To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: March 7, 2024
Re: Board of Adjustment Meeting – March 18, 2024

***PROPOSED AGENDA***

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, March 18, 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 February 19, 2023 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).
   - Case 1: **RE-HEARING**
     120 Stuyvesant Road – Special Use Permit request for Accessory Structure (Basketball Court) and Variance Request for Accessory Structure (Concrete Mounds) in Front Yard
   - Case 2: 11 Forest Road – Special Use Permit request for Accessory Structures within Rear Yard
   - Case 3: 11 Hilltop Road – Special Use Permit request for Replacement of Existing Fence
   - Case 4: 15 Eastwood Road – Special Use Permit request for Driveway Columns and Entrance Walls
   - Case 5: 19 East Forest Road – Special Use Permit request for Accessory Structure (Fire Pit) Installation within Rear Yard and Replacement of Portions of Existing Fence
   - Case 6: 44 Forest Road – Special Use Permit request for Accessory Building within the Rear Yard
   - Case 7: 332 Vanderbilt Road – Approval for New Construction of Single-Family Home and Associated Tree Removal and Landscaping Plans
   - Case 8: 430 Vanderbilt Road – Special Use Permit request for Retaining Wall along Existing Drive and Boulder Installation; Variance Request for Construction within Front Yard
   - Case 9: 1345 Hendersonville Road – Special Use Permit request as Planned Unit Development for New Parking Lot and New Plaza and Amphitheatre

5. Adjourn

https://us02web.zoom.us/j/82405586759?pwd=VlFaQ0JMIUXFCaGRRYUNoTHVHU2tmZz09
Meeting ID: 824 0558 6759
Passcode: 804985
The Board of Adjustment met at 4:00 p.m. on Monday, February 19, 2024.

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

Chairman Greg Goosmann called the meeting to order at 4:07 p.m.

Chairman Goosmann swore in the following:

- Mr. Tony Williams
- Mr. Jonathan Kanipe
- Mr. John Semanik
- Ms. Susan Turner
- Mr. Jeremy McCowan
- Mr. Orlando Hernandez Jr.
- Mr. Jason Gilliland
- Mr. Konstandin Barlas
- Ms. Toni Barlas
A motion was made by Ms. Martha Barnes to approve the minutes from December 18, 2023. Ms. Kieffer seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The first matter is for a tree removal request and landscaping plan review at 9 Brooklawn Chase. The matter is being shepherded by Ms. Martha Barnes. There will be a total of ninety-seven trees being removed and twelve trees are protected. Mr. John Semanik said there is a lot of mold and leaf accumulation on the roof due to all the trees surrounding his home. Leaves are also continuing to clog the gutters and drains. It causes damage to the roof. Mr. Bill Hascher from the Biltmore Estate, who is an arborist, looked at the trees and said many of the trees are damaged or
dead and need to come down. They are also trying to protect the house. There is currently a lack of sunlight which prevents them from having proper gardening. Significant mold has accumulated on the roof, on the ground, and on the pavers. The lot is four acres and is a heavily wooded lot. They will be replacing with fourteen trees, which is double the requirement. Ms. Barnes said the Board asked that he include 25% of trees of preference. Mr. Semanik agreed to plant the trees of preference.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated the facts and said Mr. John Semanik is asking for a tree removal request. It is for a total of 97 trees that will be removed. 85 trees are unprotected, and they are small enough to where the ordinance doesn’t require them to be replaced. The requirement replacement is seven trees, and they are replacing with fourteen trees.

Ms. Lynn Kieffer moved that the tree replacement plan be granted to John Semanik of 9 Brooklawn Chase and described by Martha Barnes. The Board has inspected the site and no neighboring owner has objected. Ms. Rhoda Groce seconded the motion. The motion passed unanimously.

HEARING (Evidentiary):

The second matter is for a Special Use Permit for a swimming pool in the rear yard at 6 Fairway Place. The matter is being shepherded by Ms. Lynn Kieffer. Ms. Susan Turner represents the Ellington’s who live at this address. There will be a terraced retaining wall that will vary in height and length. It is compliant with the setback. On the back left side, it is well buffered and on the right side isn’t as well buffered. Mr. and Mrs. Ellington will buffer additionally, if necessary, but Ms. Turner would prefer to move the fence along the setback line on the setback line. The fence will be less obvious than originally proposed. The Country Club and neighboring property owner, Mr. Michael O’Buckley approved of the project.
DELIBERATION AND DETERMINATION:

Ms. Martha Barnes moved that a Special Use Permit be granted to Ken Ellington of 6 Fairway Place for a pool/spa in 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 Mr. Robert Chandler. The motion was unanimously approved.

HEARING (Evidentiary):

The third matter is for a Variance request for encroachment into the side yard setback at 7 Amherst Road. Mr. Jeremy McCowan represented the property owner. The matter is being shepherded by Robert Chandler. It would be located ten feet from the side property line, and they want to have a 7,265 square foot car port to be added over the existing driveway so the impervious surface would not increase. Mr. McCown said the hardship is the current parking situation is not enough for a modern-day family. They have multiple cars and would like to expand their covered space. There is an existing retaining wall and an existing hedge. There would be some screening for the car port. Mr. McCowan explained the proposed plans. The carport would be a little bit less than 50% above the hedge. Mr. Chandler asked if they would be interested in having additional landscaping installed that is taller. Mr. McCowan said the space between the existing property line and existing hedge is very limited. Ms. Barnes asked if they looked into using the land on the other side of the house to build this. Mr. McCown said this proposal is much more practical for the homeowners. The lot size is .64 acres and the existing
house is already 42 feet from the side setback. Mr. Hernandez who is a neighboring property owner asked questions about the lot size and the location. Mr. Hernandez asked what is encroaching into the 10-foot line. The 10-foot encroachment is part of their driveway. The existing garage is being used as a den. Ms. Barnes said she has concerns because it is at the property line, and it is tall and looming. Mr. Hernandez said he also has concerns because it is creating a narrow space in between and there is also a bedroom window near that area.

Ms. Kieffer asked if they considered having a two-car garage instead of a three-car garage. Ms. Whitworth said a two-car garage would be more appropriate and solve the problems of encroaching into this area.

**DELIBERATION AND DETERMINATION:**

Mr. McCowan withdrew the application, and the matter will be tabled until next month.

**HEARING (Evidentiary):**

The fourth matter is for a Special Use Permit request for a retaining wall and fence in the rear yard; a Variance request for fence location in the front yard on Cedar Hill Drive, Lot 1-Parcel number 9646-42-14-1900000. The matter is being shepherded by Rhoda Groce. Mr. Jason Gilliland from Site Works Studio represented Mr. and Mrs. Barlas. The gate and columns were previously approved in December 2023. They are seeking approval of retaining walls, free standing estate walls, and fencing components. The locations were shown, and each proposal is within the setbacks. The retaining wall starts at zero and retains up to five feet. As it returns south of the first seventy or seventy-two feet essentially to the rear of the garage, it is retaining five feet of Earth. At that location, it starts to go down, the wall is being terraced along the side yard setback. The columns climb to eight feet and the wall ranges from five to seven feet. The rear of the house has a wall that is six feet in height with seven-foot columns which terraces in a few locations. The hardship in this location is they must meet building safety requirements. Ms. Barnes asked how tall the barrier must be. Mr. Gilliland said forty-eight inches. The Town was provided with three-dimensional sketches. It accurately shows the wall heights with respect to
grade. Ms. Barnes asked about the exterior of the wall on the West side. Mr. Gilliland said it goes from six in height to one foot. There will be plenty of landscaping to buffer these areas.

On the opposite side of the house, they are proposing a more transparent fence to tie the corner of the house to the column which has been previously approved.

Mr. Barlas said they are trying to avoid front yard fencing and Mr. Barlas said he is ok with it but he just thought they are having to put a retaining wall there and there is a twelve foot section there and the whole thing gated instead of adding another twenty foot section for the back and the pool safety. Mr. Barlas said if the Board believes they need to tie it to the back is a better option, he would be ok with this plan. Ms. Groce added that the Board didn’t want the neighborhood to look unfriendly and they felt like putting fencing in the front yard would do this and makes homes look unapproachable.

They would like to seek approval of the wall and fencing as presented with the exception of eliminating the twelve-foot section between the previously approved gate and the house. This would also reduce the height of the retaining wall in the front from the gate to the eastern property line and the retaining wall would follow the proposed grade where you would not be able to see that section of fence and wall from the front of the property.

**DELIBERATION AND DETERMINATION:**

Ms. Groce restated the facts and said Konstandin Barlas is seeking a Special Use Permit for a privacy wall/retaining wall for his new residence. The fence will be required in the area for safety per building code from the northeast corner. Ms. Martha Barnes moved that a Special Use Permit and Variance as requested be granted to the applicants at the vacant lot of Cedar Hill Drive, Lot 1 for a fence 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. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with
the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Further, she moved 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.

The motion was seconded by Ms. Lynn Kieffer and unanimously approved.

HEARING (Evidentiary):

The fifth matter is for a Special Use Permit for concrete mounds in the front yard and a sports court in the side yard; a Variance request for concrete mounds in the front yard at 120 Stuyvesant Road. The matter is being shepherded by Ms. Martha Barnes. They are proposing a 30’x 65’ foot basketball court. Mr. Finger said he doesn’t want to interfere with his neighbors who are objecting to this. They would have a concrete pad with one big goal and two small goals. They are going to buffer this area and add additional buffering if needed. A neighboring property owner objects to this proposal. Mr. Finger said he would add additional buffering to offset the light, but the lighting isn’t being considered as part of this proposal.

Mr. Clarke said the Fingers can also state as part of the Special Use Permit that the proposed basketball court would not be used as a pickleball court. The existing basketball court is dangerous because the balls roll down the hill into the street. It also has a grade, and the
driveway is a constant slope. The hardship is there is not enough room on the existing court. Ms. Barnes mentioned they would be open to a smaller proposed court. Mr. Finger said yes, they would be open to having a 40’ x 50’ court. Ms. Kieffer said they have approved two sport courts in the past year. The only time the Board approved these is because they back up to the Parkway or the Biltmore Estate. Mr. Finger said there will not be a tennis net. It will just be a basketball court for his daughters to play basketball, gymnastics, and roller skating. Ms. Kieffer said this is close to their back neighbors and there will be three goals. Mr. Finger said he could take the court down to one goal. There is a neighboring property owner that has a basketball goal in their driveway.

Ms. Groce said the neighbors are very concerned about this proposal. Mr. Adam Berry asked why Pickleball isn’t allowed. Mr. Kanipe said the concern with the neighbors is the noise.

Mr. Chandler said that if someone is playing basketball with a hoop or in a court, there doesn’t seem like there would be a difference in noise.

