



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: April 7, 2021  
Re: **Board of Adjustment Meeting – April 19, 2021**

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#### **Applicants:**

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

Members of the Board of Adjustment & staff may visit each property prior to the meeting. If this occurs, the property owner will be notified beforehand and asked if they approve the visit. If so, the visit will be conducted in a socially distant manner consistent with North Carolina state orders related to preventing the spread of Covid-19.

#### **Neighbors:**

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

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

You are invited to attend the scheduled meeting via Zoom and make comment when called upon. Any additional information regarding the Zoom meeting will be provided on the Town's website no later than April 16, 2021.

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, March 15, 2021 at 4:00 pm in the Town Hall Board Room via Zoom. The format for the meeting and instructions for attending the meeting via Zoom can be found on the second page of this agenda. The link for the Zoom meeting can be found at the bottom of the second page.

1. The meeting will be called to order and roll call taken.
2. The minutes of the March 15, 2021 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).
  - Case 1: 412 Vanderbilt Road – Special Use Permit Request for Driveway Gates and Columns**
  - Case 2: 57 Forest Road – Special Use Permit Request for Accessory Structure in Rear Yard and Driveway Expansion**
  - Case 3: 309 Vanderbilt Road – Special Use Permit Request for Rear Yard Fence and Driveway Realignment**
  - Case 4: 5 Stuyvesant Crescent – Special Use and Variance Request for Accessory Structure (Fencing) Located in Side and Rear Yard Setback**

4. Adjourn

### **Process and Procedure for April 19, 2021 Board of Adjustment Meeting via Zoom**

- All participants attending will be held in the “waiting room” prior to admittance by Town staff. Once admitted into the meeting, please mute audio until called upon by the Board chair.
- The meeting will be called to order at 4:00 p.m. by the Chair. All interested parties and applicants will be virtually sworn-in at this time.
- Each matter will be called forward and Town staff will authorize video and audio for the applicants and any person with standing for that particular case. If an applicant would like to present visual evidence, they must provide this evidence to Town staff no later than Friday, April 16, 2021.
- The Board chair, or other Board of Adjustment member, will specifically ask questions to the applicant and ask for any evidence that they would like to present.
- The Board chair, or other Board of Adjustment member, will then specifically ask for any person with standing for that specific matter to provide comment. Town staff will moderate this comment period but will ensure each person who wishes to speak or provide evidence is able to do so.
- When all evidence and testimony has been provided, the Board will deliberate and render a decision, then move on to the next matter where the process will be repeated.

### **How to Access the April 19, 2021 Board of Adjustment Meeting via Zoom**

In order to access the Board of Adjustment meeting, please visit <http://zoom.us> to sign up, for free, for a Zoom account. This will enable you to participate with your desktop or laptop computer as you see fit. The Zoom link and log-in credentials are at the bottom of this page.

You may also download the free Zoom app from the Apple Store or Google Play on your mobile iOS or Android device. This app will walk you through setting up a free account.

If you are unable to access the meeting through a web or app based format, but would still like to listen and participate in the meeting, you may do so by calling one of the phone numbers listed below and entering the meeting ID and password.

Join Zoom Meeting

<https://us02web.zoom.us/j/84813258206?pwd=SHhKNGJYT2JsT2J2ZDRpNkZmYXgwUT09>

Meeting ID: 848 1325 8206

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, MARCH 15, 2021

The Board of Adjustment met at 4:00 p.m. on Monday, March 15, 2021. The meeting was held virtually via Zoom.

Members present: Mr. Greg Goosmann, Ms. Rhoda Groce, Mr. Robert Chandler (via Zoom), Ms. Lynn Kieffer, and Mr. Lowell Pearlman (via Zoom). Ms. Martha Barnes, alternate member, was also present via Zoom. Mr. Jonathan Kanipe, Town Manager, Mr. Harry Buckner, Public Works Director, and Mr. Mike Dale, Assistant Public Works Director, were also present. Mr. William Clarke, Town Attorney was present via Zoom.

