of the Town requiring protection. The Town is focused on maintaining the current health of the forest and increasing species diversity, with a primary goal to replace hardwood trees, other native trees, and trees of preference more quickly. 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.

(B) Preservation and appropriate replacement of trees is the intent of this chapter. This chapter shall apply to all properties within the Town of Biltmore Forest except as noted in part C below.

(C) This chapter does not apply to properties owned, leased, or controlled by the Town of Biltmore Forest. This chapter does not apply to properties that perform forestry activity on forestland taxed on the basis of its present-use value as forestland under Article 12, Chapter 105, of the N.C. General Statutes. Once an active forestry management plan is no longer in place, the exception for the property will be removed. Property owners with an active forestry management plan shall provide a current copy of this plan to the Town each calendar year by January 31.

(D) This ordinance applies to residential and non-residential tree removal that does not involve construction activity. Refer to §153.034 for landscaping plan requirements and §153.061 for tree removal and replacement guidelines related to all construction activity.

§ 153.051 DEFINITIONS.

NON-RESIDENTIAL USES. For the purposes of this chapter, non-residential uses may include specific uses found throughout the Town that do not encompass single-family or multi-family residential dwellings. These uses may exist within a residential zoning district, but by actual use, are not residential in nature. Examples of these uses include, but are not limited to, public or private schools; country, athletic, and social clubs; medical or dental offices and campuses.

ORDINANCE ADMINISTRATOR. For the purposes of this chapter, the ordinance administrator charged with administration, inspection, review, and enforcement is the Town Manager or his/her designee.

OUTDOOR RECREATION ACTIVITIES. Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment, and taking place at prescribed non-residential places, sites, or fields. Active recreational uses and supporting services include swimming, tennis, golf, baseball and other field sports, track, and playground activities.

PROTECTED TREE. A 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.

RECOMMENDED PLANTING LIST (RPL). A list developed and updated by the Town Arborist that includes preferred species based on the tree being removed and acceptable replacement locations. For all replanting requirements, a minimum of fifty (50) percent of the total replacement
trees must come from the RPL with twenty-five (25) percent of the total replacement trees being those species identified as trees of preference, as defined below. A minimum of one (1) tree scheduled for replacement shall come from the Tree of Preference (TOP) list as defined below. The replanting list may be updated periodically and is available on the Town’s website.

**RESIDENTIAL USES.** For the purposes of this chapter, residential uses include single-family detached dwelling units found within the R-1, R-2, and R-3 zoning districts and includes attached multi-family residential units found within the R-1, R-2, and R-3 zoning districts.

**SETBACKS.** For the purposes of this chapter, setback refers to the minimum yard setback requirement found in § 153.007 “DIMENSIONAL REQUIREMENTS” of the Town Zoning Ordinance. “INSIDE SETBACK AREA” is the length found from the street or property line, and “OUTSIDE SETBACK AREA” is the remainder of the property area. An example of setback locations are shown below.

![Setback Determination (Example)](image)

**TREES OF PREFERENCE (TOP).** Trees that warrant additional attention and regulation due to being a preferred native species or having distinctive height and/or diameter. Trees of preference include any healthy, living tree with the following characteristics:

(A) Has a trunk diameter at breast height (DBH) of thirty-six (36) inches or more;

(B) Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of thirty (30) inches or more.

**UNREGULATED TREE.** A tree that is less than six (6) inches in diameter, regardless of height or species, is to be unregulated and not subject to the provisions of this chapter.

**UNPROTECTED TREE.** A tree that is six inches or more in diameter at a height of four and a half feet from the ground, and is dead, produces no foliage during normal growing seasons, or a tree that is diseased or damaged to the extent that it is structurally compromised and poses a safety hazard,
or a tree that, for any other reason, poses a safety hazard. Safety hazard concerns are evaluated by the Town Arborist in accordance with best management practices developed by the International Society of Arboriculture (ISA).

§ 153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without receiving approval from the appropriate regulatory review body for the removal and paying any applicable fee. Any protected trees removed shall be replaced as outlined in § 153.057 below.