Ms. Whitworth asked how many letters came in from neighbors objecting to the project. Mr. Kanipe said there were a total of three letters. Two letters were from the same people. A total of two properties received objection letters.

Neither resident was present for the meeting. Mr. Clarke said the people who object to the project are supposed to appear at the meeting in order to have this matter considered. One of the letters also said it referenced hearing something that someone else said so he encouraged the board not to consider this since it is hearsay evidence. This should not be the basis for denying the request.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated and said T.J. and Kirby Finger of 120 Stuyvesant Road are requesting a Special Use Permit for a 30’ x 65’ basketball court. It will be well screened and not encroaching in any setbacks. They have agreed to add more screening if requested by neighbors.

Ms. Martha Barnes moved that a Special Use Permit be granted to T.J. and Kirby Finger of 120 Stuyvesant Road for a basketball court which is 30’ x 65’ and would have one goal and
The facts she recited in her summation be accepted findings and facts to support this grant. The Board has inspected this site, and neighboring property owners have 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 court is being solely used as a basketball and play court. It will not be used as a pickleball court.

Mr. Robert Chandler seconded the motion. Ms. Rhoda Groce voted nay, Ms. Lynn Kieffer voted nay, Ms. Martha Barnes voted aye, Ms. Janet Whitworth voted nay. The motion did not pass. Chairman Goosmann said Mr. and Ms. Finger will have to wait one year before presenting this matter again.

Ms. Martha Barnes said the next matter is for a Special Use Permit and Variance that is being requested for existing spheres already placed on the property. There are eight 20” concrete spheres at 120 Stuyvesant Road. Six of these are in the setback and they are along the front driveway. Ms. Barnes asked what the hardship is for the Variance. Ms. Finger said balls aesthetically match the house and the house already had white balls on the front in two different spots. It is also for safety reasons, so people don’t end up going down the driveway into the ravine. Ms. Kieffer said they probably need to be pulled back to comply with the sixty feet requirement.

Ms. Barnes restated the facts and said T.J. and Kirby Finger at 120 Stuyvesant Road are requesting a Special Use Permit for eight 20” concrete balls that are lining their driveway. There are four on each side. Six of them need a Variance because they are in the front setback. The hardship is guiding people on a driveway that slopes and has a ravine. Ms. Rhoda Groce
seconded the motion. Mr. Robert Chandler voted aye, Ms. Kieffer voted aye, Ms. Barnes voted nay, and Ms. Whitworth voted aye. The motion passed.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request as a unit development for a new parking lot, new plaza, and amphitheater at 1345 Hendersonville Road (Carolina Day School). Mr. Chandler stated he is on the Board of Regents with his wife at Carolina Day School. Chairman Goosmann stated that his wife is on the board at Carolina Day School and he will not be voting. Ms. Groce said her son is on the board at Carolina Day School. Ms. Kieffer said she was formerly on the Board at Carolina Day School as well but she does not need to recuse herself. Mr. Clarke said the conflicts they have stated does not exclude them from participating with exception of Chairman Goosmann. Ms. Kieffer shepherded the matter.

Ms. Wendy Legerton is representing Carolina Day school and showed the proposed parking lot and amphitheater which is a series of retaining walls to the left of the upper school. There will be a canopy at the entrance of the upper school. Ms. Kieffer said the house on the land will be demolished and 150 parking spaces will be added as one pulls into Carolina Day School on the right. Ms. Kieffer said the front setback is fifty feet and the parking lot will infringe into that by twenty feet. Ms. Legerton said the grade of Hendersonville Road is above the grade of the proposed parking lot. Ms. Kieffer said the existing parking lot on the other side is probably thirty feet from the road. Mr. Steven Lee Johnson said the parking lot is thirty-five feet which means it is thirty feet from the right of way. This is for the proposed parking lot. On the survey, the existing parking area doesn’’t indicate the existing line on Hendersonville Road. The amphitheater will be placed on the left side in front of the school and working it into an existing retaining wall. A glass covered area will be there with plantings with rainwater to water the plants like a catch basin. Ms. Emily Roberts said on the trellis, the way the columns are designed is the rainwater will cascade away from the building and catch it and will create beautiful rain gardens. It also treats stormwater.

Ms. Legerton said a traffic consultant is also going to give a report later. All the data will be incorporated into the final plans. Ms. Legerton said they reached out to neighbors, one of
them being directly from the north, did not receive a notice. Also, the surveyor did not pick up the Duke power easement so they will get the survey updated. The intent of all the trees and shrubs proposed is to look carefully at the Biltmore Forest tree plan and all elements are proposed to show compliance.

Chairman Goosmann asked Mr. Clarke about Mr. Clay Mooney and whether this matter should be tabled until next month since he didn’t receive a notice. Mr. Clarke said Mr. Mooney can have his turn to speak about the project. Mr. Mooney has an issue with the sloping and the grading plan. There is a five-to-six-foot drop and is near his office. Mr. Mooney asked how this plan ties in with the security proposal Carolina Day School proposed in August. Ms. Roberts said they are still working toward this project, but this proposal had to come first. Mr. Johnson said the proposed fence location is shown on the landscape plan. He didn’t see any conflict with the fencing going in after landscaping. They may have to make an adjustment to the fence where the power easement was installed six months ago.

Although Mr. Mooney did not receive a notice, Steven Lee Johnson and Clay Mooney reached out to each other on February 15th to discuss these plans from Carolina Day School. Mr. Mooney requested a grading plan which Mr. Johnson will send to him.

Mr. Clarke recommended with the consent of the applicant and pending questions that the Board move consideration of this matter until next month’s meeting. Ms. Roberts said it can be moved until next month, but they would like to hear from neighboring property owners.

Mr. Adam Berry had concerns about noise, lights, and decreased home value if this gets approved. He was also concerned about the limited access road being too noisy. Ms. Jackie Berry said lights shine in their house every night from the lighting in the Carolina Day School parking lot. Ms. Roberts said they are proposing cut off light fixtures with this project. Mr. Johnson said they are required to use dark skylight fixtures.

Ms. Mary Goodkind asked what the amphitheater will be used for. Ms. Roberts said it will be used for one act plays, poetry slams, and meetings. They will be conducted during school hours. There will be no outdoor amplification system but there will be electrical outlets outside.
DELIBERATION AND DETERMINATION:

The matter will be tabled until next month.

The meeting was adjourned at 6:59pm.

The next meeting is scheduled for Monday, March 18, 2024 at 4:00pm.

ATTEST:

_________________________________         _______________________________
Greg Goosmann                    Laura Jacobs
Chairman                     Town Clerk
BOARD OF ADJUSTMENT MEETING
STAFF MEMORANDUM
March 18, 2024

CASE 1
Property Address: 120 Stuyvesant Road
Property Owner: TJ & Kirby Finger
Request: Special Use Permit request for Accessory Structures
Variance for encroachment into the front setbacks

Note
This is a re-hearing from the prior month. There was a procedural issue with the consideration of this matter, requiring it to be reheard.

Background
The property owners request permission to construct a sports court. They are also requesting approval for the concrete round balls along the driveway. The proposed 30’x65’ sport court would be located on the flat area to the south side of the home. The proposed sport court is in compliance with the setbacks. 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 8 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 25’ from the edge of the pavement per the submitted plan.
Zoning Compliance Application
Town of Biltmore Forest

Name
TJ & Kirby Finger

Property Address
120 Stuyvesant Rd  Asheville, NC 28803

Phone
(828) 318-4550

Email
kirbyfinger@gmail.com

Parcel ID/PIN Number
964683765100000

ZONING INFORMATION

Current Zoning
R-1

Lot Size
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
3/1/2024

Estimated Completion Date
5/1/2024

Estimated Cost of Project
$150,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
LA-Finger-Site Plan-005-Court.pdf
Applicant 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       Email
(828) 318-4550 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

Thomas Finger Jr.

Date
11/24/2023
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

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.

What does the ordinance require?
60ft front set back

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

REQUIRED FINDINGS: Please provide a thorough response to each.

Unnecessary hardship would result from the strict application of the ordinance.
The driveway is steep and has a definite sharp curve. These outline the drive and assist drivers young and old to stay on the pavement, outlined by the balls. Failure to stay on the pavement could result in a vehicle traveling into the ravine resulting in a personal injury as well as potential litigation if it were a visitor. Also, because of the light color they are visible at night.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
The driveway is steep and has a definite sharp curve. These outline the drive and assist drivers young and old to stay on the pavement, outlined by the balls. Failure to stay on the pavement could result in a vehicle traveling into the ravine resulting in a personal injury as well as potential litigation if it were a visitor. Also, because of the light color they are visible at night.

The hardship did not result from actions taken by the applicant or the property owner.
NO

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.
We believe this is in keeping with the community's character and consistent with the spirit of the ordinance.

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
CASE 2
Property Address: 11 Forest Road
Property Owner: Adam Voron
Request: Special Use Permit request for Accessory Structure

Background

The property owners request permission to construct an outdoor fireplace and patio with walkway in the rear yard. The proposed patio is circular and measures 14’ across with a metal fire pit in the center and within the setbacks. The applicant is also looking to add two wooden arbors, one as an entrance to the existing garden area near the garage, and one as an entrance to the back yard with an open height of 7’6” and open width of 4’. Along with the proposals mentioned above, the project includes replacing existing stone walkways that are in disrepair with new flagstone and stone steps as well as a damaged brick wall with a curved stone wall.

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. These proposed structures comply with setbacks and appear to meet all requirements.

The proposed application meets the requirements of Section 153.110 (C)(2)(b) regarding special use standards.

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)
Zoning Compliance Application
Town of Biltmore Forest

Name
Adam Voron

Property Address
11 Forest Road, Biltmore Forest, NC 28803

Phone
(828) 299-2399

Email
teri@terrilongdesign.com

Parcel ID/PIN Number
PIN 9647-62-8340

ZONING INFORMATION

Current Zoning
R-1

Lot Size
1.49 acres

Proposed Roof Coverage Total
N/A

Proposed Impervious Surface Coverage
Existing impervious hardscaping is approximately 7840 square feet. Additional proposed hardscaping will be approximately 300 square feet.

Front Yard Setback
60 feet (R-1 District)

Side Yard Setback
20 feet (R-1 District)

Rear Yard Setback
25 feet (R-1 District)

Building Height
N/A

Description of the Proposed Project
Renovation of existing landscaping includes the following: new ornamental landscape and privacy plantings, low voltage landscape path and accent lighting, garbage container enclosure, removal of existing stone walks and steps to be replaced with flagstone, additional stone steps and flagstone walk to new patio in open area, two arbors, trellis and pergola above garage doors, replace damaged brick wall below maple with curved stone wall with built-in bench.