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

Mr. Goosmann swore in the following:

Mr. Jonathan Kanipe  
Mr. Harry Buckner  
Mr. Chuck Hutchinson  
Mr. Reginald Grant  
Mr. Will McCrary  
Mr. Cass Fowler  
Mr. Paul Dismukes

A motion was made by Ms. Lynn Kieffer to approve the minutes from February 22, 2021. Ms. Rhoda Groce seconded the motion. Roll call was taken by Chairman Goosmann and the minutes were unanimously approved.

HEARING (Evidentiary):

A Special Use Permit was requested at 9 Hilltop Road for the installation of rooftop-mounted solar panels. Ms. Rhoda Groce shepherded the matter. This will have a battery backup system. Mr. McCrary said the neighbors have not opposed to the project. Mr. Trip McCrary said the panels will not be angled and will be flat and congruent with the roof. The panels are non-reflective and are matte.

### DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Mr. William McCrary of 9 Hilltop Road is requesting a Special Use Permit for 32 mounted solar panels on the residence. These will be black, matte, and mounted flush on the roof. There were no additional questions or comments.

Mr. Lowell Pearlman moved that a Special Use Permit be granted to Mr. William McCrary of 9 Hilltop Road for a roof-mounted solar system 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. Mr. Pearlman 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.

### HEARING (Evidentiary):

The next matter was for a Special Use Permit and Variance request for installation of fencing along the rear property line at 296 Vanderbilt Road. The matter was shepherded by Mr. Lowell Pearlman. It will be a six-foot tall wood fence across the back of the property. There is currently a fence at the location that is falling apart. They would like to fix it up and put in a solid wood, six-foot tall fence. There was a row of Cedar trees since the 1940's and the old fence is collapsing. The new fence will run along the rear property line. Mr. Grant said during the latter part of the summer, Ms. Grant saw people crossing over the fence and they had lights installed with infrared readers to act as security. They would like to straighten out the look and security. Mr. Pearlman asked Mr. Grant what



the hardship is for the Variance requirement. Mr. Pearlman verified there is uncontrolled access to and from Mr. Grant's yard and the commercial lot behind Mr. Grant's house.

Mr. Billy Clarke said the Ordinance specifically involves fencing for those along Hendersonville Road and adjacent to the Blue Ridge Parkway and the Biltmore Estate. The hardship requested was for safety and general welfare.

#### DELIBERATION AND DETERMINATION:

Mr. Reginald Grant of 296 Vanderbilt Road is requesting a Special Use Permit for a six-foot tall wooden fence along the rear property line to replace an old fence that is not on his property but abuts it. The hardship is there is unlimited access to his property from commercial property and public thoroughfares. Ms. Kieffer said it is not a replacement fence. Chairman Goosmann asked Mr. Grant how far into the property the fence will be. Mr. Grant said they have to go pretty much at the rear edge of the property or four inches in. Mr. Grant said they do not have a lot of room to work with. The trees are on the Grant's side of the fence.

Mr. Pearlman said some trees were marked on the Grant's property and wanted to verify these are being removed as part of the project. Mr. Kanipe said the tree removal is a separate issue and not part of this. The Town arborist will look at these later to discuss the possibility of removal.

Ms. Lynn Kieffer made a motion to grant a Special Use Permit to add a fence in the rear yard and a Variance to exceed the fence height maximum per the Town's regulations. The facts as recited by Lowell Pearlman and his summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. Ms. Kieffer 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. Kieffer further moved that granting this Variance satisfies the applicable Sections of 153.110(D) and paragraphs one through four, and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. 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. Rhoda Groce seconded the motion. Roll call was taken and unanimously approved.

HEARING (Evidentiary):

The final matter was for a Special Use Permit and Variance Request for Temporary Installation of Front Yard Fencing (Continued from the June 2020 Meeting) at 8 Westwood Road. The matter was shepherded by Ms. Martha Barnes. The homeowner is applying to extend this temporary fence until December 31, 2021. Mr. Billy Clarke said the request was initially submitted in June of 2020 to allow the temporary fence in the backyard and to allow it until the end of 2021. Mr. Hutchinson said he pulled the request back in June and said if he presented to the Board again today, he would withdrawal it again. Mr. Clarke said what Mr. Hutchinson is asking for today is different from what he is asking for in June of 2020. Mr. Clarke said Mr. Hutchinson is requesting permission to leave the temporary fence in the front yard until the end of 2021. Mr. Hutchinson had the temporary fence professionally done, is all black, and was installed behind plant materials that already existed. This fence is still currently up and Mr. Hutchinson would like to continue to remain in its current place until December 2021.