(B) If the Ordinance Administrator concludes the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this chapter, 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 Ordinance Administrator may require that the applicant provide a tree survey showing the location, size, and type of protected trees on a property, including common scientific names. The tree 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 Ordinance Administrator may also require an applicant to provide documentary evidence, in the form of a survey or other documentation sufficient, in the opinion of the Ordinance Administrator, to confirm that the protected tree(s) are on the applicant's property. An applicant has the right to appeal a decision of the Ordinance Administrator to the Board of Adjustment within five (5) business days of the decision.

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN (10) PROTECTED TREES.

An application to remove more than ten (10) protected trees in twelve (12) successive months shall be made to the appropriate regulatory review authority as shown below. A fee for this application shall be paid along with the application.

<table>
<thead>
<tr>
<th>Protected Trees Requested for Removal</th>
<th>Regulatory Review Body</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-10 Trees</td>
<td>Ordinance Administrator</td>
</tr>
<tr>
<td>11-30 Trees</td>
<td>Board of Adjustment</td>
</tr>
<tr>
<td>31+ Trees</td>
<td>Board of Commissioners</td>
</tr>
</tbody>
</table>

§ 153.054 REMOVAL OF UNPROTECTED TREES.

(A) An unprotected tree may be removed by the property owner after notifying the Town of the plans to remove the tree(s) and receiving approval to do so from the Ordinance Administrator.
(B) The Ordinance Administrator 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 § 153.057 below.

§ 153.055 ENFORCEMENT.

Any unauthorized removal, cutting, or damage to protected or unprotected tree(s) may result in the Ordinance Administrator placing a stop-work order on any activity on the property. This order shall remain in effect until all corrections are made to bring the property into compliance with this chapter, up to and including a final landscaping plan showing the full tree replacement as required by 153.057 below.

§ 153.056 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. Final landscape plans shall protect this area around the tree and denote tree save areas on the plan.
§ 153.057 REPLACEMENT OF TREES.

(A) The replacement of protected and unprotected trees and trees of preference shall be established in accordance with the following requirements:

**Table 2 - Residential Tree Replacement Requirements**

<table>
<thead>
<tr>
<th>SIZE OF TREE REMOVED (DBH)</th>
<th>INSIDE SETBACK AREA</th>
<th>OUTSIDE SETBACK AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PROTECTED</td>
<td>UN-PROTECTED</td>
</tr>
<tr>
<td></td>
<td>Qty Size</td>
<td>Qty Size</td>
</tr>
<tr>
<td>6&quot;-12&quot;</td>
<td>1 2&quot; x x</td>
<td>x x</td>
</tr>
<tr>
<td>13&quot;-18&quot;</td>
<td>1 2&quot; 1 2&quot;</td>
<td>1 2&quot; x x</td>
</tr>
<tr>
<td>19&quot;-36&quot;</td>
<td>1* 3&quot; 1 2&quot;</td>
<td>1 2&quot; x x</td>
</tr>
<tr>
<td>36&quot;+ T</td>
<td>1** 3&quot; 1&quot; 3&quot; 2&quot; 2&quot; 1 2&quot;</td>
<td></td>
</tr>
</tbody>
</table>

* must include a minimum of 3 screening/buffering trees as defined in RPL

** must include a minimum of 5 screening/buffering trees as defined in RPL

T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

**Table 3 - Non-Residential Tree Replacement Requirements**

<table>
<thead>
<tr>
<th>SIZE OF TREE REMOVED (DBH)</th>
<th>INSIDE SETBACK AREA</th>
<th>OUTSIDE SETBACK AREA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PROTECTED</td>
<td>UN-PROTECTED</td>
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<tr>
<td></td>
<td>Qty Size</td>
<td>Qty Size</td>
</tr>
<tr>
<td>6&quot;-12&quot;</td>
<td>1 2&quot; x x</td>
<td>x x</td>
</tr>
<tr>
<td>13&quot;-18&quot;</td>
<td>2 2&quot; x x</td>
<td>1 2&quot; x x</td>
</tr>
<tr>
<td>19&quot;-36&quot;</td>
<td>2* 3&quot; 1 2&quot;</td>
<td>1 3&quot; x x</td>
</tr>
<tr>
<td>36&quot;+ T</td>
<td>2** 4&quot; 1* 3&quot; 1 4&quot; 1 3&quot;</td>
<td></td>
</tr>
</tbody>
</table>

* must include a minimum of 3 screening/buffering trees as defined in RPL

** must include a minimum of 5 screening/buffering trees as defined in RPL

T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements
(B) A replacement tree may be planted up to one (1) year prior to the removal of any tree in order to count toward replacement. Replacement trees planted after existing tree removal shall be in the ground within six months of removal of the original tree. The Ordinance Administrator may, for good cause shown, and in his or her sole discretion, extend this period for an additional six months.