Estimated Start Date
4/1/2024

Estimated Completion Date
5/31/2024

Estimated Cost of Project
$120,000.00
Supporting Documentation (Site Plan, Drawings, Other Information)
Voron-Lighting-3B-11.16.23.pdf
Voron-Lighting rev.12.8.23-.pdf
Voron-11.28.23-pricing.pdf
Voron-landscape concepts-10.24.23.pdf
WAC-mini wall wash 5121.pdf
wac accent 5011.pdf
spj-mpl-s6.pdf
hinkley.squirrel.pdf
Voron-arbor.pdf
Voron-garbage can enclosure.pdf
pergola concept image copy.pdf

Applicant Signature

[Signature]

Date
1/23/2024
Special Use Permit Application
Town of Biltmore Forest

Name
Adam Voron

Address
11 Forest Road

Phone
(828) 299-2399

Email
teri@terrilongdesign.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:
Construct two wood arbors as entrances to the existing garden area beside the garage. One will be an entrance from the stone walk in the backyard to the garden and the other leading from the far side of this garden to access a new stone walk and patio with a free-standing metal fire-pit in a newly landscaped part of the property. The existing stone walks are in disrepair and will be replaced with a flagstone walk and stone steps.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
The arbors will contribute to the beauty of the neighborhood by defining an existing garden room. The locations of the arbors will not be visible from the road. The new walks will be safer than the old ones. The new section of walk and patio will provide safe access to a currently unkempt, lower part of the property, which will also be landscaped with attractive plants. It is planned for an area that will not be seen by neighbors and away from trees.

I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.
Case 3

Property Owner: Thomas Moran
Property Address: 11 Hilltop Rd
Request: Special Use Permit Request for Replacement Fence Installation

Project Description

The applicant requests a special use permit for the replacement of an existing wooden and chain-link fence with a black metal fence. The application includes a site plan showing the existing fence location and length of fence.

Special Use Permit Request

The Town considers fences as accessory structures, pursuant to Chapter 153.049 of the Zoning Ordinance. Section 153.049 is attached for the Board’s review. The specific language of the Zoning Ordinance states that the replacement of existing fences shall be approved by the Board of Adjustment as a special use so long as the replacement fence is constructed of materials deemed acceptable in 153.049 (D). The fence replacement appears to meet the requirements of the Towns Ordinance.

The proposed application meets the requirements of Section 153.110 (C)(2)(b) regarding special use standards.
Zoning Compliance Application

Town of Biltmore Forest

Name
Thomas Moran

Property Address
11 HILLTOP RD, ASHEVILLE, NC  28803-3017

Phone
(919) 395-6299

Email
tom.moran@live.com

ZONING INFORMATION

Current Zoning
R-2

Lot Size
.59 acre

Proposed Roof Coverage Total
no changes

Proposed Impervious Surface Coverage
no changes

Front Yard Setback
50 feet (R-2, R-3, R-4, and R-5 Districts)

Side Yard Setback
15 feet (R-2, R-3, R-4, and R-5 Districts)

Rear Yard Setback
20 feet (R-2, R-3, R-4, and R-5 Districts)

Building Height
no change

Description of the Proposed Project
As part of a project to replace damaged and rotten wood on an existing rear deck, we intend to also replace damaged and defective wood and chain link fences that extend to the property lines on either side of the house. Please see attachments for more details.

Estimated Start Date
2/5/2024

Estimated Completion Date
2/16/2024

Estimated Cost of Project
$22,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
11 Hilltop Road - survey with fence notes - Moran.pdf
Pegram - new fence picture.png
11 Hilltop - Plot.pdf
11 Hilltop - satelite of lot.png
Applicant Signature

Date
2/1/2024
Special Use Permit Application
Town of Biltmore Forest

Name
Thomas Moran

Address
11 Hilltop Rd

Phone
(919) 395-6299

Email
tom.moran@live.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:
Replacement of two sections of old fencing on sides and back of house. Section 1 would replace approximately 25’ of 6-foot chain link fence on side of house at rear. The second section would be to replace a 46’ curved wooden fence along back of parking area at rear of house. Both sections would extend to property lines on each side. Please see drawings and pictures for more information.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
Both fence sections to be replaced are in very poor condition and would be replaced by new 4-foot high black metal fencing. Each would represent a significant improvement for neighbors.

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

Signature

Date
2/2/2024
NOTES:
1. LANDS SHOWN HEREON ARE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, DRIERSHIP OR OTHER INSTRUMENTS OF RECORD AND ARE SUBJECT TO ANY AND ALL EASEMENTS, RIGHTS OF WAY, OR RESTRICTIONS THAT MAY LEGALLY AFFECT THIS PROPERTY.
2. MARKINGS SHOWN HEREON ARE BASED ON THE RECORD PLAN.
3. SCALE TO 0.05 MONUMENT WAS CALCULATED FROM G.S. OBSERVATIONS MADE USING SPECTRA PRECISION EPOCH 53 RECEIVERS.
4. UNDERGROUND FOUNDATIONS, LANDSCAPE FEATURES AND ROOF OVERHANGS WERE NOT LOCATED.
5. THIS IS AN ABOVE GROUND SURVEY, THE SURVEYOR MAKES NO CERTIFICATION TO THE EXISTENCE OF UNDERGROUND UTILITIES OR STRUCTURES. CALL 811 BEFORE DIGGING.
6. THERE WAS NO INVESTIGATION INTO THE EXISTENCE OF ENVIRONMENTALLY SENSITIVE AREAS.
7. DUE TO VEGETATION, THERE MAY BE ADDITIONAL UTILITIES OR IMPROVEMENTS NOT VISIBLE AT THE TIME OF THE SURVEY THAT ARE NOT SHOWN.
8. SOME FEATURES MAY BE EXAGGERATED FOR CLARITY.
9. OWNERSHIP, DEED AND PLAT INFORMATION IS PER THE BUNCOMBE COUNTY GIS WEBSITE.
10. THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.
CASE 4  
Property Address:  15 Eastwood Rd  
Property Owner:  Crockett and Liza Dale  
Request:  Special Use Permit request for Stone Columns at Driveway within Front Yard Setback  

Background  

The applicant requests approval from the Board of Adjustment for the installation of two (2) driveway columns and two (2) low site walls, one of each at the entrance and exit of the driveway. The proposed structures are (2) 38”x38”x90” columns and (2) low site walls at 2’ or below. The structures will be set back approximately 7’ from the edge of pavement.  

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

Special Use Permit Requirements  

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

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

Special Use Request  

The applicant has filed a special use request to allow this installation within the front yard setback. The proposed location of the columns are not within the Town’s right of way and are located approximately 7 feet from the edge of pavement. The project does not meet the setback requirements; however, it can be reviewed as a special use as stated above.  

The proposed application meets the requirements of Section 153.110 (C)(2)(b) regarding special use standards.
Zoning Compliance Application
Town of Biltmore Forest

Name
Daniela Neal

Property Address
15 Eastwood road, Asheville NC 28803

Phone
(615) 663-9063
Email
daniela@carlton-edwards.com

Parcel ID/PIN Number
964696054400000

ZONING INFORMATION

Current Zoning
R-1
Lot Size
1.25 acres

Proposed Roof Coverage Total
5498 sq ft

Proposed Impervious Surface Coverage
12824 sq ft

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
37

Description of the Proposed Project
The proposed structures are (2) 38"x38"90" stone pillars with (2) low site walls at both the entry and exit driveways for a total of 4 structures. The stone pillars will have face mounted gas lanterns facing Eastwood road and integrated lights on the short site walls to illuminate the drives for the residents. The pillars will be set back approximately 3' from the property line and approximately 7' from the edge of the road to not cause obstruction.

Estimated Start Date
4/1/2024
Estimated Completion Date
5/31/2024

Estimated Cost of Project
$20,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
2024-02-27 Dale Special Use premit set.pdf
Applicant Signature

Date
2/28/2024
Special Use Permit Application
Town of Biltmore Forest

Name
Daniela Neal

Address
15 Eastwood Rd, Asheville, NC 28803

Phone
(615) 663-9063
Email
daniela@carlton-edwards.com

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

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

Please provide a description of the proposed project:
The proposed structures are (2) 38"x38"x 90" stone pillars with (2) low site walls at both the entry and exit driveways for a total of 4 structures. The stone pillars will have face mounted gas lanterns facing Eastwood road to illuminate the drives for the residents and integrated lights on the short site walls. The pillars will be set back approximately 3' from the property line and approximately 7' from the edge of the road to not cause obstruction.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
The pillars will have the same material pallet as the home and will be set back from the right-of-way. The lighting will be sufficient to safely illuminate the entry and exit of the property without being blinding or a hazard to those driving by.

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

Signature

Date
2/27/2024
153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.
(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

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

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

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

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

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

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

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
CASE 5
Property Address: 19 East Forest Road
Property Owner: Dennis and Wendy Thies
Request: Special Use Permit request for Accessory Structure and Fence

Background

The property owners request permission to construct an outdoor fireplace on a patio within the rear yard. The proposed fire pit is located on a rear patio and not within the setbacks. The applicant is also looking to replace some existing wooden fence and add some new fencing to the rear yard and within the setbacks. The fencing will be black metal fencing. The layout of the fence as well as an example picture of the fence being removed, and fence being installed is in the enclosed application packet.

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. The proposed structure complies with setbacks and appears to meet all requirements.

Section 153.049 (attached) of the Town’s Zoning Ordinance regulates fences and gates as accessory structures and requires a special use permit from the Board of Adjustment. The proposed replacement fence and the proposed new fence appear to meet all requirements.

The proposed application meets the requirements of Section 153.110 (C)(2)(b) regarding special use standards.
153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

2. Existing fences, gates, or walls in the front yard shall not be replaced. No new fences, gates, or walls shall be allowed in the front yard.
(3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this section.

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

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

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

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

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

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

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

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

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
Zoning Compliance Application
Town of Biltmore Forest

Name
Matthew Fusco

Property Address
19 East Forest Road

Phone
(828) 243-6604

Email
Matt@FuscoLA.com

Parcel ID/PIN Number
9646-57-6419

ZONING INFORMATION

Current Zoning
R-1

Lot Size
1.366

Proposed Roof Coverage Total
n/a

Proposed Impervious Surface Coverage
11,170

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
n/a

Description of the Proposed Project
Proposed loop connection of driveway to improve circulation and prevent from having to back into East Forest Road when leaving driveway. Install gas fire pit on rear patio within setbacks. convert sections of existing wood fence to metal picket and add fencing to expand rear fences yard within setbacks.