Ms. Barnes asked Mr. Hutchinson if there are any concerns from the neighbors regarding this temporary fence. Dr. Cas Fowler said he lives across the street and doesn't notice the fence. Mr.

Fowler said he notices Mr. Hutchinson's beautiful garden. Mr. Fowler is in support of the fence being there.

Mr. Hutchinson said part of the reason he is asking for the extension until the end of the year is he wanted to submit photos of his garden to the Smithsonian Institute for the spring, summer, and fall seasons for the submission requirements.

Mr. Clarke asked Mr. Hutchinson if he had a black "hogwire" type fencing installed in June of 2020. Mr. Hutchinson said yes. Mr. Clarke asked Mr. Hutchinson when that fence was replaced. Mr. Hutchinson said it was at the end of June 2020. Mr. Clarke asked if Mr. Hutchinson spoke to the Board of Commissioners. Mr. Hutchinson said no. Mr. Hutchinson said when he does speak to the Board of Commissioners; it will be part of a bigger picture. Mr. Clarke also asked Mr. Hutchinson how long he has been working on the garden submission to the Smithsonian Institute. Mr. Hutchinson said he has been working on this for eleven years. Mr. Hutchinson said he started taking pictures late last fall. Mr. Hutchinson said tomorrow he would start putting together a strategy about seeking permission to have the existing ordinance modified.

Mr. Paul Dismukes said he had no objection to the temporary fence.

#### DELIBERATION AND DETERMINATION:

Ms. Barnes recited the facts stating Mr. Chuck Hutchinson at 8 Westwood Road is requesting a Special Use Permit for a temporary fence and a Variance for a temporary fence in the front yard. Mr. Hutchinson's practical difficulty or unnecessary hardship is that he is trying to get the Smithsonian Institute certification for his garden and he needs to keep the fence in order to keep the deer out. Mr. Hutchinson is requesting to keep the temporary fence up until December 31, 2021. Mr. Hutchinson already has existing screening. Mr. Robert Chandler asked Mr. Clarke if the Board is meeting the requirements for this project. Mr. Clarke said yes as long as it is temporary and a date that is certain.

Ms. Rhoda Groce moved that a Special Use Permit be granted to Mr. Chuck Hutchinson of 8 Westwood Road for a fence in the front yard and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site

and no neighboring property owner has objected. Ms. Groce 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. Groce further moved that granting this Variance satisfies the applicable Sections of 153.110(D) and paragraphs one through four, and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. She further moved the Board to find the spirit of the ordinance would be observed, public safety and welfare secured and substantial justice done. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Lynn Kieffer seconded the motion. Roll call was taken and the motion was unanimously approved.

Chairman Goosmann adjourned the meeting at 4:51 pm. The next Board of Adjustment meeting is scheduled for Monday, April 19, 2021 at 4:00 pm.

ATTEST:

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Greg Goosmann  
Chairman

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Laura Jacobs  
Town Clerk

# BOARD OF ADJUSTMENT STAFF MEMORANDUM

April 19, 2021



## Case 1 – 412 Vanderbilt Road Special Use Permit Request for Driveway Gates & Columns

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The applicant requests permission for a special use permit to install driveway gates and associated columns along the front drive of the property. Existing columns and a secondary driveway on the property will be removed in conjunction with this project.

Section 153.049 of the Zoning Ordinance (attached) specifies the following:

*(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 with a 14 foot minimum height clearance.*

The initial proposal includes a gate opening of 12 feet. After reviewing the proposal, I contacted Skyland Fire Department and asked them to provide thoughts on this plan. Interim Chief Trevor Lance has indicated that a column width of 14 feet (particularly since the proposed gate/columns are farther onto the property than present) will be sufficient to provide access. Sitework Studios and the applicant are in agreement with this and are working on a revised plan showing the 14 foot wide entrance. This will allow full compliance with the Special Use requirements for this specific accessory structure within the Town's Zoning Ordinance.

