



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: April 3, 2024  
Re: **Board of Adjustment Meeting – April 15, 2024**

**Applicants:**

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

Members of the Board of Adjustment & staff will conduct a site visit prior to the meeting. Site visit times listed are approximate.

**Neighbors:**

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

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

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

Additional information regarding the meeting will be provided on the Town's website no later than April 10, 2024.

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

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, April 15, 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 March 18, 2024 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 19 Hemlock Road – Special Use Permit request for Accessory Structure (Landscaping Wall) within Rear Yard**  
*Site Visit – 2:45pm*

**Case 2: 430 Vanderbilt Road – Special Use Permit request for Retaining Wall along Existing Drive and Boulder Installation; Variance Request for Construction within Front Yard**  
*Site Visit – 3:00pm*

**Case 3: 8 White Oak Road – Special Use Permit request for retaining walls, and Variance request for intrusion into side and rear yard setbacks and additional wall location within front yard.**  
*Site Visit – 3:15pm*

5. Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT  
MEETING HELD MONDAY, MARCH 18, 2024

The Board of Adjustment met at 4:00 p.m. on Monday, March 18, 2024.

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

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

Chairman Goosmann swore in the following:

Mr. Tony Williams

Mr. Jonathan Kanipe

Mr. Jim Hughes

Ms. Rebecca Lester

Ms. Kirby Finger

Mr. T.J. Finger

Mr. Tom Finger

Mrs. Kay Finger

Mr. Drew Stephens

Ms. Terry Long

Mr. Jason McElreath

Ms. Daniela Neal

Mr. Matt Fusco

Mr. David Varbel

Ms. Jessica Larsen

Mr. Keeton Pool

Mr. Charles Vasey

Mr. Malcolm Collins

Ms. Christy Greaves

Ms. Emily Roberts

Mr. Brett Fuhrman

Ms. Wendy Legerton

Mr. Steven Lee Johnson

Ms. Penny Branch

Ms. Jackie Berry

Ms. Brenda Lily

Ms. Mary Goodkind

Mr. Clay Mooney

A motion was made by Mr. Robert Chandler to approve the minutes as amended from February 19, 2024. Ms. Martha Barnes seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The first matter is for a re-hearing at 120 Stuyvesant Road for a Special Use Permit for an accessory structure (basketball court) and a variance for an accessory structure (concrete mounds) in the front yard. Mr. Tony Williams shepherded the matter and said this is a rehearing from last month. There was a procedural issue last month, requiring it to be reheard. The proposed sport court would be 30'x65' feet long. It would be located on the flat area on the south side of the home. It is in compliance with all of the setbacks. Six of the twenty-inch concrete balls are within the front setback along the driveway but out of the right of way.

Mr. T.J. Finger said spheres match the house with the concrete structure. The right and left side of the driveway dips off and prevents people from moving off the driveway, so it is helpful to have the spheres there which is the hardship.

Mr. Williams restated the facts and there are six spheres that are within the setback and two are not. Ms. Barnes said for a variance there are some things that need to be true. Ms. Barnes said we are trying to be careful with front yards because we are not allowed to have fences, spheres, and statues. Ms. Barnes felt like it didn't meet the hardship requirements. Mr. Clarke said to approve a variance, four "aye" votes are needed, and Ms. Kieffer is not present at this meeting today. Mr. Finger said he will remove this item this from the request today.

Mr. Williams said the Fingers are also applying for a 30' x 65' sport court. It is located on the South side of the home and does meet all setback requirements.

Mr. Jim Hughes lives at 122 Stuyvesant. He does not want the basketball court next to his window. Mr. Finger said they have planted trees on the side of the house. Ms. Finger said there is a row of trees that were planted, and they are established trees. Mr. Tom Finger said Biltmore

Forest is zoned residential and not commercial so this basketball court should be taken into consideration.

Ms. Rebecca Lester said she objects to the court. Ms. Lester lives at 3 Stuyvesant Crescent. Ms. Lester works from home, and she said she is concerned about balls being bounced in the evening hours because she has two young children. Ms. Lester also asked about lighting the area. Mr. Finger said the light will be facing down. Mr. Finger said he would work with them regarding lighting. Ms. Lester asked if the court could be put at Stuyvesant and Stuyvesant Crescent. Mr. Finger said he doesn't want it on the other side because he was trying to appease his neighbor, Chuck.

Mr. Clarke said the town has a noise ordinance which is neighbor complaint driven. Ms. Lester said she objects to this basketball court. Mr. Finger said he would be willing to add additional buffering to add privacy and buffer more noise.

Ms. Holly Towe asked about the noise ordinance. Mr. Goosmann said it is complaint driven and can be addressed to the police department. Mr. Kanipe said it is "sounds impacting residential life". The construction hours are 7:30am-6pm. If we get calls during the day, we can address this but if it is after hours, the police can address it. Mr. Clarke said they would need to work with Town staff regarding lighting.

Mrs. Kay Finger said Carolina Day School has noise and there is a train that makes noise. There are neighbors that have basketball courts throughout Town especially on Stuyvesant Crescent. Mrs. Finger said it will not be used every day and it is not fair to deprive children of a basketball court.

Mr. Williams said the Fingers are proposing a 30' x 65' sport court and it is complaint within the setbacks. It will be located on the South side of the home.

#### DELIBERATION AND DETERMINATION:

Mr. Chandler moved that a Special Use Permit as requested be granted to T.J. and Kirby Finger of 120 Stuyvesant Road and the facts as recited by Tony Williams be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have objected. He further moved the Board define that granting this Special Use Permit (a) would not

materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town. The motion was seconded by Ms. Rhoda Groce. The motion was unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request for accessory structures within the rear yard at 11 Forest Road. Ms. Terry Long is the landscape designer for Adam and Indigo Voron at 11 Forest Road. Mr. Williams said the homeowners are requesting permission to construct an outdoor fireplace along with a patio and walkway in the rear yard. The proposed patio is circular and measures fourteen feet across with a metal fire pit in the center. It is within the setbacks. They would also like to add two wooden arbors. One would be located at the entrance to the garden area at the garage. The other is located at the entrance to the backyard. They have an open height of 7'6" and a width of 4'. Ms. Long explained the plans. There is an existing garden which will be removed. The existing fence will be taken out and stone steps and stone pavers will be put in. There will also be a free-standing metal fire pit. It will not be visible to the neighbors. There will be plenty of landscaping around the house providing a lot of texture and color.

Ms. Barnes asked about the fence which was already approved at a prior meeting.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts, and the owners are proposing an outdoor fireplace, patio, and walkway at 11 Forest Road within the rear yard. There will be a circular patio which is fourteen feet across with a metal fire pit in the center. This is within the setbacks. They would also like to add two wooden arbors. They all meet the requirements of the Town.

Ms. Groce made a motion to approve a Special Use Permit for Adam Voron at 11 Forest Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no 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 motion was seconded by Ms. Barnes and unanimously approved.

HEARING (Evidentiary):

The third matter is for a Special Use Permit request for replacement of an existing fence at 11 Hilltop Road. Mr. Williams said they will remove the existing wood and chain link fence with a black metal fence. Mr. Jason McElreath is representing the homeowner. They are removing the outdated chain link fence and did a redeck and rerail on their deck. They are planning on matching the rails with the fence.

Mr. Drew Stephens said he supports this project.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said Mr. Tom Moran of 11 Hilltop Road is requesting to replace an existing chain link and wooden fence with black metal fencing that does meet the requirements for Special Use for the Town.

Ms. Martha Barnes moved that a Special Use Permit as requested be granted to Mr. Tom Moran of 11 Hilltop Road and the facts as recited by Tony Williams and his summation be

accepted as findings and facts to support this grant. The Board has inspected this site, and no 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 motion was seconded by Ms. Rhoda Groce and unanimously approved.