Estimated Start Date
4/1/2024

Estimated Completion Date
5/15/2024

Estimated Cost of Project
$50,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
2024-02-26-Thies-Materials.pdf
2024-02-26-Thies-Site_Plan.pdf
Special Use Permit Application
Town of Biltmore Forest

Name
Matthew Fusco

Address
19 East Forest Road

Phone
(828) 243-6604

Email
Matt@FuscoLA.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:
Proposed loop connection of driveway to improve circulation and prevent from having to back into East Forest Road when leaving driveway. Install gas fire pit on rear patio within setbacks. Convert sections of existing wood fence to metal picket and add fencing to expand rear fences yard within setbacks.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
Driveway work will improve safety to the community by allowing the homeowner to exit their property without having to back into the street. The access points will be greater than 100’ apart which conforms to NCDOT recommendations for access point spacing. The proposed gas fire pit will be behind the house and not visible from the street or in direct view of neighbors. The proposed fencing will follow typical fence style within the area and will be placed to the back of the house where it will be less visible from the street.

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

Signature

Date
2/26/2024
THIES RESIDENCE
Driveway, Fire Pit & Fence Improvements

19 East Forest Road
Biltmore Forest, NC 28803

SHEET INDEX
L1.01 NOTES & SPECIFICATIONS
L2.01 SITE DEMOLITION & STABILIZATION
L3.01 SITE PLAN
L4.01 SITE DETAILS
EROSION CONTROL NOTES

1. SEQUENCE OF CONSTRUCTION FOR EROSION & SEDIMENT CONTROL

B. MAINTENANCE PLAN:

1. INSTALL EROSION CONTROLS AS INDICATED IN THE EROSION CONTROL NOTES AND SEQUENCE OF CONSTRUCTION FOR EROSION

2. FLAG THE LIMITS OF DISTURBANCE AND MARK THE TREES TO BE REMOVED AND OBTAIN APPROVAL PRIOR TO PROCEEDING.

3. EQUIPMENT UTILIZED DURING THE CONSTRUCTION ACTIVITY ON SITE MUST BE OPERATED AND MAINTAINED IN SUCH A MANNER AS

4. BORROW OR WASTE COMES FROM OR GOES TO A SITE WITH AN APPROVED EROSION & STORMWATER CONTROL PLAN.

5. REQUIRED TO PREVENT ON- OR OFF-SITE RUNOFF AND EROSION.

6. REMAIN SHALL BE DONE WITH HAND TOOLS UNDER THE DIRECTION OF LANDSCAPE ARCHITECT.

7. REMOVE OBSTRUCTIONS, TREES, SHRUBS, GRASS AND OTHER VEGETATION WITHIN THE LIMITS OF DISTURBANCE TO PERMIT

8. MARK TREES AND OTHER PLANT MATERIAL TO BE REMOVED WITH A SINGLE AND UNIQUE COLOR OF SURVEY FLAGGING AND

9. OPTIMUM EFFICIENCY FOLLOWING EVERY RUNOFF-PRODUCING RAINFALL BUT IN NO CASE LESS THAN ONCE EVERY WEEK. ANY

10. CONTRACTOR IS RESPONSIBLE FOR REGULAR INSPECTION AND MAINTENANCE OF EROSION CONTROL MEASURES TO ENSURE

11. ALL EROSION AND SEDIMENT CONTROL PRACTICES SHALL BE CHECKED AND MAINTAINED FOR STABILITY AND OPERATION AT

12. ALL SEEDED AREAS WILL BE FERTILIZED, RESEEDED AS NECESSARY, AND MULCHED ACCORDING TO SPECIFICATIONS IN THE

13. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

14. BORROW OR WASTE COMES FROM OR GOES TO A SITE WITH AN APPROVED EROSION & STORMWATER CONTROL PLAN.

15. REQUIRED TO PREVENT ON- OR OFF-SITE RUNOFF AND EROSION.

16. REMAIN SHALL BE DONE WITH HAND TOOLS UNDER THE DIRECTION OF LANDSCAPE ARCHITECT.

17. LATE WINTER & EARLY SPRING

18. INSTALL UNDERGROUND UTILITY WARNING TAPE DIRECTLY ABOVE UTILITIES, 12 INCHES BELOW FINISHED GRADE AND IN THE SAME

19. DO NOT SCALE FROM DRAWINGS.

20. AFTER ADEQUATE PROTECTION HAS BEEN PROVIDED FOR THE EXISTING STRUCTURES. THE CONTRACTOR SHALL BE

21. UTILIZATION OF MATERIALS TO BE DETERMINED BY THE CONTRACTOR FOR MAXIMUM FREQUENCY AND ECONOMY.

22. THE CONTRACTOR SHALL BE

23. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

24. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

25. TO MAINTAIN A VIGOROUS, DENSE VEGETATIVE COVER.

26. ALL WASTES COMPOSED OF BUILDING MATERIALS SHALL BE DISPOSED OF IN ACCORDANCE WITH STATE GENERAL STATUTES.

27. BORROW OR WASTE COMES FROM OR GOES TO A SITE WITH AN APPROVED EROSION & STORMWATER CONTROL PLAN.

28. REQUIRED TO PREVENT ON- OR OFF-SITE RUNOFF AND EROSION.

29. REMAIN SHALL BE DONE WITH HAND TOOLS UNDER THE DIRECTION OF LANDSCAPE ARCHITECT.

30. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

31. BORROW OR WASTE COMES FROM OR GOES TO A SITE WITH AN APPROVED EROSION & STORMWATER CONTROL PLAN.

32. REQUIRED TO PREVENT ON- OR OFF-SITE RUNOFF AND EROSION.

33. REMAIN SHALL BE DONE WITH HAND TOOLS UNDER THE DIRECTION OF LANDSCAPE ARCHITECT.

34. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

35. TO MAINTAIN A VIGOROUS, DENSE VEGETATIVE COVER.

36. ALL WASTES COMPOSED OF BUILDING MATERIALS SHALL BE DISPOSED OF IN ACCORDANCE WITH STATE GENERAL STATUTES.

37. BORROW OR WASTE COMES FROM OR GOES TO A SITE WITH AN APPROVED EROSION & STORMWATER CONTROL PLAN.

38. REQUIRED TO PREVENT ON- OR OFF-SITE RUNOFF AND EROSION.

39. REMAIN SHALL BE DONE WITH HAND TOOLS UNDER THE DIRECTION OF LANDSCAPE ARCHITECT.

40. LAYING SEEDING MATERIALS, APPLY SEEDS OR SEEDING AND MULCH MATERIALS TO THE SURFACE OF THE EROSION CONTROL

41. TO MAINTAIN A VIGOROUS, DENSE VEGETATIVE COVER.
**NOTES:**

1. **TREE PROTECTION:** Shall be provided as shown in detail. Barriers shall be installed prior to any construction in buffer area of trees.
2. Tree protection barriers shall be removed and replaced with temporary metal stakes as required for construction activities.
3. Barriers shall remain in place until all paving, construction and utility work is completed.
4. Tree protection barriers shall be protected during the construction process of trees.
5. Tree protection shall be removed upon completion of construction activities in buffer area.

**ASPHALT PAVING:**

- 2" coarse aggregate
- 4' height (typ.)
- 18" to 24"
- 36" minimum
- 4" max. opening between pickets
- 6" min. gap to divert runoff
- 6" hump to divert runoff

**TEMPORARY CONSTRUCTION ENTRANCE:**

- 6" hump to divert runoff
- 2" course aggregate
- Metal stakes 6" max. spacing
- Top finished grade

**FENCE DETAIL:**

- 1" max. opening between pickets
- 2" max. opening between pickets
- 2' max. opening between pickets

**TREE PROTECTION:**

- Tree protection barriers shall remain vertical and free of damage.
- Tree protection barriers shall be installed prior to all construction.

**FILTER BARRIERS:**

- Filter barriers shall be inspected immediately after each rainfall and deposits reach approximately 1/3 height of barrier.
- Repair shall be made as necessary.
- Filter barriers shall be replaced promptly if found to be in disrepair.

**SOIL BERM:**

- 6'' soil berm to hold water
- 3'' mulch as specified
- Crown of rootball shall be kept within 2" of finished grade

**DECIDUOUS TREE PLANTING DETAIL:**

- 1" max. diameter main roots or destroy rootball when installing tree stakes
- Tree staking shall be in accordance with approved tree staking plan
- Contractor shall ensure percolation of all planting beds/pits prior to installation
- Tree staking shall be replaced with 2' x 2' x 3' backfill and compact in 3" lifts

**DESIGN & VENDEE THIES RESIDENCE**

**DRIVeway, FIrE PIt & FENCE IMPROVEMENTS**

**19 EAST FOREST ROAD, BILTMORE FOREST NC 28803**

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Site Details

Sheet Title: 4.01

Revision / Issue: R02/26/2024

P.O. Box 8013, Asheville, NC 28814 • Ph: 828.243.6604 • www.fuscoland.com
Proposed Materials

February 26, 2024

Proposed Asphalt Driveway

Proposed Fence

Proposed Fire Pit

Existing Fence to Remain

Existing Fence to Be Removed

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This plan illustrates a general plan, which is subject to future change and revision. Dimensions, boundaries, and positions are for illustrative purposes only and are not intended to be exact.
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
CASE 6
Property Address: 44 Forest Road
Property Owner: David Varbel
Request: Special Use Permit request for Accessory Building

Background

The property owners request permission to install a detached accessory building within the rear yard. The proposed detached accessory building is 12’x12’. The applicant states the structure will be 23’ off the side property line and 27’ off the rear property line. It is also stated the shed will be inline with the neighbor’s shed, which is already screened from their view.

Special Use Permit

Section 153.029 (attached) of the Town’s Zoning Ordinance regulates accessory buildings and requires a special use permit from the Board of Adjustment. The application appears to meet all requirements set forth in section 153.029, as well as meet the setbacks for this R-1 district.

The proposed application meets the requirements of Section 153.110 (C)(2)(b) regarding special use standards.
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:

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   (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;

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   (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;

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

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(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
Zoning Compliance Application
Town of Biltmore Forest

Name
David Varbel

Property Address
44 Forest Rd

Phone
(415) 328-7254

Email
david.varbel@gmail.com

Parcel ID/PIN Number
9646-79-1773

ZONING INFORMATION

Current Zoning
R-1

Lot Size
0.64 acre

Proposed Roof Coverage Total
144 feet

Proposed Impervious Surface Coverage
144 feet

Front Yard Setback
60 feet (R-1 District)

Side Yard Setback
20 feet (R-1 District)

Rear Yard Setback
25 feet (R-1 District)

Building Height
11 feet

Description of the Proposed Project
The project is a 12 foot by 12 foot garden shed. The shed will be located in the back of the house (see attached map of proposed shed location). It will be set back 23 feet from the side of the lot and 27 feet from the back of the lot. It is adjacent to our neighbor’s shed, which is already screened from their view (see attached picture of proposed shed location). The shed will be built and painted in a style that matches the main house (see attached mockup of shed).