(C) The Town’s Recommended Planting List (RPL) shall be utilized by applicants when determining what species of trees are to be replanted. A minimum of fifty (50) percent of the total replacement trees shall come from the RPL with a minimum of twenty-five (25) percent of total replacement trees coming from the Trees of Preference (TOP) list. A minimum of one (1) tree scheduled for replacement shall come from the Tree of Preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

(D) See the above charts for the minimum replacement size for all deciduous trees. Evergreen trees that are planted as replacement trees shall be a minimum of six (6) feet in height at the time of planting.

(E) (1) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Ordinance Administrator or by the Board of Adjustment (in the case of an appeal to the Town) or the Ordinance Administrator may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive. For existing residential lots where mature canopies remain after tree removal, replacement requirements may be amended regarding location and species to provide the best opportunity for healthy growth. This replacement requirement discretion is meant solely to allow for maintenance of existing residential lots where the canopy is thick and growing new trees would be impractical and/or difficult. This allowance is not intended for new residential construction.

(2) For non-residential lots, if replanting inside the setback results in an adverse condition to Town roads, other public property, other private property, or results in an undue hardship for an outdoor recreation activity, a variance application may be filed with the Board of Adjustment to replant the appropriate number of trees in a different location.

(3) Non-residential properties that include an outdoor recreation activity as a primary purpose, as defined above, are provided a tree removal allowance not to exceed net fifty (50) trees outside the setback of the property in a calendar year. Net removal is defined as the number of protected trees removed minus the number of trees re-planted on the property where the outdoor recreation activity occurs. Prior to removal of trees pursuant to this section, the property owner should submit to the Ordinance Administrator notice of the tree(s) to be removed. For purposes of this net removal allowance, a property owner needs only to submit to the Ordinance Administrator documentation of any protected trees removed and any trees replanted as a record of same for each calendar year. Unprotected trees outside the setback of a non-residential property with an outdoor recreation activity as a primary purpose may be removed without replacement, provided that notice is given to the Ordinance Administrator regarding the necessity for removal.

(F) The Town encourages a diversity of species during replanting, with a focus on replenishing hardwood trees within the forest. However, to provide appropriate screening and buffering, particularly among non-residential uses, trees that have a lower canopy (height) at maturity are also encouraged for inclusion in a replanting plan. This combination will ensure the canopy is varied in both height and species.
(G) Replacement trees shall not be planted within the Town’s right-of-way or in an area to obstruct the view of traffic.

§ 153.058 INSPECTIONS, APPEALS, BOND, AND PENALTY.

(A) All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the Ordinance Administrator six months following any construction to ensure the trees are in a healthy condition. The Ordinance Administrator may require replacement or replanting of replacement trees if the appropriate replacement trees are not in place during this review.

(B) Any person aggrieved by a decision made under this subchapter by the Ordinance Administrator may file, within five (5) 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.

(C) At the option of the Town, a bond or other type of guarantee can be required of the property owner and/or applicant when submitting a tree removal application to ensure all replanting requirements are met to the satisfaction of the Town.

(D) Any violation of this chapter shall be subject to the penalty provisions found in §153.999 of the Town of Biltmore Forest Zoning Ordinance.

Section 2. Chapter 93, Sections 93.30 through 93.41, shall be deleted from the Biltmore Forest Town Code due to the removal of this ordinance to the Town of Biltmore Forest Zoning Ordinance.

Section 3. Effective Date.

This ordinance amendment shall take effect upon adoption.

10-9-2023

George F. Goosmann, III
Mayor

Laura Jacobs
Town Clerk
Case 3

Property Owner: Kenneth Ellington
Property Address: 6 Fairway Place

Project Description

The applicant requests a special use permit for the installation of a pool/spa in the rear yard. The application includes a description of the project proposed and is not within the setbacks. This was tabled from the October 2023 meeting.