#### HEARING (Evidentiary):

The fourth matter is for a Special Use Permit request for driveway columns and entrance walls at 15 Eastwood Road. Ms. Daniela Neal represented the homeowners. Mr. Williams said they are proposing two driveway columns and two low site walls at each of the entrances and exit of the driveway. Two of those structures will be 38" x 38" x 90" tall. The other two are 2' or below. The structures will be set seven feet from the edge of the pavement.

Ms. Neal said the homeowners would also like to add a mailbox integrated into one of the piers which is not part of the original proposal. The height of the mailbox would be 5' 4.25".

#### DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 15 Eastwood Road are proposing the installation of two driveway columns and two low site walls, one at each entrance of the driveway. Adding to this case not originally in the plan is a mailbox on the rear side of one of those. They will be seven feet from the edge of the pavement, 38" x 38" x 90" for two and the two site walls are 2' or less. Mr. Chandler asked what the purpose of the site walls are. Ms. Neal said the purpose is to offer continuity of the pillars on the opposite side of the drive and to also have small integrated lights to light the pathway entry and exit for the homeowners. Mr.



Chandler asked if this is common. Ms. Neal said she can't speak to what is common. Ms. Neal said she has seen other people do this.

Mr. Chandler moved that a Special Use Permit be granted to Eliza Dale of 15 Eastwood Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have objected. He further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town. The motion was seconded by Ms. Barnes and she also added it is for driveway columns and two driveway entrance walls or markings of the driveway. The motion was unanimously approved.

HEARING (Evidentiary):

The fifth matter is for a Special Use Permit request for an accessory structure (fire pit) installation within the rear yard and replacement of portions of an existing fence at 19 East Forest Road. Mr. Williams said they are also looking to replace some of their wooden fence along with some chain link fence. Also, a section of new fencing. All the fencing and project proposed is within the setbacks.

Ms. Barnes asked if any parts of the fence are visible from the road. Mr. Fusco showed the Board the site plans. Ms. Barnes asked if they would be willing to buffer additionally. Mr. Fusco said if visibility is an issue, the homeowner would probably entertain this.

### DELIBERATION AND DETERMINATION:

Mr. Williams said the homeowners at 19 East Forest Road would like to construct an outdoor fireplace with a patio in the rear yard. They are also replacing some additional wooden and chain link fencing as well. They will also be adding a new section of fencing. This project is all within the setbacks. Mr. Fusco said he would discuss with the homeowner to see if they would be willing to add additional buffering.

Ms. Groce moved that a Special Use Permit be granted to Dennis and Wendy Thies at 19 East Forest Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no 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 motion was seconded by Ms. Barnes and Ms. Barnes also added it's for driveway columns and two driveway entrance walls or markings of the driveway. The motion was unanimously approved.

Mr. Robert Chandler seconded the motion and was unanimously approved.

### HEARING (Evidentiary):

The sixth matter is for a Special Use Permit request for an accessory building within the rear yard at 44 Forest Road. Mr. Williams said the homeowners would like to build a detached accessory building in the rear yard. The structure is 12' x 12'. It will be located twenty-three feet off the side property line and twenty-seven feet off the rear property line. This meets the

requirements for this district. It is also in line with the shed that adjoins their neighbor that is also screened from the view as well.

Mr. Varbel said it is a small garden shed and the neighbors support this project. It will be styled like the house. It is located behind a couple of trees and existing bushes already there.

#### DELIBERATION AND DETERMINATION:

Mr. Williams said the owners at 44 Forest Road are seeking permission to install a detached accessory building that is 12' x 12' and it is within the rear yard. Mr. Varbel said he would be happy to provide additional screening if necessary.

Ms. Martha Barnes made a motion to approve a Special Use Permit for Mr. David Varbel at 44 Forest Road for an accessory building and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no 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 motion was seconded by Mr. Robert Chandler and unanimously approved.

#### HEARING (Evidentiary):

The seventh matter is for approval for new construction of a single-family home and associated tree removal and landscaping plans at 332 Vanderbilt Road. Mr. Williams said it would be a height of more than twenty-five feet which requires adjusted setbacks. It appears to meet those requirements set forth in the ordinance. They are also proposing removing twenty-one

protected trees which would need approval from the Board. The Town Arborist, Mike Dale has reviewed this plan and approved this plan.

Mr. Chandler asked if the landscaping plan meets the requirements. Mr. Williams said yes. Ms. Barnes asked about protected trees and replacing them. Mr. Kanipe said the replacement plan follows the Town codes.

Mr. Malcolm Collins, a neighboring property owner asked about the landscaping plan and the drainage issues. Mr. Vasey is worried about the water going down the driveway and that it may affect his property. He asked if there is a plan to keep it contained. They have put in a great deal of effort to slow the water down when it rains heavily, and he would like to see something put in to prevent the water from flowing down.

Mr. Charles Vasey, a neighboring property owner, is concerned about the conflict with the current survey and the property line between him and 332 Vanderbilt. He is also concerned about the trees being taken down. The landscaping plan was explained to him. Mr. Vasey is still concerned about the survey and property line.

Ms. Christy Greaves said she and her husband are building the house on this lot. This lot was subdivided, and she doesn't think it will be a big issue for Charles Vasey. There will be a permeable surface for the driveway so the water will drain. They want to keep as many trees as possible. They will also probably plant more trees and are nature people.

Twenty-one trees will be removed. These trees will be replaced according to the landscaping plan.

#### DELIBERATION AND DETERMINATION:

Mr. Williams said the property owners at 332 Vanderbilt Road are proposing construction of a new home and they are also proposing removing twenty-one protected trees and the replacement per their landscaping plan that was submitted.

Mr. Chandler moved that a Special Use permit be granted to 332 Vanderbilt Road and the facts and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property

owners have objected. He further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Rhoda Groce seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The eighth matter is for a Special Use Permit request for a retaining wall along an existing drive and boulder installation. A variance is also being requested for construction within the front yard at 430 Vanderbilt Road.

DELIBERATION AND DETERMINATION:

There was no one present for this matter, so this was tabled until next month's Board of Adjustment meeting.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request as a planned unit development for a new parking lot, new plaza, and new amphitheater at 1345 Hendersonville Road which is Carolina Day School. Mr. Chandler said he was on the board previously at Carolina Day School. Ms. Groce said she was also on the Board and so was Chairman Goosmann. Mr. Clarke said it is not a conflict due to not having financial interest in Carolina Day School.

Mr. Williams said there will be 150 new parking spaces, a student plaza, solar panels, and an amphitheater in front of the existing upper school.

Mr. Brett Fuhrman thanked the Board for having them and last week he was able to secure a full-time director of operations position and this person will be able to reach out to all the neighbors in case any issues arise.

Mr. Steven Lee Johnson said they reevaluated the existing tree situation. They also established tree preservation zones as shown in the plans. There were concerns about covered and uncovered spaces. The amphitheater plans were shown. The placement of it will be in the central part of the campus.

Also, the perimeter road is being proposed as a limited use road. They will move the gate past the parking lot or create a turnaround before one gets to the parking lot.

Ms. Jackie Berry said the same rules need to apply to Carolina Day School as the rest of Biltmore Forest. This will not be aesthetically pleasing to her. She also doesn't want to see the trees cut down and she doesn't want a parking lot in the back of her home.

Mr. Clay Mooney discussed the landscaping plan with Mr. Steven Lee Johnson and made other suggestions as to what should be in the plan. Mr. Johnson said they can reevaluate the plan and see if additional shrubs are needed but emphasized this part of the plan is significantly lower than the street so shrubs wouldn't be noticed. The deciduous shade trees could easily be large evergreens which would include Norway spruce. Those adjustments suggested by Mr. Mooney were taken into consideration by Mr. Johnson. Mr. Johnson will update the plan and share it with Mr. Mooney. Mr. Clarke said the Board can accept a Special Use Permit with conditions and these should comply what the ordinance requires for parking, and they could also include more specific conditions that involve a mix of evergreens and other trees as opposed to shrubbery along Hendersonville Road.