Estimated Start Date
4/1/2024

Estimated Completion Date
4/30/2024

Estimated Cost of Project
$9,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
44 Forest Proposed Shed Location.pdf
Shed location picture towards neighbor lot 27.pdf
Shed Mockup Picture.png
Applicant Signature

Date
2/18/2024
Special Use Permit Application  
Town of Biltmore Forest

Name  
David Varbel

Address  
44 Forest Rd

Phone  
(415) 328-7254

Email  
david.varbel@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:  
The project is a 12 foot by 12 foot garden shed that would be located in the yard behind the house. See the zoning compliance application for details.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:  
The shed will be located in the back of the house, behind trees and vegetation. It will be adjacent to our neighbor’s shed at 46 Forest Road (lot 27), which is already screened from view from our neighbors’ houses by vegetation. The shed will be built and painted in a style that matches the main house.

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

Signature  
2/22/2024
Lot 28-(Block N)
D.B. 6341 Pg. 629
P.B. 10 Pg. 12
PIN: 9646-79-1773
Total Area: 0.64 Acre

Lot 29-(Block N)
John D. Cantrell & Janice H. Cantrell
D.B. 2184 Pg. 890
P.B. 10 Pg. 12

Lot 27-(Block N)
Henry W. Garbee & Sarah Y. Garbee
D.B. 3810 Pg. 712
P.B. 10 Pg. 12

Lot 28-(Block N)
D.B. 6341 Pg. 629
P.B. 10 Pg. 12
PIN: 9646-79-1773
Total Area: 0.64 Acre

Lot 29-(Block N)
John D. Cantrell & Janice H. Cantrell
D.B. 2184 Pg. 890
P.B. 10 Pg. 12

Thomas A. Maher & Nancy Kendall Maher
D.B. 4776 Pg. 1434
P.B. 10 Pg. 12
CASE
Property Address: 332 Vanderbilt Rd
Property Owner: Charles and Cristy Greaves
Request: Review of Landscaping Plan Associated with New Residential Construction

Background

The property owners are presenting plans for a new home construction. The home plan has a height of more than 25’ which requires adjusted setbacks. The application appears to meet the requirements set forth in the ordinance. As part of this construction, they have submitted the proposed tree removal and replacement schedule. They are proposing the removal of 21 protected trees.

Board of Adjustment Review for New House Construction

Chapter 153.034 (attached) references landscaping and grading plans and will need the Board’s approval. When removing between 11-30 protected trees the ordinance requires the Boards approval. The tree replacement information can be found in chapters 153.050-153.058 along with 153.060-153.070 (attached).

Section 153.007 footnote (7) addresses the setback adjustment of one and a half feet for each one foot over the 25’ requirement and footnote (4) states “Height requirements may be varied upon approval of the Board of Adjustment”.


§ 153.034 LANDSCAPING AND GRADING PLANS, LAND DISTURBANCE, AND SEDIMENTATION CONTROL.

(A) Plans required. A landscaping and grading plan, as defined in the town’s zoning application process, are required for any or all of the following activities.

1. Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot. Prior to commencing such activity in a public service district, any land-disturbing activity, such as grading projects or removal of natural vegetation other than routine maintenance, shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.

2. Any residential construction activity that results in an addition of greater than 500 square feet of roof coverage.

3. Any non-residential construction activity as defined in §153.061.

(B) All landscape and grading plans shall demonstrate compliance with the town’s tree protection and preservation regulations as found in §§ 153.050 through 153.059 and §153.061(C) for existing residential and non-residential tree maintenance and new construction activities, respectively.

(C) Pre-construction conference and supervision.

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

2. The applicant shall provide the following at least seven days prior to the pre-construction conference.
   (a) Approved landscaping plan, showing all protected and unprotected trees to be removed, and all replacement trees to be planted.
   (b) Chart showing the quantity of trees, scientific species name, and tree designation (protected, unprotected, or tree of preference) and replacement quantities required.
   (c) Final grading plan showing tree preservation limits and limits of disturbance.

(D) Construction supervision and additional compliance requirements.

1. The town shall have developed sites inspected periodically to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter. Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer/contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this subchapter. At the option of the town, a compliance bond may be required.

2. Compliance with G.S. § 113A-54. Where applicable, all proposed development projects or land-disturbing activities shall comply with G.S. § 113A-54, and Rules and Regulations for Erosion and Sediment Control as established by the State Sedimentation Control Commission, State Department of Natural Resources and Community Development.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021; Ord. 2023-05, passed 10-9-2023)

TREE PRESERVATION

§ 153.050 PURPOSE.

(A) In order to maintain the unique characteristics of the town 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 except as noted in division (C) below.

(C) This chapter does not apply to properties owned, leased, or controlled by the town. 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 G.S. Article 12, Chapter 105. 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 subchapter 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.

(Ord. 2023-06, passed 10-9-2023)
§ 153.051 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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 or 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 one-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 50% of the total replacement trees must come from the RPL with 25% of the total replacement trees being those species identified as trees of preference, as defined below. A minimum of one 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. The minimum yard setback requirement found in § 153.007. 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.

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.

1. Has a trunk diameter at breast height (DBH) of 36 inches or more;
2. Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of 30 inches or more.

UNPROTECTED TREE. A tree that is six inches or more in diameter at a height of four and one-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).

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

(Ord. 2023-06, passed 10-9-2023)
§ 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 business days of the decision.

(Ord. 2023-06, passed 10-9-2023)

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

An application to remove more than ten protected trees in 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>

(Ord. 2023-06, passed 10-9-2023)

§ 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.

(Ord. 2023-06, passed 10-9-2023)

§ 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.

(Ord. 2023-06, passed 10-9-2023)

§ 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.

(Ord. 2023-06, passed 10-9-2023)

§ 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>Unprotected</td>
</tr>
<tr>
<td></td>
<td>Qty</td>
<td>Size</td>
</tr>
<tr>
<td>6&quot;-12&quot;</td>
<td>1</td>
<td>2&quot;</td>
</tr>
<tr>
<td>13&quot;-18&quot;</td>
<td>1</td>
<td>2&quot;</td>
</tr>
<tr>
<td>19&quot;-36&quot;</td>
<td>1</td>
<td>3&quot;</td>
</tr>
<tr>
<td>36&quot;+ T*</td>
<td>1</td>
<td>3&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
* Must include a minimum of three screening/buffering trees as defined in RPL
** Must include a minimum of five 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>Unprotected</td>
</tr>
<tr>
<td></td>
<td>Qty</td>
<td>Size</td>
</tr>
<tr>
<td>6&quot;-12&quot;</td>
<td>1</td>
<td>2&quot;</td>
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<tr>
<td>13&quot;-18&quot;</td>
<td>2</td>
<td>2&quot;</td>
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<tr>
<td>19&quot;-36&quot;</td>
<td>2</td>
<td>3&quot;</td>
</tr>
<tr>
<td>36&quot;+ T*</td>
<td>2</td>
<td>4&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
* Must include a minimum of three screening/buffering trees as defined in RPL
** Must include a minimum of five 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 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 50% of the total replacement trees shall come from the RPL with a minimum of 25% of total replacement trees coming from the trees of preference (TOP) list. A minimum of one 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 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
In the event that a 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 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 replanted 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.

(Ord. 2023-06, passed 10-9-2023)

§ 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 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.

(Ord. 2023-06, passed 10-9-2023)

BUFFERS, SCREENING, AND LANDSCAPING REQUIREMENTS

§ 153.060 PURPOSE AND INTENT.

(A) The town has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits.

(B) Landscape requirements for new construction and substantial additions are set forth below, in order to:

(1) Encourage the preservation of existing trees and vegetation on undeveloped residential lots and ensure the reforestation of the lot when tree removal is required for any construction activities.

(2) Ensure landscape plans presented to the town include considerations for native species, reforestation, environmental protection, and effective stormwater management.

(C) The landscape and buffering standards set forth below require buffers and landscaping between dissimilar land uses, along public rights-of-way, and within parking lots, in order to:

(1) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;

(2) Protect and improve the visual quality of the town and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities, and mechanical systems and buildings;

(3) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;

(4) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy; and

(5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of the town while allowing flexibility to promote well-designed and creative landscape plantings.

(Ord. 2023-07, passed 10-9-2023)
§ 153.061 GENERAL INFORMATION.

(A) Applicability.

(1) Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments within the town limits.

(2) (a) The following developments are required to be in full compliance with this section.

(b) New residential development, including additions, exceeding more than 500 square feet of roof coverage, and all nonresidential development, including special uses; and

(3) New parking spaces or lots shall comply with the provisions of § 153.064.

(B) Landscape and grading plan required. Applicants are advised to meet with town staff in order to review all ordinance requirements and procedures and receive a copy of the plan checklists. As required in § 153.034, a landscape and grading plan meeting town requirements shall be reviewed and approved prior to any grading.

(C) Tree replacement requirements. The following tree replacement requirements are in place for all developments as defined in division (A)(2).

<table>
<thead>
<tr>
<th>Table 1 - New Construction Tree Replacement Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Size of tree removed (DBH)</strong></td>
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<tr>
<td></td>
</tr>
<tr>
<td>Qty</td>
</tr>
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<td>-----</td>
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<tr>
<td>6&quot;-12&quot;</td>
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* Must include a minimum of three screening/buffering trees as defined in RPL
** Must include a minimum of five 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

(D) Alternative compliance.

(1) The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Board of Adjustment, in consultation with the Design Review Board, may alter the requirements of this section as long as the existing or added landscape features of the development site comply with the intent of this chapter.

(2) Requests for alternative compliance shall be accepted if one or more of the following conditions are met.

(a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements;

(b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood; or

(c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of the ordinance, and exhibits superior design quality.

(3) The property owner must submit a plan of the area for which alternative compliance is requested to the Town Manager 14 days prior to the meeting of the Design Review Board at which the request will be considered. The site plan shall show existing site features and any additional material the property owner will plant or construct to meet the intent of the buffer, street tree, and parking lot tree requirements.
In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. Upon recommendation from the Design Review Board following their review, alternative compliance plan shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

(Ord. 2023-07, passed 10-9-2023)

§ 153.062 EXISTING VEGETATION IN R-4 OR R-5 ZONES.

(A) Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, and mitigate the impacts of development on the community. It is recommended that groups of trees be preserved, as well as individual trees. Existing trees and shrubs designated for preservation may be credited towards required buffer trees, street trees, and parking lot trees at the discretion of the Ordinance Administrator as described below.

(B) As required in § 153.052, no person shall remove or in any way damage any protected trees without first filing an application for the removal and receiving approval from the town. This requirement is applicable to both residential and non-residential uses within the town.

(C) Special attention shall be given to protected trees located within 20 feet of the rear or side property line of property meeting the definition of an incompatible land use.

1. Credits and other incentives to preserve vegetation within non-residential land use.

   (a) Vegetation located in the buffer strip. One existing evergreen shrub over four feet high located in the buffer strip may be credited for two new shrubs, also on a case-by-case basis by the Board of Adjustment.