Special Use Request

The Town considers a pool as an accessory structure, pursuant to Chapter 153.029 of the Zoning Ordinance. This is attached for the Board’s review. The specific language of the Zoning Ordinance states that the Town regulates these only as the North Carolina General Statutes allows. This statute is also included for the Board’s review. Updated plans and pictures have been provided.

Special Use Requirements

153.008 SPECIAL USES.

(A) Purpose. The following special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as special uses if the provisions of this and all other sections of this chapter have been met.

(B) Development plan/site plan requirement.

(1) All applications for special use permits shall include a development plan or site plan.

(2) If the special use request is for a subdivision or planned unit development, the development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

(a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

(b) Boundary lines of the proposed development, proposed lot lines, and plot designs;
(c) Proposed location and use of all existing and proposed structures;

(d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;

(e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);

(f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;

(g) Location and/or notation of existing and proposed easements and rights-of-way;

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

(j) Where applicable, the following written documentation shall be submitted:

1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;

2. The zoning district or districts in which the project is located;

3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;

4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;

5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and

6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) Special use standards.

(1) Generally, the following standards are applied to specific special uses. Before issuing a special use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.
Zoning Compliance Application
Town of Biltmore Forest

**Name**
Susan Turner

**Property Address**
6 Fairway Place

**Phone**
(828) 989-4387

**Email**
susan@signature-llc.com

** Parcel ID/PIN Number**
964688801200000

### ZONING INFORMATION

<table>
<thead>
<tr>
<th><strong>Current Zoning</strong></th>
<th><strong>Lot Size</strong></th>
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<td>R-1</td>
<td>1.1499998</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Maximum Roof Coverage</strong></th>
<th><strong>Proposed Roof Coverage Total</strong></th>
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</thead>
<tbody>
<tr>
<td>4,682 square feet (Up to 1 acres)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Maximum Impervious Surface Coverage</strong></th>
<th><strong>Proposed Impervious Surface Coverage</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1 acre (27.5 percent of lot area)</td>
<td>~1500 sqft</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Front Yard Setback</strong></th>
<th><strong>Side Yard Setback</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>60 feet (R-1 District)</td>
<td>20 feet (R-1 District)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Rear Yard Setback</strong></th>
<th><strong>Building Height</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>25 feet (R-1 District)</td>
<td>0'</td>
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</tbody>
</table>

**Description of the Proposed Project**
custom pool/ spa- start date & total cost is unknown currently. We are trying to get the preliminary plan approved so we can move forward with contract

**Estimated Start Date**
1/5/2024

**Estimated Completion Date**
5/31/2024

**Estimated Cost of Project**
$250,000.00

**Supporting Documentation (Site Plan, Drawings, Other Information)**
SK1-Site Plan.pdf
Applicant Signature

Susan Turner

Date
10/2/2023
Special Use Permit Application
Town of Biltmore Forest

Name
Susan Turner

Address
6 Fairway Place

Phone
(828) 989-4387

Email
imsturner@yahoo.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:
custom pool/ spa with patio and retaining wall

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
this is a residential custom swimming pool and spa. It will enhance the beauty of the property and will not negatively affect the community

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

Signature

Date

Susan Turner
Hi Again,
I would like to modify the variance request to include the retaining wall that will be needed to hold back the existing landscape in the backyard and keep the pool deck at the same elevation as the existing back patio area. The wall varies in heights, which is listed below and on the plans. It will have a concrete footer under the wall and be constructed with CMU block, rebar and concrete poured in the block after they are installed. The face of the wall and the cap will match the veneer and caps on the house columns in the backyard.
Wall heights and length of each height:
1'-6" tall @ 20'-6" long
2'-6" tall @ 20'-6" long
3' tall @ 20'-6" long
3'-6" tall @ 39' long
3' tall @ 18'-6" long

Thank you very much for your help with this change. Look forward to meeting you all onsite.