The lighting for the amphitheater will not be allowed to spill over into the parking lot so there shouldn't be lighting issues for homeowners. Ms. Penny Branch asked if there would be screening for the lighting. Ms. Legerton said these lights meet the requirements of the proposed ordinance. Mr. Johnson said the tree ordinance is serving neighboring property owners very well and this will be very well screened and there will be large deciduous shade trees around the lights. The plan will be met and exceeded.

Ms. Brenda Lily who lives on Ridgefield said this plan does concern her and she wouldn't want a parking lot outside her house and feels like Carolina Day School isn't addressing the concerns of neighboring property owners.

Mr. Johnson showed the parking lot and said they feel like the concerns have been addressed and they are doing what they can do to address concerns and listening to neighbors.

Ms. Mary Goodkind said she also lives on Ridgefield. She is confused about the access road, and everyone would be guided to the light intersection.

Mr. Fuhrman said it will be a right in only and no left turns. The plan remains the same and nothing has changed.

Mr. Kanipe said this is not a Town or State Road, it is in fact a private road. The Town cannot enforce anything about this.

Mr. Drew Stephens said he would like to see an internal audit for noise coming from the amphitheater. He said it looks like a beautiful design. Ms. Legerton said there will be plenty of buffering. Mr. Stephens said he wants to make sure everyone does their research.

#### DELIBERATION AND DETERMINATION:

Mr. Williams said Carolina Day School at 1345 Hendersonville Road is requesting permission from the Board of Adjustment to construct a new parking lot with 150 spaces. Also, a new student plaza with solar panels, and an amphitheater in front of the existing upper school. Mr. Johnson also said adjustments will be made to the landscape plan to indicate the use of more evergreens and that be a document that be reviewed by the concerned neighboring property owner, Clay Mooney, as well as staff level review for compliance.

Further, she moved that by granting this variance further satisfies the applicable Sections of 153.110(D) and paragraphs one through four and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured,

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

Ms. Martha Barnes moved that a Special Use Permit as requested be granted to Carolina Day of 1345 Hendersonville Road for a new parking area (parking ordinance), a student plaza with solar panels, a new amphitheater, and updated landscaping plan and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

The motion was seconded by Ms. Rhoda Groce. The motion was unanimously approved.

The meeting was adjourned at 7:14 pm.

The next meeting is scheduled for Monday, April 15, 2024 at 4:00pm.

ATTEST:

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Greg Goosmann

Chairman

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Laura Jacobs

Town Clerk





## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

April 15, 2024

#### CASE 1

**Property Address:** 19 Hemlock Rd

**Property Owner:** Kerney McNeil

**Request:** Special Use Permit request for Accessory Structure

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#### Background

The property owners request permission to construct a stone landscaping wall for a new garden. The proposed wall would be in the rear of the home near the garage and parking area and complies with all setbacks. The dimensions of the stone wall would be 60 linear feet and 30 inches high.

#### Special Use Permit

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

#### **153.029 ACCESSORY STRUCTURES AND BUILDINGS.**

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;

(d) The accessory building must be screened by vegetation or other buffer as set forth in § [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.

### **§ 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)

[Home](#) > [Departments](#) > [Planning & Zoning](#) >

# Zoning Compliance

## Zoning Compliance Application

Town of Biltmore Forest

### Name

kerney

McNeil

### Property Address

19 Hemlock Road

### Phone

(828) 231-6400

### Email

kmcneil501@gmail.com

### Parcel ID/PIN Number

964661366800000

ZONING INFORMATION

**Current Zoning \***

R-1  R-2  R-3  R-4  R-5  P-S

**Lot Size \***

1.62 acres

**Proposed Roof Coverage Total \***

0

*Must not exceed maximum coverage allowed*

**Proposed Impervious Surface Coverage \***

0

*Must not exceed maximum coverage allowed*

**Front Yard Setback \***

NA



**Side Yard Setback \***

40' to set back



**Rear Yard Setback \***

37' to set back



**Building Height \***

**Description of the Proposed Project \***

Construct 60 LF dry stack stone wall to create raised garden adjacent to garage parking  
wall is 30" tall at highest point

**Estimated Start Date \***

3/25/2024



**Estimated Completion Date \***

4/15/2024



**Estimated Cost of Project \***

\$20,000.00

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

Upload

or drag files here.