   (b) Vegetation located elsewhere on the property.

      1. Trees designated for preservation may be credited at the rate of the following:

         Two-inch to six-inch caliper tree = one tree
         Seven-inch to 12-inch caliper tree = two trees
         Thirteen-inch to 18-inch caliper tree = three trees
         Nineteen-inch to 24-inch caliper tree = four trees
         Twenty-five-inch and greater = five trees

      2. One existing shrub over four feet high may be credited for two new shrubs. In order to receive credit, vegetation designated for preservation shall be in good health and condition. Trees and shrubs designated to be preserved shall be indicated on the landscape and grading plan, as well as all protective barriers. If a tree or shrub designated for preservation dies within five years of the project’s completion, it must be replaced with the total number of trees or shrubs which were credited to the existing tree or shrub within six months from removal of the dead trees or shrubs.

2. Protection of existing trees and shrubs during construction.

   (a) 1. No grading or other land-disturbing activity shall occur on a site with existing trees or shrubs which are designated to be preserved in order to meet the landscaping requirements until the landscape and grading plan has been approved by the Board of Adjustment and protective barriers are installed by the developer and approved by the Zoning Administrator. Trees designated for preservation which are counted toward the landscape and buffering requirements shall be protected by barriers, while trees designated for preservation which do not count toward the landscape and buffering requirements are encouraged to be protected by barriers. The diameter of the trees designated for preservation and the location of protective barriers shall be shown on the landscape and grading and site plans with the dimensions between the tree trunk and barrier indicated.

   2. Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within 50 feet of any grading or construction activity. Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub. All protective barriers shall be maintained throughout the building construction process.

   (b) 1. All contractors shall be made aware of the areas designated for protection.

   2. No disturbance shall occur within the protective barriers, including:

      a. Grading;

      b. Filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or state cooperative extension specialist is installed to protect the tree from suffocation;

      c. Temporary or permanent parking;

      d. Storage of debris or materials, including topsoil;

      e. Disposal of hazardous wastes or concrete washout; and

      f. Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.
3. If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or state cooperative extension specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

4. The developer shall coordinate with the utility companies early in the design process to resolve potential conflicts about the placement of utilities and buffer and screening requirements in § 153.063(B)(5). The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two feet directly below the tree roots to minimize root damage.

5. If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the drip line area.

(c) Tree protection zone signs shall be installed on the tree protection barriers visible on all sides of the protection area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language: “TREE PROTECTION ZONE, KEEP OUT” or “TREE SAVE AREA, KEEP OUT”.

(Ord. 2023-07, passed 10-9-2023)

§ 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

(B) The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

(1) Use of buffer strips. Required buffers shall not be disturbed for any reason except for approved driveway openings and other passive or accessory uses compatible with the general separation of land uses and; provided, that the total number of required plantings are still met. Approval from the Town Manager is required prior to initiating any disturbance of the buffer.

(2) Placement of buffer plantings. The exact placement of the required plants shall be the decision of the developer or designer, but shall be reviewed by the Town Manager and approved by the Board of Adjustment. Plants shall be planted in a manner to serve as an effective screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.

(3) Composition of buffer plantings. A buffer consisting of two staggered rows of evergreen shrubs or sheared evergreen trees, planted 48 inches apart (as measured from the central stem) in a 20-foot wide strip shall be installed to screen the nonresidential use from neighboring residential properties. Trees or shrubs shall be between four and five feet high at time of planting. During times of extended dry weather, the applicant may petition the Board of Adjustment to reduce the required size of vegetation to be planted in order to better ensure its survival. It is suggested that a mixture of two to three shrubs selected from the recommended species list be planted to encourage healthier plants.

(4) Coordination with stormwater drainage provisions. If the buffer strip is to be used as part of the area for required stormwater runoff absorption as outlined in Chapter 52 of this code, then the shrubs and trees within the buffer shall be water tolerant.

(5) Coordination with utility easements. In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of division (C) above maybe altered to be only ten feet wide at the discretion of the Board of Adjustment, based on the factors of space, feasibility, and other considerations which may make it difficult to provide a 20-foot buffer.

6. The board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case-by-case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this section. Shrubbery shall be planted on the applicant’s side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.

(Ord. 2023-07, passed 10-9-2023)

§ 153.064 PARKING LOT LANDSCAPING REQUIREMENTS.

Trees and shrubs are required in and around parking lots with more than five spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

(A) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation,
measured from the back of the curb and extending ten feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians, and cyclists entering and leaving commercial properties.

(B) (1) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip ten feet wide shall be established and continuously maintained between the growing strip and parking area(s).

(2) Street trees shall be planted within the landscaped planting strip in accordance with §153.066 and parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards.

(a) Evergreen shrubs shall be planted 36 inches apart as measured from the center and attain a height of at least 48 inches within four years of installation;

(b) There shall be a fence or wall three feet high constructed of the same material as the principal building; or

(c) There is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 36 inches apart.

(3) No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit, or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

(C) (1) (a) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three parking spaces, with some appropriate clustering of trees permitted, and six-foot by 18-foot projecting landscaped islands generally between ten and 12 parking spaces.

(b) Whenever possible, interior parking spaces should have a continuous planter strip six feet wide between rows of parking.

(2) Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one large maturing deciduous tree shall be provided for a parking lot regardless of the number of spaces provided. No parking space shall be located more than 50 feet from the trunk of a large-maturing deciduous tree. When calculating the number of trees required, the applicant shall round up to the nearest whole number.

(D) All landscaped areas shall be bordered by a concrete curb that is at least six inches above the pavement and six inches wide or a granite curb that is at least six inches above the pavement and four inches wide.

(E) To increase the parking lot landscaped area, a maximum of two feet of the parking stall depth may be landscaped with low-growth, hearty materials in lieu of asphalt, allowing a bumper overhang while maintaining the required parking dimensions.

(F) When more than the required number of parking spaces is provided, the applicant shall provide two times the required number of trees for the spaces provided above the ordinance requirement.

(Ord. 2023-07, passed 10-9-2023)

§ 153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES.

(A) All dumpsters, loading docks, outdoor storage areas, or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or buffer strip. Landscaping shall not interfere with the access and operation of any such structure or facility. Trash and storage areas shall be well-maintained, including prompt repair and replacement of damaged gates, fences, and plants.

(B) Openings of trash enclosures shall be oriented away from public view or screened with sturdy gates wide enough to allow easy access for trash collection, where practical. The consolidation of trash areas between businesses and the use of modern disposal techniques is encouraged. All dumpsters shall be located a minimum of 50 feet from a residential dwelling. All unenclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets.

(C) Screen types include:

(1) A continuous hedge of evergreen shrubs planted in a five-foot strip spaced a maximum of 36 inches apart; and

(2) A wall or fence six feet high, with the finished side of the fence or wall facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees and/or shrubs planted in a minimum five-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50% of the fence or wall.

(Ord. 2023-07, passed 10-9-2023)

§ 153.066 STREET TREES.

(A) (1) Street trees are required for all developments meeting the applicability requirements of §153.061(A). Street trees shall be required at the rate of one large-maturing tree (over 35 feet in height) for every 40 linear feet of property abutting a street.
In the event that overhead utility lines are present, then one small-maturing tree (less than 35 feet in height) may be planted for every 30 feet of property abutting a street.

This does not imply that trees must be spaced exactly 30 or 40 feet apart.

The exact placement of the required tree or trees may be established with input from the reviewing boards in order to fit in with sign placement and other building issues.

Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in §53.064(A) and also according to regulations from the State Department of Transportation.

(Ord. 2023-07, passed 10-9-2023)

§ 153.067 CERTIFICATION OF COMPLETION.

(A) Landscaping shall be installed and inspected prior to receiving a certificate of completion. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials. If the season or weather conditions prohibit planting the materials, the developer may provide an irrevocable letter of credit, or other financial surety in an amount equal to 110% of the cost of installing the required landscaping to guarantee the completion of the required planting.

(B) Upon approval of the financial surety, the certificate of completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

(Ord. 2023-07, passed 10-9-2023)

§ 153.068 MAINTENANCE.

(A) The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Failure to maintain or replace dead, damaged, or diseased material or to repair a broken fence or wall shall constitute a zoning violation and shall be subject to the penalty provisions in § 153.999 if not replaced within 30 days of notification.

(B) If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material shall be in compliance with the minimum size, spacing, and quantity standards of the ordinance requirements in effect at the time of project approval.

(Ord. 2023-07, passed 10-9-2023)

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

(A) It is required that all new utility structures, whether they are part of a new dwelling or are being added to an existing dwelling, located out of doors, including, but not limited to, heat pumps, air conditioning units (with the exception of window units), and generators shall be screened on all sides except the side closest to the dwelling. The screening shall consist of evergreen shrubs or trees planted a maximum of 36 inches apart, with a height of 18 to 24 inches at time of planting. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

(B) Electric vehicle (EV) charging stations are hereby included as a utility structure for the purposes of this chapter. The town recommends that EV charging stations be installed inside a garage and out of the public view. However, when this is not possible, the following requirements shall apply.

(1) The EV charging station shall not be located within a front, side, or rear yard setback.

(2) (a) The EV charging station shall be screened from the public road and adjacent properties per requirements in division (A) above. The only exception to this requirement is that screening is not required in a location inhibiting the ability to charge the vehicle per the manufacturer’s recommendation.

(b) A site plan shall be provided to the town prior to installation indicating the location, species, and planting timeline for screening. This site plan shall also include applicable setback lines for the appropriate zoning district and the distance of the proposed EV charging station to each property line.

(3) Upon approval from the town regarding the placement of the EV charging station, the property owner must obtain building inspections approval from Buncombe County for installation. The applicant shall provide all appropriate documentation submitted to Buncombe County, and subsequent approvals, to the town once permitted.

(Ord. 2023-07, passed 10-9-2023)

§ 153.070 PLANT SPECIFICATIONS.

(A) Recommended plant species. Plants may be chosen from the recommended plant list (RPL) available from the town. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may be used following approval from the Board of Adjustment.

(B) Minimum plant size requirements.
(1) Large-maturing deciduous tree. Greater than 35 feet at maturity. Minimum size at planting shall be 12 to 14 feet in height and two inches caliper (diameter);

(2) Small-maturing deciduous tree. Smaller than 35 feet at maturity. The tree shall be at least one and one-half inch caliper and eight to ten feet high at time of planting;

(3) Evergreen tree. Minimum height of eight feet at time of planting; and

(4) Evergreen shrub. Minimum three gallon container or ten-inch root ball with a height of 18 to 24 inches at time of planting.

(C) **Plant standards.**

(1) All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1.

(2) Plants shall be healthy, well-branched, and free of disease and insect infestation.