Susan Turner
Asheville, NC
828.989.4387 (mobile)
www.thesignatureexperience.com

On Thu, Jan 4, 2024 at 2:58 PM Tony Williams <twilliams@biltmoreforest.org> wrote:

Hi Susan,

We can take care of it over the phone or if you want to type up an email with the changes and I can take care of that for you. If you prefer the phone, I will be available on and off until around 12 tomorrow.
Site Permeability Plan

Existing Lot Coverage Chart

<table>
<thead>
<tr>
<th>Feature</th>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing House</td>
<td></td>
<td>4376 SF</td>
</tr>
<tr>
<td>Pool &amp; Pool Deck</td>
<td></td>
<td>1933 SF</td>
</tr>
<tr>
<td>Ducks</td>
<td></td>
<td>365 SF</td>
</tr>
<tr>
<td>Limestone Patio/Deck</td>
<td></td>
<td>819 SF</td>
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<tr>
<td>Bridge</td>
<td></td>
<td>100 SF</td>
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<tr>
<td>Mountain</td>
<td></td>
<td>87 SF</td>
</tr>
<tr>
<td>Driveway</td>
<td></td>
<td>6481 SF</td>
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<tr>
<td>Retaining Wall</td>
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<td>1700 SF</td>
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<td>Equipment Pad</td>
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<td>32 SF</td>
</tr>
<tr>
<td>Total, Impermeable Areas</td>
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<td>14624 SF</td>
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<tr>
<td>Permeable Areas</td>
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<td>35684 SF</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>50308 SF</td>
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<td>Pervious Percentage</td>
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</tr>
<tr>
<td>Impervious Percentage</td>
<td></td>
<td>29.07%</td>
</tr>
</tbody>
</table>

Site Permeability Plan

Elegant Backyard Retreat with Pool and Spa

PREPARED FOR
The Ellington Family

PROJECT LOCATION
6 Fairway Place
Biltmore Forest, NC 28803

Signature, LLC
781 Congaree Rd.
Greenville, SC 29607
office@Signature-LLC.com
1 (864) 991.8020 Office
1 (864) 551.2421 Fax
www.Signature-LLC.com

1 (864) 991.8020 Office
1 (864) 551.2421 Fax

Call 811 at least 72 hours prior to breaking ground, excluding weekends and legal holidays to connect you to the correct local "Call Before You Dig" Center.

Site Permeability Plan

Page 1 of 1
CASE 4
Property Address: 7 Amherst Rd
Property Owner: Meherwan Irani
Request: Variance for structure within side setback

Background

The property owners request permission to construct a 28x24 carport addition to the home in an existing driveway area. The proposed carport would be in the side yard of the home and would encroach into the side yard setbacks. No new impervious surface will be installed due to the carport going on an existing driveway area.

Variance

The Variance requested would be for the proposed structure to be constructed within the side setback and would be located 10 feet from the side property line. The property is in the R-1 District and has a front setback of 60’, sides 20’, and rear 25’.

Variance Requirements

(D) Variances. Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the public may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
Zoning Compliance Application
Town of Biltmore Forest

Name
Jeremy McCowan

Property Address
7 Amherst Road

Phone
(828) 545-6633
Email
jeremy@jandnhomes.com

Parcel ID/PIN Number
964698761600000

ZONING INFORMATION

Current Zoning
R-1

Lot Size
.64

Proposed Roof Coverage Total
3,687 existing - adding 886 of coverage for the carport- new total 4,573

Proposed Impervious Surface Coverage
7,265 sq/ft existing - carport is to be added over the existing gravel driveway so impervious surface would not increase

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
13’ 8”

Description of the Proposed Project
Add a carport and convert existing garage into a den. Variance application will be submitted for encroachment on side set back. Existing 7’ tall shrub spans entire length of new proposed carport.

Estimated Start Date
2/12/2024

Estimated Completion Date
4/22/2024

Estimated Cost of Project
$75,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
12.27.23_7 Amherst Rd_Carport.pdf
7 Amherst Existing Hedge Screening.jpg
VARIANCE APPLICATION
Town of Biltmore Forest

Name
Jeremy McCowan

Address
7 Amherst Road

Phone
(828) 545-6633

Email
jeremy@jandnhomes.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?
Add a carport over existing gravel driveway. Carport would encroach into side setback 10'.

What does the ordinance require?
20' to side 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.
There is not enough room on the side setback to allow the size of carport that is needed for parking of a modern day family.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
The existing home and garage are already located 42' from the side setback.

The hardship did not result from actions taken by the applicant or the property owner.
Correct. The current owner is working with conditions that existed when they purchased the home.