Applicant Signature \*

Date \*

⊗ Kerney McNe

3/4/2024



draw type

Submit

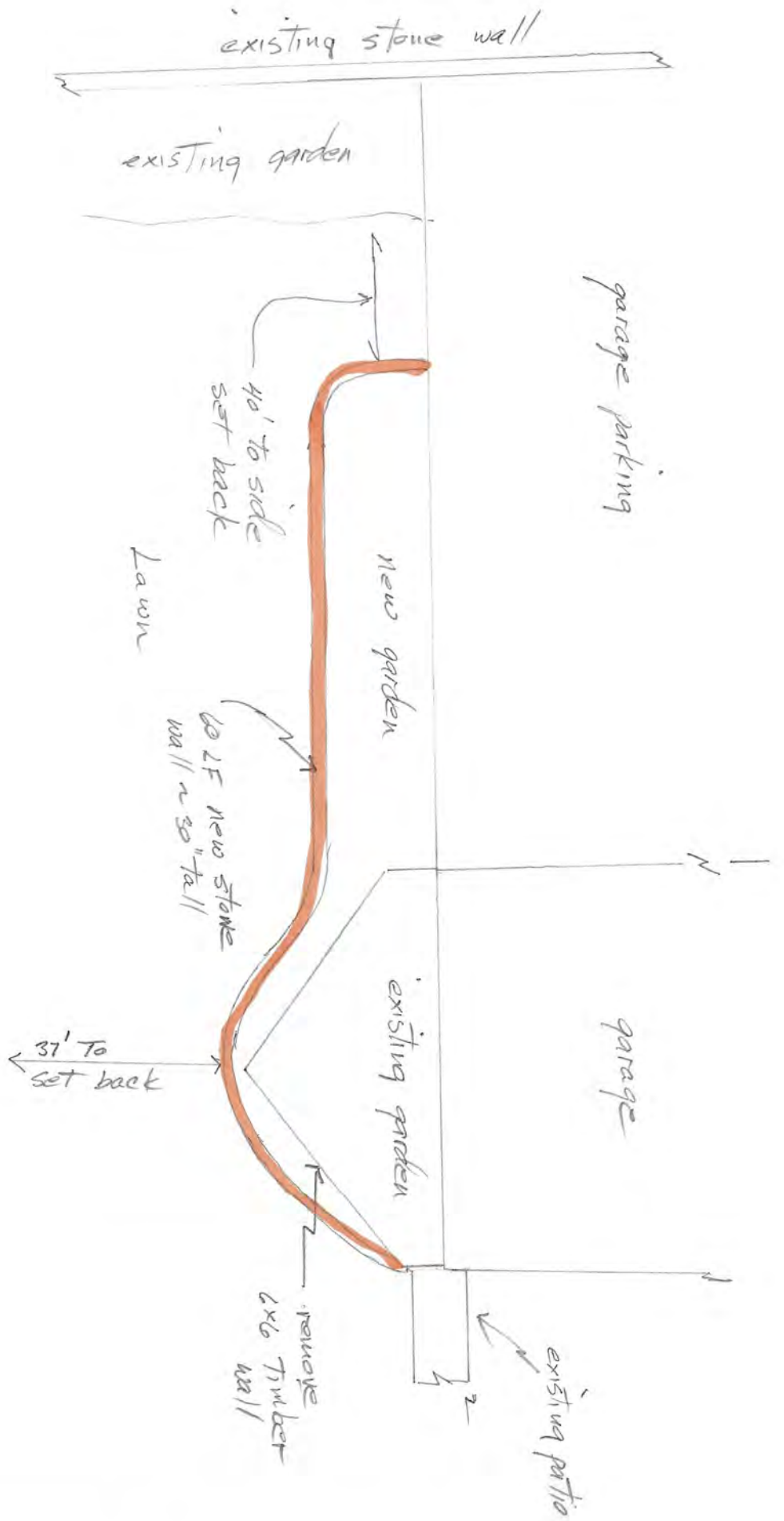
Save



Town of Biltmore Forest,  
NC

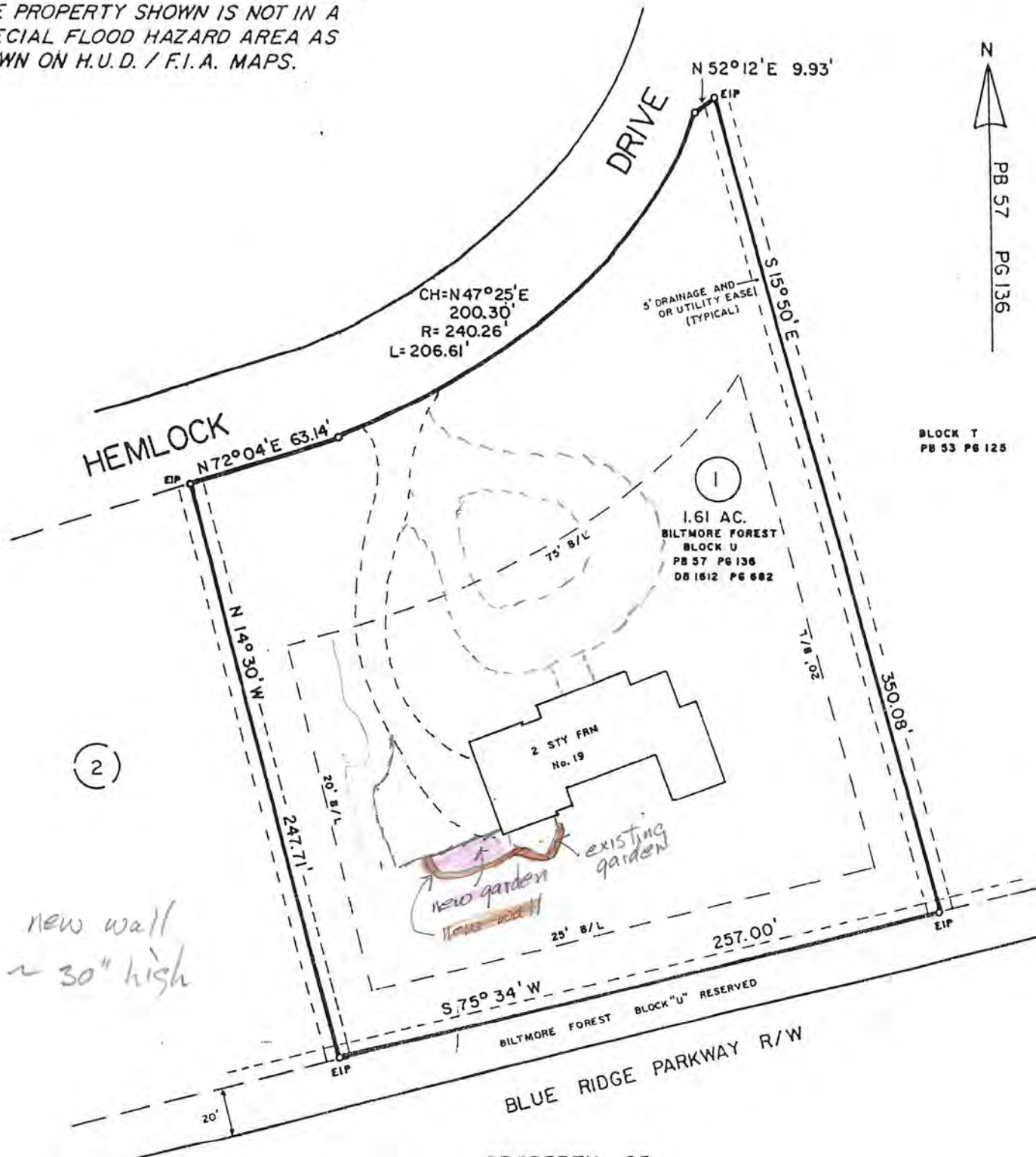
355 Vanderbilt Rd.  
Biltmore Forest, NC 28803  
(828) 274-0824

© 2024 Town of Biltmore Forest, NC



McNeil  
19 Hemlock Rd

I, KENNETH O. PANKOW, CERTIFY THAT THE PROPERTY SHOWN IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON H.U.D. / F.I.A. MAPS.



PROPERTY OF  
M. KERNEY and wife JANE B. McNEIL

BILTMORE FOREST  
SCALE 1" = 60'

BUNCOMBE CO., N.C.  
JUNE 21, 1991



PANKOW ENGINEERING COMPANY  
Harrell Park - 1270 Hendersonville Road  
Asheville, North Carolina 28603

REVISED 11-18-96. SITE INSPECTION.





## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

March 18, 2024

#### CASE

**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.

## **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)

### **153.008 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.

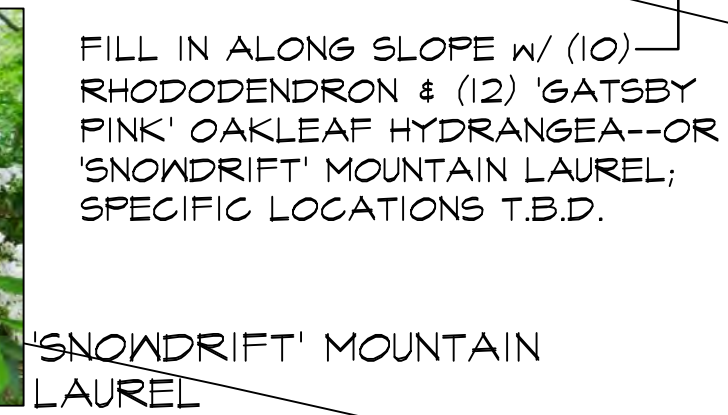
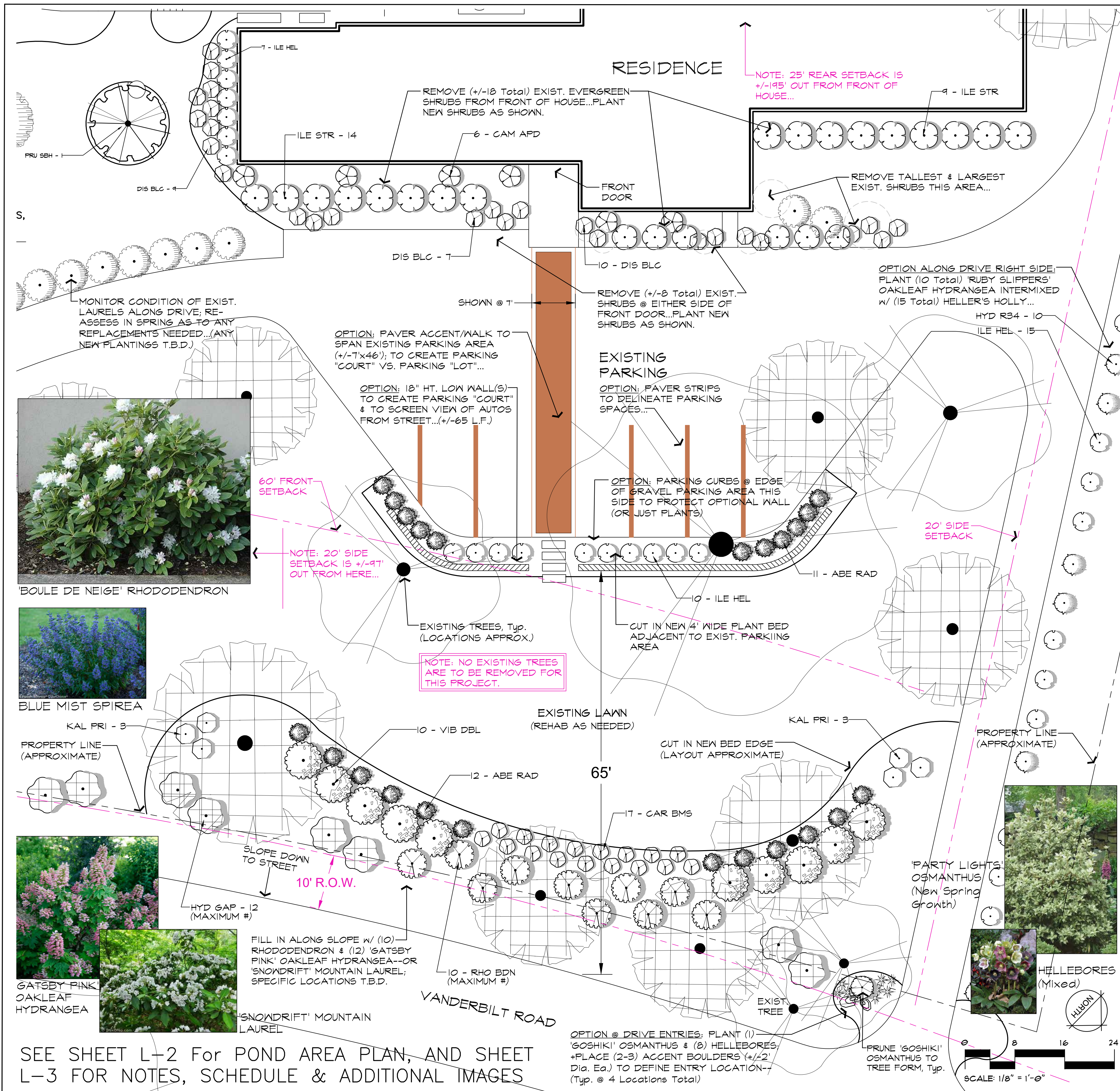
**I hereby certify that all of the information set forth above is true and accurate to the best of my**