(Ord. 2023-07, passed 10-9-2023)
Zoning Compliance Application
Town of Biltmore Forest

Name
Keeton Pool

Property Address
332 Vanderbilt Rd

Phone
(828) 450-4257

Email
keetonriverbirch@gmail.com

Parcel ID/PIN Number
964782342000000

ZONING INFORMATION

Current Zoning
R-1

Lot Size
1.55 acres

Proposed Roof Coverage Total
3165 ft²

Proposed Impervious Surface Coverage
450 ft²

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
33'1"

Description of the Proposed Project
New construction project with 3165 square feet of heated space. 2 car garage with driveway from Vanderbilt Rd. Driveway also house a circle in front of house.

Estimated Start Date
4/1/2025

Estimated Completion Date
4/1/2025

Estimated Cost of Project
$1,100,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)
2024_0214 332V PRICING SET DRAFT.pdf
Applicant Signature

Keeton Pool

Date
2/15/2024
Special Use Permit Application
Town of Biltmore Forest

Name
Keeton Pool

Address
21 Deleuil Drive, Asheville, NC 28806

Phone
(828) 450-4257

Email
keetonriverbirch@gmail.com

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

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

Please provide a description of the proposed project:
New construction for single family family home at 332 Vanderbilt. 2625 square feet.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
New construction home with appropriate architectural styling.

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

Signature

Date
2/15/2024

Keeton Pool
THE FOLLOWING APPLIES TO ALL DRAWINGS IN THIS SET
CONTRACTOR TO REVIEW EXISTING FIELD CONDITIONS PRIOR TO WORK START AND DURING PROGRESS. CONTRACTOR TO BRING ANY CONDITIONS THAT DO NOT MATCH DRAWING CONDITIONS IMMEDIATELY TO THE ATTENTION OF THE ARCHITECT/OWNER AND PRIOR TO PROCEEDING W/ WORK.

WRITTEN INFORMATION TAKES PRECEDENT OVER DRAWING LINES. BRING CONFLICTS BETWEEN WRITTEN INFORMATION AND DRAWN LINES TO THE ATTENTION OF THE ARCHITECT IMMEDIATELY.

EXTERIOR AND INTERIOR DIMENSIONS MEASURED FROM OUTSIDE FACE OF STUD AND/OR OUTSIDE FACE OF MASONRY, UNLESS SHOWN OTHERWISE.

NEW WALLS

GENERAL NOTES - PROPOSED

SECOND FLOOR PLAN

PROPOSED FLOOR PLAN - SECOND

PRICING SET - DRAFT

March 04, 2024 - revised

157 S. Lexington Ave - B2
Asheville, NC  28801
828.768.8708
cjemdesign@gmail.com

cJem DESIGNS, PLLC
332 Vanderbilt Road
Biltmore Forest, NC 28803

GREAVES RESIDENCE
THE FOLLOWING APPLIES TO ALL DRAWINGS IN THIS SET
CONTRACTOR TO REVIEW EXISTING FIELD CONDITIONS PRIOR TO WORK START AND DURING PROGRESS. CONTRACTOR TO BRING ANY CONDITIONS THAT DO NOT MATCH DRAWING CONDITIONS IMMEDIATELY TO THE ATTENTION OF THE ARCHITECT/OWNER AND PRIOR TO PROCEEDING W/ WORK.

WRITTEN INFORMATION TAKES PRECEDENT OVER DRAWING LINES. BRING CONFLICTS BETWEEN WRITTEN INFORMATION AND DRAWN LINES TO THE ATTENTION OF THE ARCHITECT IMMEDIATELY.

EXTERIOR AND INTERIOR DIMENSIONS MEASURED FROM OUTSIDE FACE OF STUD AND/OR OUTSIDE FACE OF MASONRY, UNLESS SHOWN OTHERWISE.

NEW WALLS

GENERAL NOTES - PROPOSED

ROOF PLAN

PROPOSED FLOOR PLAN - ROOF

PRICING SET - DRAFT

March 04, 2024 - revised
1 | SOUTH ELEVATION

2 | NORTH ELEVATION

DIMENSIONS PROVIDED FOR GENERAL REFERENCE ONLY, CONTRACTOR TO VERIFY CONDITIONS IN FIELD.

1. INSTALL ALL SIDING AND ROOFING MATERIALS PER MANUFACTURERS RECOMMENDATIONS
2. INSTALL ALL SIDING OVER TYVEK HOUSE WRAP
3. INSTALL ROOFING OVER TITANIUM ROOF UNDERLAYMENT
4. ALL EXTERIOR TRIM, INCLUDING DOOR AND WINDOW TRIM SHALL BE "TRIM, SMOOTH SIDE OUT,
5. PAINTED
6. REFER TO FLOOR PLANS FOR LOCATIONS OF DOORS AND WINDOWS, TYPICAL.
7. REFER TO THE SCHEDULES ON SHEET A300 FOR DOOR AND WINDOW TYPES.
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<th>Quantity</th>
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<tr>
<td>Ginko</td>
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Unprotected Inside Setback:
- Hickory: 10" x x

Unprotected Outside Setback:
- Chestnut: 16" x 12" River Birch
- 12" x 2" River Birch
- 10" x 2" River Birch

Protected Outside Setback:
- Poplar: 24" x 2 3" Chestnut
- 10" x 2" River Birch
- 12" x 2" River Birch
- 20" x 2" River Birch
- 20" x 2" River Birch
- 20" x 2" River Birch

Screening:
- 5 Red Bud
- 6 Dogwood
- 5 Snowwood
- 5 American Holly
- 12" x 2" River Birch
- 12" x 2" River Birch
- 10" x 2" River Birch
- Yellow Pine: 10" x x
- Red Oak: 10" x x
- 10" x x
- Chestnut: 16" x 12" River Birch
- 20" x 2" River Birch
- 20" x 2" River Birch
153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.
(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

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

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

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

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

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

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

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.
CASE 8  
Property Address: 430 Vanderbilt Road  
Property Owner: Thomas Bolton  
Request: Special Use Permit Request For A Wall And Accent Boulders In The Front Yard; Variance Request to Encroach Into The Front Setback

Background

The property owners are applying for a special use permit and variance for a low screen wall at the existing front yard parking area. The wall will be 18” high and will have a small section within the front setback. As part of the project, they would like to add accent boulders near the drive entries but outside of the Town’s right of way. There will be 2-3 boulders at +/- 2’ in size with a total of 4 locations.

Special Use Permit

The retaining wall and boulders would be considered accessory structures per the Town’s ordinance which requires a special use permit and Board approval. Section 153.029 refers to Accessory structures and states walls shall be regulated by section 153.049 of the ordinance. Section 153.049 (attached) of the Town’s Zoning Ordinance regulates fences, gates, and walls. Section 153.008 (attached) gives the specific standards and requirements for special uses.

Variance Request

The wall as proposed, does not meet the ordinance requirements, and would require a variance from the Board due to the wall being located in the front yard and a small section within the front setback. The parking area is existing and with the wall following the parking area there would be approximately 3’ protrusion into the front setback at the deepest point of an approximate 20’ section of the proposed wall. The accent boulders would also be within the front setback, just outside of the right of way next to each entrance of the driveway therefore requiring a variance.
The Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this section.

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

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

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

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

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

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

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

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

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

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

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

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

(D) Acceptable materials and standards for fences and walls/maintenance. The following materials and standards for fences and walls shall be deemed acceptable.
(1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.

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

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

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

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

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

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

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
Thomas Bolton

Property Address
430 Vanderbilt Rd. Asheville, NC 28803

Phone
(828) 274-1744

Email
tcbolton1942@gmail.com

Parcel ID/PIN Number

ZONING INFORMATION

Current Zoning
R-1

Lot Size
1.84 acres

Proposed Roof Coverage Total
No change

Proposed Impervious Surface Coverage
Adding 485 sq ft to the existing 9365 sq ft - ends up being 12% total impervious surface coverage

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
31 ft

Description of the Proposed Project
Replacing and adding plantings; paver walkway crossing existing parking area, and low wall (18" height) to screen parking and mitigate erosion.

Estimated Start Date
3/15/2024

Estimated Completion Date
3/29/2024

Estimated Cost of Project
$49,351.04

Supporting Documentation (Site Plan, Drawings, Other Information)
Bolton, T._Landscape Design-24x36_Screened Porch & Pond Area.pdf
Bolton, T._Landscape Design-24x36_House Front - Front Lawn.pdf
Applicant Signature

Date
2/5/2024

Thomas C. Bolton
Special Use Permit Application
Town of Biltmore Forest

Name
Thomas Bolton

Address
430 VANDERBILT RD

Phone
(828) 747-2549

Email
tcbolton1942@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:
Replacing and adding plantings; paver walkway crossing existing parking area and low wall (18" height) to screen parking and mitigate erosion.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
New plantings will enhance/screen views from Vanderbilt Rd.; low wall will help screen vehicles from existing parking area.

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

Signature

Date
2/5/2024

Thomas C. Bolton
VARIANCE APPLICATION

Town of Biltmore Forest

Name
Thomas Bolton

Address
430 VANDERBILT RD

Phone
(828) 747-2549

Email
tcbolton1942@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?
Enhance landscaping with low screen wall (18" height) at existing front yard parking. Paver walkway across existing parking. Accent boulders to delineate drive entries.

What does the ordinance require?
No fencing / walls in front yard; observe setbacks.

BOARD OF ADJUSTMENT: N.C.G.S. 160A-388(D) requires that the Board of Adjustment shall vary the provisions of the Zoning Ordinance only upon a showing of ALL the items below. The Board of Adjustment must follow strict procedure and all determinations must be decided by a concurring vote of four-fifths of the members of the Board. It is important to provide detailed supporting documentation for the Board of Adjustment to review. If necessary, additional sheets may be attached to this application.

REQUIRED FINDINGS: Please provide a thorough response to each.

Unnecessary hardship would result from the strict application of the ordinance.
Owner experiencing some erosion damage along existing parking area.

The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
The existing parking area is decades old and some settling has occurred.

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

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.
Desired enhancements are intended to screen views to and from existing parking area, mitigate erosion and paver walkway improves pedestrian crossing the existing parking area.

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

Signature

Date
2/5/2024

Thomas C. Bolton
CONCEPT IMAGES: TUDOR ESTATE STYLES

SCALE: 1/8" = 1'-0"

BOLTON RESIDENCE

SCALE: 1/8" = 1'-0"
LANDSCAPE / PROJECT NOTES

- Coordinate w/ owner to mark all existing utilities prior to beginning new landscape work.
- Are there any drainage issues to address? Lighting?
- Option: Verify any existing drip irrigation lines/mitters. If so, owner to consider providing additional emitters (zones) as needed for new plantings—OR new drip irrigation system if Tier.
- Option: Mulch for all new or modified plant beds, to be 3-4" depth of hardwood mulch (+/- S.F., verify...).