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 new carport location would not affect public safety. There is an existing 7' tall privacy hedge that already blocks the view of the driveway and location where the owners currently park their cars. The existing hedge would provide screening for the neighbors in the new location of the carport.
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature

Date
12/28/2023
(4) 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.
West Elevation

Scale: 1/4" = 1'-0"
CASE  5
Property Address:  Vacant lot (Lot 1) next to 23 Cedar Hill Drive
Property Owner:  Konstandin Barlas
Request: Special Use Permit request for a Privacy Wall/Retaining Wall for a
new residence

Variance Request for fence in front yard.

Background

The property owners submitted plans for a new home construction in November of 2023. As part of this construction, they request a special use permit from the Board of Adjustment for a Privacy/Retaining Wall. The wall is considered an accessory structure per the Town’s Zoning Ordinance and requires approval by the Board of Adjustment as a special use.

The owners also request a variance for a fence in the front yard, which would require proof of hardship from the applicant and approval from the Board of Adjustment.

Special Use Permit Requirements

153.008 SPECIAL USES.

(A)  Purpose. The following special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as special uses if the provisions of this and all other sections of this chapter have been met.

(B) Development plan/site plan requirement.

(1) All applications for special use permits shall include a development plan or site plan.

(2) If the special use request is for a subdivision or planned unit development, the development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:
(a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

(b) Boundary lines of the proposed development, proposed lot lines, and plot designs;

(c) Proposed location and use of all existing and proposed structures;

(d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;

(e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);

(f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;

(g) Location and/or notation of existing and proposed easements and rights-of-way;

(h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

(i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

(j) Where applicable, the following written documentation shall be submitted:
   1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;
   2. The zoning district or districts in which the project is located;
   3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;
   4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;
   5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and
   6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) Special use standards.

(1) Generally, the following standards are applied to specific special uses. Before issuing a special use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.
Special Use Request

The property owners are presenting plans for a special use permit from the Board of Adjustment for a Privacy/Retaining Wall. The wall is considered an accessory structure per the Town’s Zoning Ordinance and requires approval by the Board of Adjustment as a special use. All items shown on the plan with generated pictures for reference.

Variance Information

The property owners request a variance for a fence in the front yard.

Variance Request

The owners are requesting a variance for a fence in the front yard. The Town’s Ordinance does not allow a fence in the front yard without a variance granted from the Board of Adjustment. The variance request must show a hardship for approval from the board. The home plans were heard at the November 2023 meeting for this property. Updated photos have been included with plans.
Special Use Permit Application
Town of Biltmore Forest

Name
Konstandin Barlas

Address
23 Cedar Hill Drive

Phone
(828) 777-5550

Email
barlasdino752@aol.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:
We would like to add a wall surrounding our back yard, retaining wall for our driveway to allow for proper pullout, and a wrought iron fence above a retaining wall over lower courtyard.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
These items would not adversely affect anyone living in the neighborhood. In fact it would provide safety to anyone who steps on our property, as well as provide some privacy for ourselves and our neighbors. We are using all approved materials as well as trying to maintain a heavily landscaped buffer for our neighbors. Virtually the entire wall will be hidden by trees from the neighborhoods perspective.

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

Signature

Date
12/21/2023
VARIANCE APPLICATION

Town of Biltmore Forest

Name
Konstandin Barlas

Address
23 Cedar Hill Drive

Phone
(828) 777-5550

Email
BARLASDINO752@AOL.COM

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?
Add a retaining wall for driveway, wall around back yard for pool and tennis court, wrought iron fencing in front of home.

What does the ordinance require?
No fences in front 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.
NC building code requires fencing for safety above the courtyard. We need a retaining wall for our driveway turnaround because of the lay of the land.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
In order to have an egress from our basement and maintain as much as the natural lay of land as possible to keep within the spirit, purpose and intent of the Biltmore Forest ordinances, we will need the fence for fall protection above the lower courtyard and a retaining wall for our driveway turnaround.

The hardship did not result from actions taken by the applicant or the property owner.
The NC building codes for safety and the natural lay of the land.

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 variance is consistent with the spirit, purpose, and intent of the ordinance because we are doing everything possible to abide by all Biltmore Forest guidlines, NC building codes, and fall within the
parameters of ordinance. Also the extensive new landscaping parameters that we met, will help achieve justice by helping maintain Biltmore Forests integrity.