knowledge.

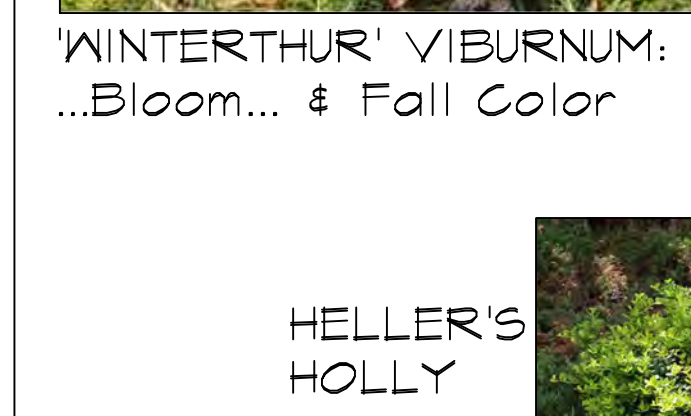
Signature

Date  
2/5/2024

*Thomas C. Bolton*



**CONCEPT IMAGES: TUDOR ESTATE STYLES**  
 - EXEMPLIFIED BY A MIX OF FORMAL & INFORMAL EVERGREENS, MODEST COLOR ACCENTS, PRIMARILY WHITE BLOOMS w/ SEASONAL ADDED COLORS, ESPECIALLY AT ENTRY DRIVES & FRONT DOOR...ALSO, SEE PROPOSED "PARKING COURT" OPTIONS ON SHEET L-3.



REVISIONS

1.	

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

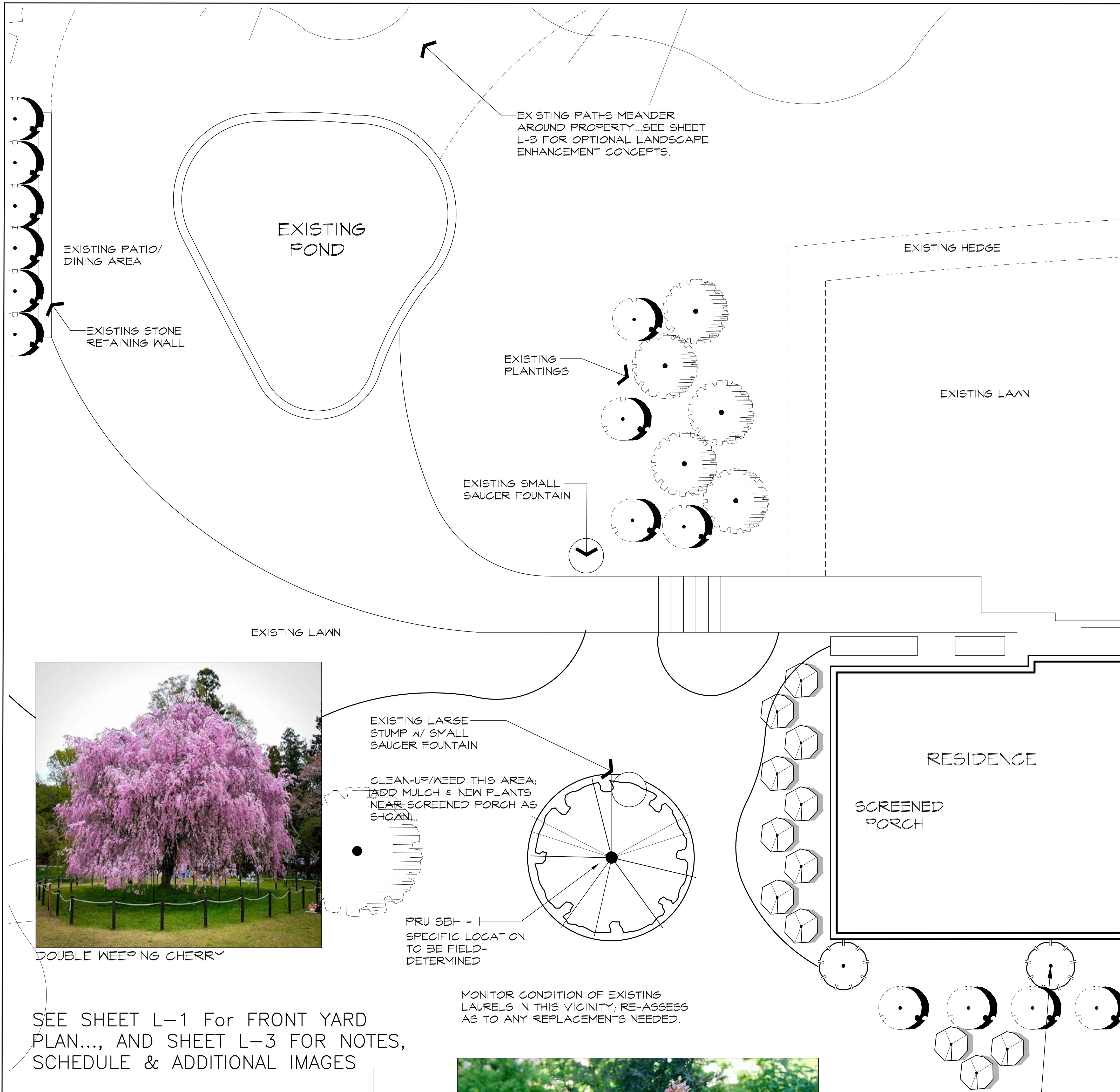
DATE 02/01/24

Drawn By BBAM

SHEET #

L-1

SEE SHEET L-2 For POND AREA PLAN, AND SHEET L-3 FOR NOTES, SCHEDULE & ADDITIONAL IMAGES



DOUBLE WEeping CHERRY

SEE SHEET L-1 For FRONT YARD PLAN..., AND SHEET L-3 FOR NOTES, SCHEDULE & ADDITIONAL IMAGES

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/EMITTERS; IF SO, OWNER TO CONSIDER PROVIDING ADDITIONAL EMITTERS (ZONES?) AS NEEDED FOR NEW PLANTINGS--OR NEW DRIP IRRIGATION SYSTEM W/ TIMER...
- = OPTION: MULCH FOR ALL NEW OR MODIFIED PLANT BEDS: TO BE 3-4" DEPTH OF HARDWOOD MULCH (+/- \_\_\_\_\_ S.F., VERIFY...).