EXISTING VIEW OF LEFT SIDE OF HOUSE & POND AREA:

BELOW NEEDS TO BE FOLDED IN NEW PLANTS & SCREENED PORCH:

EXISTING LARGE SHRUBS:

EXISTING SMALL SUGAR MAPLE:

EXISTING PLANTINGS:

EXISTING POND:

EXISTING PATIO:

EXISTING wall:

EXISTING retaining wall:

SEE SHEET L-1 FOR FRONT YARD PLAN..., AND SHEET L-3 FOR NOTES, SCHEDULE & ADDITIONAL IMAGES.
CASE 9  
Property Address: 1345 Hendersonville Rd  
Property Owner: Carolina Day School Inc  
Request: Special Use request for a New Parking Area, a New Student Plaza with Solar panels, and a New Amphitheater. 

Background  
The applicant requests permission from the Board of Adjustment to construct a new parking lot with 150 spaces. Also, as part of the request is a new student plaza with solar panels and an amphitheater in front of the existing upper school. This request was tabled during the last meeting. 

Project Description  
The proposed parking area would be located on the northeast portion of the property facing Hendersonville Rd. The proposed new student plaza and amphitheater are located at the existing upper school and beside the upper school respectively. 

Special Use Request  
The Town’s Zoning Ordinance regulates special uses in section 153.008. Section 153.008(C) (2)(c) (i) allows a waiver of “The normal minimum lot size, setbacks, and frontage requirements are hereby waved for the planned unit development: provided, that the spirit and intent of this section are complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.” 

Property Information  
The property is split zoned, with the portion fronting Hendersonville Road being in the R-4 Zoning District. The bulk of the property is in the R-2 Zoning district. The setbacks are the same for each district: Front 50 ft, Side 15 ft, and Rear 20 ft. The proposed new parking area will be located within the front setback by approximately 20 feet.
Special Use Permit Application
Town of Biltmore Forest

Name
Steven Lee Johnson

Address
1345 Hendersonville Road

Phone       Email
(828) 231-9988  sljohnson@siteworkstudios.com

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

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

Please provide a description of the proposed project:
Carolina Day School- Proposed construction on new parking facility (150 spaces), new plaza and amphitheater in front of existing Upper School. The amphitheater requires a retaining wall that ties into an existing wall.

Explain why the project would not adversely affect the public interest of those living in the neighborhood:
Parking Lot- landscape requirements and reforestation requirements being met. Cut-off light fixtures proposed. Upper School Plaza- enhances existing outdoor space and encourages student interaction outdoors. The plaza improvements are not visible from adjacent properties. The amphitheater is oriented towards the center of campus and away from adjacent properties.

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

Signature  Date

1/26/2024

Steven Lee Johnson for Carolina Day School
## Zoning Compliance Application

**Town of Biltmore Forest**

### Name
Steven Lee Johnson

### Property Address
1345 Hendersonville Road

### Phone
(828) 231-9988

### Email
sljohnson@siteworkstudios.com

### Parcel ID/PIN Number
964694403800000

### ZONING INFORMATION

<table>
<thead>
<tr>
<th>Current Zoning</th>
<th>Lot Size</th>
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<tr>
<td>R-2</td>
<td>29 ac</td>
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<table>
<thead>
<tr>
<th>Proposed Roof Coverage Total</th>
<th>Proposed Impervious Surface Coverage</th>
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<tbody>
<tr>
<td>NA</td>
<td>NA</td>
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</table>

<table>
<thead>
<tr>
<th>Front Yard Setback</th>
<th>Side Yard Setback</th>
</tr>
</thead>
<tbody>
<tr>
<td>50 feet (R-2, R-3, R-4, and R-5 Districts)</td>
<td>15 feet (R-2, R-3, R-4, and R-5 Districts)</td>
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<table>
<thead>
<tr>
<th>Rear Yard Setback</th>
<th>Building Height</th>
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<tbody>
<tr>
<td>25 feet (R-1 District)</td>
<td>NA</td>
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### Description of the Proposed Project

### Estimated Start Date
6/5/2024

### Estimated Completion Date
9/6/2024

### Estimated Cost of Project
$5,000,000.00

### Supporting Documentation (Site Plan, Drawings, Other Information)
CDS BOA Submittal.pdf
PROPOSED PARKING LOT

PARKING COUNT: 150 SPACES

PLANTING REQUIRED:

PARKING LOT TREES: 50 TREES
STREET TREES: 10 TREES
REPLACEMENT TREES: 112 TREES
LANDSCAPE BUFFER: 56 SHRUBS

PLANTING PROVIDED:

PARKING LOT TREES: 50 TREES
STREET TREES: 10 TREES
REPLACEMENT TREES: 112 TREES
LANDSCAPE BUFFER: 56 SHRUBS

TOTAL TREES PROVIDED: 172
TOTAL SHRUBS PROVIDED: 56
EXISTING TO REMAIN
STEEL FRAMED CANOPY W/ SOLAR PV PANEL ROOF

BASIS OF DESIGN: LUMOS SOLAR VISION MODULE SYSTEM
UPPER SCHOOL IMPROVEMENTS

STEELE COLUMNS
GALVANIZED, TYP

STEEL BEAMS,
GALVANIZED, TYP

PHOTOVOLTAIC PANELS W/
INTEGRAL FRAME SYSTEM

BASIS OF DESIGN - LUMOS
VISION MODULE SYSTEM

METAL STUD WALL
W/ FIBER CEMENT RAINSCREEN
& STOREFRONT WINDOWS
W/ OPERABLE CASEMENTS

SEE PLAN FOR ALL STOREFRONT LOCATIONS

NOTES:
1) ALL DRAWING ELEMENTS IN HALFTONE (GRAY) ARE EXISTING TO REMAIN.
2) EXISTING EXTERIOR WALLS AT SOUTH ELEVATION ARE 6" METAL STUD, 1/2" SHEATHING AND 1" EIFS SIDING. BOTH LEVELS HAVE EIFS SILL. LEVEL ONE HAS NATURAL STONE BASE.
EXISTING CONDITIONS - PARKING LOT

DATE: 01.31.2024

SHEET TITLE:

REMARKS

L-101

SHEET NO.

0
10'
20'
40'
60'
80'

LEGEND

TREE TO BE REMOVED OUTSIDE SETBACK

TREE TO BE REMOVED INSIDE SETBACK

EXISTING TREE TO REMAIN

THIS DOCUMENT IS THE PROPERTY OF SITEWORK STUDIOS, PLLC. IT IS TO BE USED FOR THIS SPECIFIC PROJECT ONLY AND IS NOT TO BE USED OTHERWISE WITHOUT OBTAINING WRITTEN CONSENT FROM SITEWORK STUDIOS, PLLC.
PROPOSED PARKING LOT

PARKING COUNT: 150 SPACES

PLANTING REQUIRED:

PARKING LOT TREES: 50 TREES
STREET TREES: 10 TREES
REPLACEMENT TREES: 113 TREES
LANDSCAPE BUFFER: 56 SHRUBS

PLANTING PROVIDED:

PARKING LOT TREES: 50 TREES
STREET TREES: 10 TREES
REPLACEMENT TREES: 113 TREES
LANDSCAPE BUFFER: 56 SHRUBS

TOTAL TREES PROVIDED: 173
TOTAL SHRUBS PROVIDED: 56

EXISTING IMPERVIOUS AREA: 5,400 SF
PROPOSED IMPERVIOUS AREA: 70,222 SF

PLANT SCHEDULE

<table>
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<tr>
<th>SYMBOL</th>
<th>QTY</th>
<th>BOTANICAL NAME</th>
<th>COMMON NAME</th>
<th>CONT</th>
<th>CAL</th>
<th>SPACING</th>
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<tbody>
<tr>
<td>1</td>
<td>12</td>
<td>Acer rubrum</td>
<td>Red Maple</td>
<td>B &amp; B</td>
<td>2&quot;</td>
<td>Cal</td>
</tr>
<tr>
<td>2</td>
<td>16</td>
<td>Betula nigra</td>
<td>River Birch</td>
<td>B &amp; B</td>
<td>2&quot;</td>
<td>Cal</td>
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<tr>
<td>3</td>
<td>14</td>
<td>Cercis canadensis</td>
<td>Eastern Redbud Multi-trunk</td>
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<td>2&quot;</td>
<td>Cal</td>
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<td>4</td>
<td>18</td>
<td>Chionanthus virginicus</td>
<td>White Fringetree</td>
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<td>5</td>
<td>17</td>
<td>Cornus kousa</td>
<td>Kousa Dogwood</td>
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<tr>
<td>6</td>
<td>3</td>
<td>Cornus florida</td>
<td>Flowering Dogwood</td>
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<tr>
<td>7</td>
<td>7</td>
<td>Juniperus virginiana</td>
<td>Eastern Redcedar</td>
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<td>MIN</td>
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<tr>
<td>8</td>
<td>12</td>
<td>Liriodendron tulipifera</td>
<td>Tulip Poplar</td>
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<td>9</td>
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<td>Magnolia x soulangeana</td>
<td>Saucer Magnolia</td>
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<td>7</td>
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<td>Bald Cypress</td>
<td>B &amp; B</td>
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<td>Cal</td>
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<tr>
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<td>18</td>
<td>Ilex cornuta 'Dwarf Burford'</td>
<td>Dwarf Burford Holly</td>
<td>B &amp; B</td>
<td>4<code>-5</code> HT</td>
<td>48&quot; o.c.</td>
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<td>20</td>
<td>Ilex glabra</td>
<td>Inkberry Holly</td>
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<td>4<code>-5</code> HT</td>
<td>48&quot; o.c.</td>
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<tr>
<td>14</td>
<td>18</td>
<td>Viburnum x pragense</td>
<td>Prague Viburnum</td>
<td>B &amp; B</td>
<td>4<code>-5</code> HT</td>
<td>48&quot; o.c.</td>
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## Carolina Day School Parking Lot Replacement Trees

<table>
<thead>
<tr>
<th>TBR Inside Setback</th>
<th>Size</th>
<th>Type</th>
<th>Replacement Qty</th>
<th>Replacement Size</th>
<th># of 2&quot; Cal.</th>
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<td>4304 13&quot;</td>
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<tr>
<td>4305 18&quot;</td>
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<td>Replacement Size</td>
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<td>4379 29&quot;</td>
<td>Maple</td>
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<td>4378 50&quot;</td>
<td>Buckeye</td>
<td>2</td>
<td>4&quot;</td>
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Total Replacement Trees: 113 85
Parking Lot Trees (150 Spaces): 50 50
Street Trees (39 LF): 10 10

Total Trees: 173 145
3 Gal. 18-24" ht. at planting

Landscape buffer shrubs (230 LF): 56
Parking Lot Screening Shrubs:
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