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

[Signature]

Date
12/22/2023
Site Wall Details

Barlas Residence

7' Max Column Height
Brick To Match House
Stucco Finish
Metal Fence
Brick Fence

Driveway Gate Detail

Left Side Fence Detail

Preliminary NOT FOR CONSTRUCTION
CASE 6
Property Address: 120 Stuyvesant Road
Property Owner: TJ & Kirby Finger
Request: Special Use Permit request for Accessory Structures
Variance for encroachment into the rear and front setbacks

Background

The property owners request permission to construct a sports court as well as a gravel patio with stone walkways. They are also requesting approval for the concrete round balls along the driveway. The proposed 30’x65’ sport court and 250sf patio would be located on the Stuyvesant Crescent side and rear of the home. The proposed sport court is in compliance with the side and rear setbacks. The patio and part of the stone paths are within the rear setback and less than 10’ from the property line. Six of the eight 20” concrete balls are within the front setback along the driveway but out of the right of way.

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. The ordinance notes that all accessory structures must be located within the rear or side yard and comply with setbacks.

Variance Request

The applicant’s request for approval for round balls along the driveway that are within the front setback. The front setback for the R-1 District is 60’, six of the eight balls would fall within the setback but out of the right of way. The first balls would fall approximately 20’ from the edge of the property line per the submitted plan.

The applicants are also requesting a variance for the 250-sf gravel patio and stone walkways that are within the rear setback. The rear setback for the R-1 District is 25’, the patio is closest to the rear property line at approximately 5’ per the plans submitted. A copy of the variance and special use requirements are attached.
Zoning Compliance Application
Town of Biltmore Forest

Name
TJ & Kirby Finger

Property Address
120 Stuyvesant Rd  Asheville, NC 28803

Phone                      Email
(828) 318-4550             kirbyfinger@gmail.com

Parcel ID/PIN Number
964683765100000

ZONING INFORMATION

Current Zoning                Lot Size
R-1                          1.68

Proposed Roof Coverage Total
0

Proposed Impervious Surface Coverage
30' x 65'

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
0

Description of the Proposed Project
1.) Seeking approval for the concrete mounds along the driveway in the front yard.
2.) Seeking approval for sports court & landscape plan for side yard.

Estimated Start Date          Estimated Completion Date
3/1/2024                      5/1/2024

Estimated Cost of Project
$150,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
LA-Finger-Site Plan-005-Court.pdf
Thomas Finger Jr.
VARIANCE APPLICATION
Town of Biltmore Forest

Name
TJ & Kirby Finger

Address
120 Stuyvesant Rd. Asheville, NC 28803

Phone
(828) 318-4550

Email
kirbyfinger@gmail.com

Current Zoning/Use
Requested Use

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

What would you like to do with your property?
1.) Seeking approval for the 8 concrete mounds along the driveway in the front yard.
2.) Seeking approval for sports court & landscape plan for side yard.

What does the ordinance require?
25ft set back off the rear and 20ft setback off side

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.
In examining the further development of amenities on our property, the most cost-effective, flat, and logical place for this court is on the edge of our front setback. This would put the court in prominent view along Stuyvesant Road, a key corridor in and out of Biltmore Forest. We seek this variance to place the court in a more conspicuous spot on our property. This site is more challenging and expensive to develop, but we think it is a much better solution and more in keeping with the community's character.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
In examining the further development of amenities on our property, the most cost-effective, flat, and logical place for this court is on the edge of our front setback. This would put the court in prominent view along Stuyvesant Road, a key corridor in and out of Biltmore Forest. We seek this variance to place the court in a more conspicuous spot on our property. This site is more challenging and expensive to develop, but we think it is a much better solution and more in keeping with the community's character.

The hardship did not result from actions taken by the applicant or the property owner.
The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
This site is more challenging and expensive to develop, but we think it is a much better solution and more in keeping with the community’s character.

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

Signature                                      Date

11/24/2023

Thomas Finger Jr.
Special Use Permit Application
Town of Biltmore Forest

Name
TJ & Kirby Finger

Address
120 Stuyvesant Rd.  Asheville, NC 28803

Phone
(828) 318-4550

Email
kirbyfinger@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:
1.) Seeking approval for the concrete mounds along the driveway in the front yard.
2.) Seeking approval for sports court & landscape plan for side yard.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
1.) Why have had multiple compliments about the balls from multiple friends and neighbors.
2.) It brings community together, used to love to play basketball at the Simpkins house as a child.