EXISTING VIEWS OF LEFT SIDE OF HOUSE & POND AREA:  
 - CLEAN-UP/WEED AREA ADJACENT TO SCREENED PORCH (+/- \_\_\_\_\_ S.F.);  
 PLANT (1) DOUBLE WEeping CHERRY FOR BEST VIEW FROM PORCH.  
 - ALSO PLANT (12) 'BLUE CASCADE' DISTYLUM ALONG SCREENED PORCH.  
 - MULCH BED AREAS (+/- \_\_\_\_\_ S.F.)



LANDSCAPE PLAN - SCREENED PORCH & POND AREA

BOLTON RESIDENCE

430 VANDERBILT ROAD  
 BILTMORE FOREST, NC -28803-

REVISIONS	
1.	

SCALE: 1/4" = 1'-0"

DATE 10/19/23

Drawn By BBAM

SHEET #  
 L-2



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

April 15, 2024

#### CASE 3

**Property Address:** 8 White Oak Road

**Property Owner:** John Kimberly

**Request:** Special Use Permit Request for Driveway Wall; Variance Request To Encroach Into The Front, Side And Rear Setback And Place Wall In Front Yard

---

#### Background

The property owners are applying for a special use permit and variance for two walls, one beside the driveway and another in the front yard. The wall by the driveway is 150' long and 12-32" in height and will require a variance for intrusion into the setbacks. The wall is not located within the Town's right of way. As part of the project, the applicant is also proposing a landscaping wall in the front yard that is 60' long and 12-18" high but out of the setback. The front yard wall will also require a variance due to the location being in the front yard.

#### Special Use Permit

The retaining walls 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 proposed walls do not meet the ordinance requirements, and would require a variance from the Board due to one wall being located in the front yard and the driveway wall being within the setbacks. Included in your packet is a copy of 160D-705 which addresses the requirements for a variance.

## **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)

### **153.008 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**

John Kimberly

**Property Address**

8 White Oak Rd

**Phone**

(828) 713-8630

**Email**

john.kimberly@parknationalbank.com

**Parcel ID/PIN Number**

9647 90 1549

## ZONING INFORMATION

**Current Zoning**

R-2

**Lot Size**

.715 acres or 31,159 SF

**Proposed Roof Coverage Total**

3,470 sf

**Proposed Impervious Surface Coverage**

Site plan provided with prior approval. No increase.

**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**

25'-3"

**Description of the Proposed Project**

Stack stone retaining wall on the south side of the driveway. Small landscaping wall in front yard.

**Estimated Start Date**

2/1/2024

**Estimated Completion Date**

4/5/2024

**Estimated Cost of Project**

\$10,000.00

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

White Oak Ret Wall.pdf

**Applicant Signature**

**Date**  
3/20/2024

*John Kimberly*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

John Kimberly

**Address**

8 White Oak Road

**Phone**

(828) 398-2179

**Email**

john.kimberly@parknationalbank.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:**

Stack stone retaining wall on the south side of the driveway. Small landscaping wall in front yard.

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

The retaining wall is designed to drain water runoff that comes from the lot/home immediately to the south of ours. The topography of the adjacent lot and the guttering on the home move water from its impervious surfaces onto our driveway, around our foundation, and into our basement. In addition, the retaining wall stabilizes the bank between the two properties. Photos attached to the application(s) demonstrate this and also show that the slope of the bank is no more severe with the retaining wall than it was before.

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

**Signature**

**Date**

3/20/2024



# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

John Kimberly

**Address**

8 White Oak Road

**Phone**

(828) 713-8630

**Email**

john.kimberly@parknationalbank.com

**Current Zoning/Use**

R

**Requested Use**

R

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

**What would you like to do with your property?**

Build a stack stone retaining wall on the south side of our driveway. Small landscaping wall in front yard.

**What does the ordinance require?**

Approval for hardscape and a variance for the setback requirement.

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.**

Over the years we have experienced runoff from the adjacent lot/home due to the topography of the lot and the guttering on the home. Water moves over the bank between the two properties onto our driveway and around the foundation of our home leading to issues with the foundation and basement.

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

See explanation above. I would add that these homes are among the earliest to have been built in Biltmore Forest and are "tight" with respect to setbacks in the rear of the property.

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

These conditions have existed since we purchased our home in 2004.

**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 the improvement we seek approval for substantially corrects a functional obsolescence issue and improves the aesthetics of our property and neighboring properties.

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

Signature

Date  
3/20/2024

*John Kimberly*

**§ 160D-705. Quasi-judicial zoning decisions.**

(a) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment, planning board, or governing board hear and decide quasi-judicial zoning decisions. The board shall follow quasi-judicial procedures as specified in G.S. 160D-406 when making any quasi-judicial decision.

(b) Appeals. – Except as otherwise provided by this Chapter, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of the zoning regulation or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development. The provisions of G.S. 160D-405 and G.S. 160D-406 are applicable to these appeals.

(c) Special Use Permits. – The regulations may provide that the board of adjustment, planning board, or governing board hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the regulations. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the local government does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

The regulations may provide that defined minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification. The regulation may require that special use permits be recorded with the register of deeds.

(d) Variances. – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not 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 personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (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 is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 17, 50(b), 51(a), (b), (d).)



8 White Oak Driveway  
PRE-Demolition/Renovation

Notes:

- \*Landscape condition at property line
- \*Elevation change fr Widman to Kimberly property (approximately the height of truck door handle)
- \*Even lower grade/slope at house foundation



Water runs across Widman property downward onto Kimberly property causing damage



Widman roof gutter system drains directly onto their asphalt driveway and follows the slope onto our property causing damage



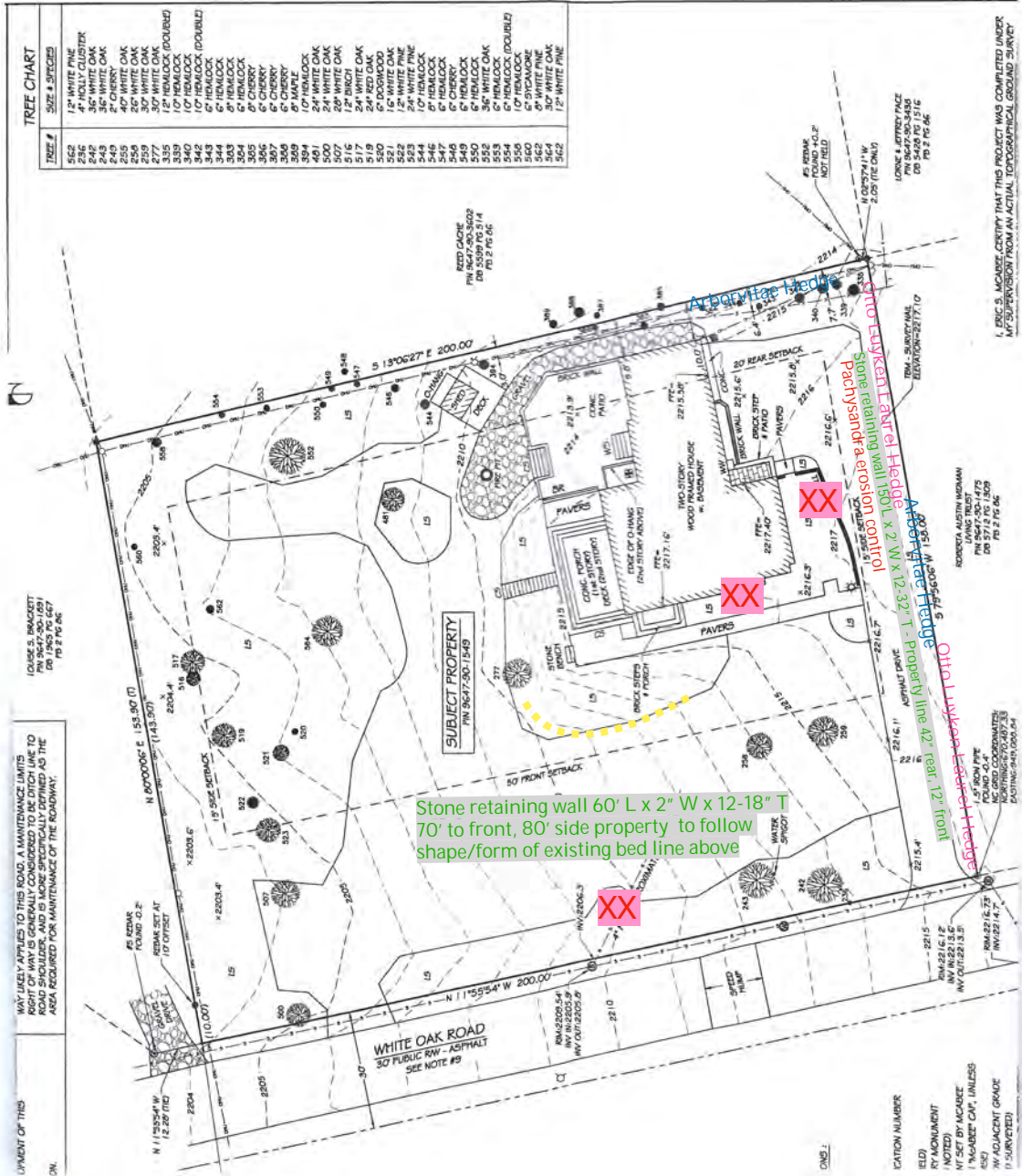
To prevent water collecting onto our property and in our basement, we excavated driveway, contoured land at house foundation, installed drainage system to collect and move water away from our home, installed natural stacked stone wall to control flow of water and debris following slope and contour of property line.