In examining the further development of amenities on our property, the most cost-effective, flat, and logical place for this court is on the edge of our front setback. This would put the court in prominent view along Stuyvesant Road, a key corridor in and out of Biltmore Forest. We seek this variance to place the court in a more conspicuous spot on our property. This site is more challenging and expensive to develop, but we think it is a much better solution and more in keeping with the community’s character.

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

Date
11/24/2023

Thomas Finger Jr.
153.008 SPECIAL USES.

(A) Purpose. The following special uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as special uses if the provisions of this and all other sections of this chapter have been met.

(B) Development plan/site plan requirement.

(1) All applications for special use permits shall include a development plan or site plan.

(2) If the special use request is for a subdivision or planned unit development, the development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

   (a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;

   (b) Boundary lines of the proposed development, proposed lot lines, and plot designs;

   (c) Proposed location and use of all existing and proposed structures;

   (d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;

   (e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);

   (f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;

   (g) Location and/or notation of existing and proposed easements and rights-of-way;

   (h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;

   (i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;

   (j) Where applicable, the following written documentation shall be submitted:

       1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;
2. The zoning district or districts in which the project is located;

3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;

4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;

5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and

6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.

(k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) Special use standards.

(1) Generally, the following standards are applied to specific special uses. Before issuing a special use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in division (B) above and § 153.110(C)(1) have been met.

§ 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

(D) Variances. Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the public may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

(4) 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.

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

Editor's note:
This amendatory language was passed during a Board meeting, May 14, 2014
1. Plant List

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2. Grading and Drainage

- Grading designed to minimize walls and steps.
- Screened slope using native flowering shrubs and perennials.
- Trees will far exceed planting targets.
- Cottonwood trees with professional top coat.
- Court sits at the edge of side and rear setbacks.
- Spectacular views looking south.
- Outdoor seating for four.
- Natural stone steps to match existing native stone.
- Fenced dog run.

3. Site Notes

- Existing trees will be assessed by an arborist and preserved when possible.
- Nolichuckey gravel patio (250 SF) for seating with lower landscaped boulder slope.
- Existing trees to be assessed by arborist and preserved when possible.
- New paths.
- Patios.
- Home Project Total Disturbed Area

4. LANDSCAPE DEMOLITION

- Remove all existing site elements.
- Remove all existing patios.
- Remove all existing driveways.
- Remove all existing landscaping.

5. Layout Notes

- All site dimensions are referenced to the lot centerline.
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Dear Jonathan - I am reaching out today regarding the proposed sport court at 120 Stuyvesant Road. My concerns are as follows:

1. This is a beautifully laid out, historic neighborhood with a specific set of rules designed to preserve the integrity of and property values in the area. The addition of a highly visible sport court on the corner of two busy roads will stick out like a sore thumb and drastically change the value of the surrounding properties. Furthermore, the court would be in a side yard, not a backyard, which then raises the question of what everyone else in the neighborhood should be allowed to do in their sideyards, which is a dangerous precedent to set.

2. While the Fingers may be using it as a basketball sport court, they may not live there forever and who knows what the next owners may use it as once it's existing. This is very concerning to us as it is just the right size to become a pickleball court in the future, which creates a ton of noise. Residents in The Ramble who live near the pickleball courts have experience decreased property values as a result of the noise pollution and I don't want that to be the case in Biltmore Forest, specifically for my property.

3. In the proposed plan, there is no fencing around the court, meaning balls will be littering the surrounding area - that is a major eyesore for everyone who passes. If a child playing on the court chases a ball down the hill and a car is coming around the corner, it creates a dangerous environment where it is very easy for someone to get hurt. The plan also lacks lighting, which once installed will pollute the surrounding area in the evenings.

4. I have concerns that children from the park will not know that the court is on private property and wander over to play on the unfenced sport court creating a liability for everyone involved.

5. I assume dirt and fill will need to be brought onto the property to create this sport court, which raises the question of water runoff and drainage issues for the neighboring properties. What will be done to mitigate that?

Everyone who lives in this neighborhood agreed to follow the rules and restrictions laid out by the town to maintain our property values and quality of life. This seems like a gross encroachment on that concept. I respectfully request that the Board of Adjustments deny this proposed request.

Thank you,
Rebecca Lester
3 Stuyvesant Crescent