Completion of water retention rock wall

Kimberly's will install:  
Landscape hedge of Otto Luyken Laurel to screen view of parking area as well as arborvitae plantings in narrow bed areas requested from John Widman.

These plantings will replace infested hemlock hedge Kimberly's paid to remove 10+/- years ago with permission from Roberta Widman.



Otto Luyken Laurel: Evergreen, Deer Resistant  
Full size: 3-4'T x 6-8'W

Arborvitae: Conical, privacy hedge

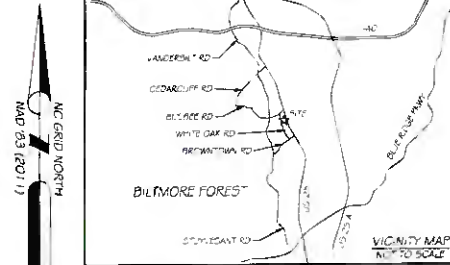
Liriope/Pachysandra: erosion ground cover

XX Hydrangea, Azalea, Boxwood, Crepe Myrtle, pine straw refresh in front/side beds

**NOTES:**

- 1) THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY PER D.F.R.M. #31200364 1000, EFFECTIVE DATE: JANUARY 6, 2010.
- 2) PROPERTY SUBJECT TO ALL RIGHTS OF WAY AND EASEMENTS OF RECORD INCLUDING, BUT NOT LIMITED TO, THOSE SHOWN HEREIN.
- 3) SURVIVOR WAS NOT PROVIDED WITH A LEGAL TITLE SEARCH THERE MAY EXIST ENCUMBRANCES OF RECORD, ENCUMBRANCES RESTRICTIVE COVENANTS, EASEMENTS, TITLE EVIDENCE, OR ANY OTHER FACTS PERTAINING TO THIS PROPERTY THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE THAT ARE NOT SHOWN ON THIS PROPERTY.
- 4) BUILDINGS, SURFACE AND SUBSURFACE IMPROVEMENTS ADJACENT TO THE SITE ARE NOT NECESSARILY SHOWN. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT SURVEYED OR CONSIDERED AS PART OF THIS SURVEY. NO FIELD DEVICE OR STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND CONDITIONS, CONTAINERS, OR FACILITIES THAT MAY AFFECT THE USE OR DEVELOPMENT OF THIS PROPERTY.
- 5) AREA BY COORDINATE COMPUTATION.
- 6. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.
- 7. THE ELEVATION DATUM FOR THIS SURVEY IS NAVD 83. THE CONTOUR INTERVAL IS ONE FOOT.
- 8. SUBJECT PROPERTY IS ZONED R-R PER THE TOWN OF BILTMORE FOREST ZONING ORDINANCE. REFER TO THE DISTANCE FOR REGULATIONS APPLICABLE TO THE SUBJECT PROPERTY.
- 9. BUILDING SETBACKS (PER R-R ZONING REGULATIONS):  
FRONT: 20'  
SIDE: 10'  
REAR: 20'
- 10. THE RIGHT OF WAY OVER WHITE OAK ROAD HAS BEEN SHOWN HEREIN PER THE DEDICATION OF THE RIGHT OF WAY ILLUSTRATED ON PLAT BOOK 2 PAGE 26. THIS RIGHT OF WAY WAS NOT FORMALLY DIMENSIONED ON SAID PLAT AND A FORMER RECORDED RIGHT OF WAY WIDTH OVER WHITE OAK ROAD WAS NOT RECORDED BY THE SURVIVOR. IT IS ADVISED THAT AT A MAXIMUM, AN "EXISTING" MAINTENANCE LIMITS BASED RIGHT OF WAY KELLY APPLIES TO THIS ROAD. A MAINTENANCE LIMITS RIGHT OF WAY IS GENERALLY CONSIDERED TO BE DITCH LINE TO ROAD SHOULDER, AND IS MORE SPECIFICALLY DEFINED AS THE AREA REQUIRED FOR MAINTENANCE OF THE ROADWAY.

**TOTAL AREA OF SURVEY**  
0.715 ACRES  
(31,159 SQ. FT.)

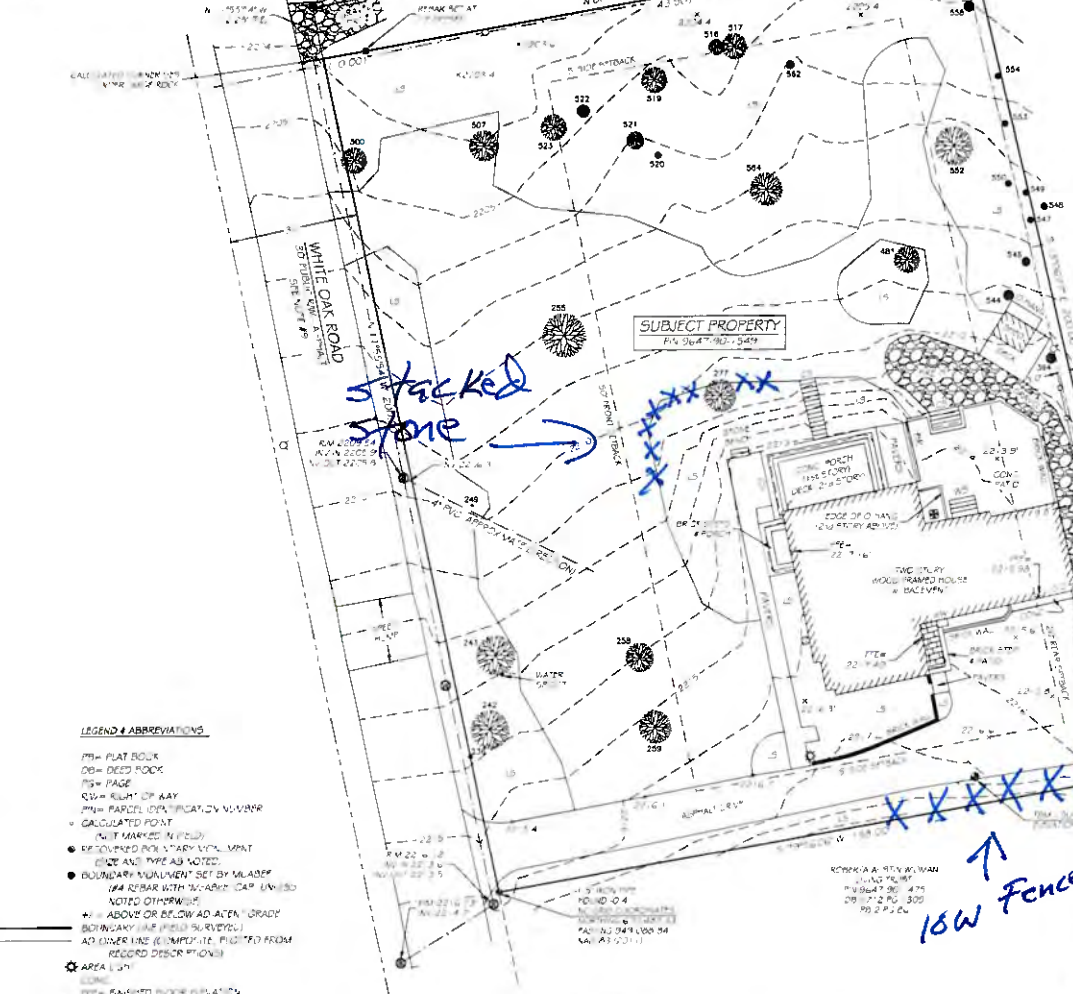


**TREE CHART**

TREE #	SIZE & SPECIES
262	12" WHITE PINE
230	4" HOLLY CACTUS
242	36" WHITE OAK
243	36" WHITE OAK
243	2" CHERRY
259	40" WHITE OAK
256	26" WHITE OAK
257	30" WHITE OAK
277	30" WHITE OAK
335	21" HEMLOCK DOUBLET
339	12" HEMLOCK
340	12" HEMLOCK
341	12" HEMLOCK DOUBLET
343	6" HEMLOCK
344	6" HEMLOCK
353	6" HEMLOCK
354	6" HEMLOCK
355	6" CHERRY
359	6" CHERRY
357	6" CHERRY
358	6" CHERRY
357	6" MAULE
354	6" HEMLOCK
400	24" WHITE OAK
400	24" WHITE OAK
501	28" WHITE OAK
516	12" PINE
517	24" WHITE OAK
518	24" PINE
519	6" SOUTHWOOD
521	6" WHITE OAK
522	12" WHITE PINE
523	24" WHITE PINE
544	6" HEMLOCK
545	6" HEMLOCK
549	6" HEMLOCK
550	6" HEMLOCK
552	36" WHITE OAK
553	6" HEMLOCK
554	6" HEMLOCK DOUBLET
555	10" HEMLOCK
560	6" SYCAMORE
561	6" WHITE PINE
564	30" WHITE OAK
562	12" WHITE PINE

**REFERENCES**

DEED # 2003 PG 276  
PG 170 PL 26



- LEGEND & ABBREVIATIONS**
- PH = PLAT BOOK
  - DB = DEED BOOK
  - PG = PAGE
  - R/W = RIGHT OF WAY
  - PH = PARCEL IDENTIFICATION NUMBER
  - = CALCULATED POINT
  - (with symbol) = POINT MARKED IN FIELD
  - (with symbol) = RECOVERED POINT
  - (with symbol) = BOUNDARY MEASUREMENT SET BY CLASSIFIED SURVEYOR WITH SCAFFOLD OR INSTRUMENT NOTED OTHERWISE
  - ▲ = ABOVE OR BELOW ADJACENT GRADE
  - = BOUNDARY LINE (FIELD SURVEYED)
  - - - = ADJACENT BOUNDARY LINE (CALCULATED FROM RECORDED DESCRIPTIONS)
  - ★ = AREA LOST
  - (with symbol) = STONE
  - (with symbol) = FIRE HYDRANT
  - (with symbol) = GAS METER
  - (with symbol) = HIGH WATER MARK
  - (with symbol) = NEAREST ELEVATION
  - (with symbol) = LANDSCAPING
  - (with symbol) = OVERSPREAD UTILITY LINE(S)
  - (with symbol) = SEWER LINE IN UNBURIED CLAY PIPE, UNLESS NOTED OTHERWISE
  - (with symbol) = WATER METER
  - (with symbol) = SPOT ELEVATION
  - (with symbol) = STOPS
  - (with symbol) = BR = BRICK STOP
  - (with symbol) = CS = CONCRETE STOP
  - (with symbol) = SW = WOODEN STOP
  - (with symbol) = TSM = TEMPORARY BENCHMARK ELEVATION
  - (with symbol) = WATER METER
  - (with symbol) = WOOD-BORDED FENCE LINE
  - (with symbol) = WOVEN WIRE FENCE LINE
  - (with symbol) = W = WINDLIFT WEIR
  - (with symbol) = \* = WARD NUT

**GLOBAL POSITIONING SYSTEM CERTIFICATION**

ERIC S. McABEE, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SURVEYOR'S PERSONAL SUPERVISION AND THE FOLLOWING INFORMATION WAS USED TO PERFORM THE SURVEY:

- 1) CLASS OF SURVEY
- 2) DATE OF SURVEY
- 3) TYPE OF GPS FIELD PROCEDURE
- 4) DATE OF SURVEY
- 5) DATUM
- 6) PROJECTION
- 7) GRID MODEL
- 8) CONVERSION FACTOR
- 9) UNIT OF SURVEY



ERIC S. McABEE, CERTIFY THAT THIS PROJECT WAS COMPLETED UNDER MY PERSONAL SUPERVISION AND THAT ALL CORNER MARKERS AND EVIDENCE OF SURVEY WERE PLACED IN ACCORDANCE WITH THE ORIGINAL RECORDS AND THAT THE ORIGINAL RECORDS ARE TRUE AND CORRECT.

*Eric S. McAbee* L-435

ERIC S. McABEE, CERTIFY THAT THIS PLAN WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY PERFORMED UNDER MY PERSONAL SUPERVISION AND THAT ALL CORNER MARKERS AND EVIDENCE OF SURVEY WERE PLACED IN ACCORDANCE WITH THE ORIGINAL RECORDS AND THAT THE ORIGINAL RECORDS ARE TRUE AND CORRECT.

*Eric S. McAbee* L-4085

**McABEE & ASSOCIATES, P.A.**  
PROFESSIONAL LAND SURVEYING

Eric S. McAbee, PLS  
J. Barry West, PLS  
Wallace S. McAbee, PLS (Emeritus)

Fax (928) 628-1294  
Telephone (928) 628-1295

3 McAbee Trail  
Fairview North Carolina, 28730

www.mcabeesurvey.com  
Firm License Number C-694

NO	DATE	DESCRIPTION	BY

**BOUNDARY, TREE, AND TOPOGRAPHIC SURVEY OF THE PROPERTY OF:**

**JOHN & LIZBETH KIMBERLY**  
BEING ALL OF LOTS 29 & 30 OF BLOCK D, BILTMORE FOREST (PER PG 2 PG 86)

SITE ADDRESS: 8 WHITE OAK ROAD  
P.O. BOX 70, 1549

BILTMORE TOWNSHIP  
BILTMORE COUNTY, N.C.

DATE	1-15-2021
PROJECT #	3458
DRAWING #	02-263
DRAWN BY	C.M.
SCALE	1"=40'



## 8 White Oak Road Landscape Plant Selections

Pachysandra  
Ground cover for erosion control



Liriope



Otto Luyken  
Laurel  
3-4' T x 6-8' W

Evergreen, hedge shrub  
Deer resistant, fast growth



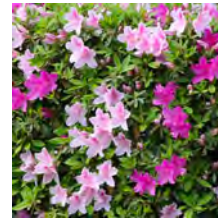
Hydrangea



Boxwood



Azalea



Pine straw



Arborvitae - Conical

Crepe Myrtle