# Zoning Compliance Application

Town of Biltmore Forest

## Name

<input type="text" value="Steven Lee"/>	<input type="text" value="Johnson"/>
First	Last

## Property Address

<input type="text" value="412 Vanderbilt Road, Asheville, NC"/>
Address Line 1

## Phone

<input type="text" value="(828) 225-4945"/>
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## Email

<input type="text" value="sljohnson@siteworkstudios.com"/>
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## Parcel ID/PIN Number

<input type="text" value="964666247700000"/>
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## ZONING INFORMATION

### Current Zoning

☒ R-1 ☐ R-2 ☐ R-3 ☐ R-4 ☐ R-5 ☐ P-S

### Lot Size

<input type="text" value="2.23"/>
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### Maximum Roof Coverage

<input type="text" value="6,100 square feet (Up to 2 acres)"/>
Choose appropriate lot size

### Proposed Roof Coverage Total

<input type="text" value="no change"/>
<i>Must not exceed maximum coverage allowed</i>

### Maximum Impervious Surface Coverage

<input type="text" value="1-3 acres (25 percent of lot area)"/>
Choose appropriate lot size

### Proposed Impervious Surface Coverage

<input type="text" value="2,500SF of existing impervious area to be removed"/>
<i>Must not exceed maximum coverage allowed</i>

### Front Yard Setback

<input type="text" value="60 feet (R-1 District)"/>
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### Side Yard Setback

<input type="text" value="20 feet (R-1 District)"/>
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### Rear Yard Setback

<input type="text" value="25 feet (R-1 District)"/>
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### Building Height

<input type="text" value="no change"/>
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## Description of the Proposed Project

<p>The scope of work for this project will be to construct and install a new driveway gate and stone columns. The new gate will be located within the property and outside the front property setbacks as required by the Town of Biltmore Forest Ordinance. In addition, the existing four white masonry columns near the road, as well as the secondary driveway, will be permanently removed and landscaped. 2,500sf of impervious asphalt driveway will be permanently removed and become permeable garden area.</p>
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**Estimated Start Date**

4/28/2021

**Estimated Completion Date**

5/31/2021

**Estimated Cost of Project**

\$50,000.00

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

412 Vanderbilt Driveway Improvements BOA Site Plan.pdf

**Applicant Signature**

**Date**

3/29/2021



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# Special Use Permit Application

Town of Biltmore Forest

**Name**

Steven Lee Johnson

**Address**

412 Vanderbilt Road, Asheville, NC

**Phone**

(828) 225-4945

**Email**

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:**

The scope of work for this project will be to construct and install a new driveway gate and stone columns. The new gate will be located within the property and outside the front property setbacks as required by the Town of Biltmore Forest Ordinance. In addition, the existing four white masonry columns near the road, as well as the secondary driveway, will be permanently removed and landscaped.

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

Given that the new entrance columns will be installed 45' further into the property and away from the street, the aesthetic of the natural roadside edge of Vanderbilt Road will be enhanced. The scale, materials and design of the entrance gate and columns will be in keeping with the existing historic home's aesthetic. 2,500sf of impervious asphalt driveway will be permanently removed and become permeable garden area.

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

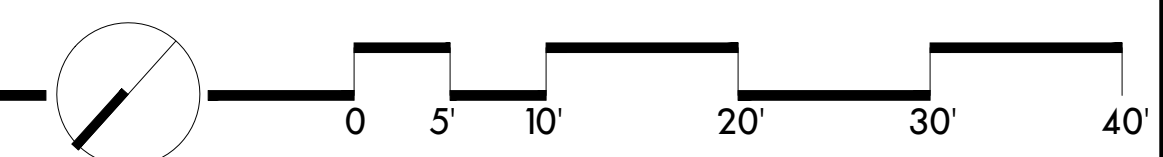
**Signature**

**Date**

3/29/2021







## DRIVEWAY IMPROVEMENTS

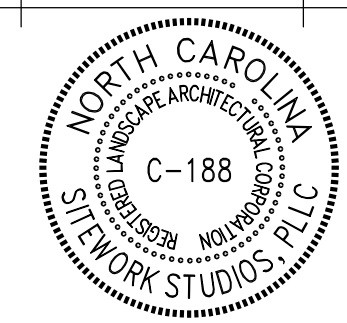
PREPARED FOR:

**412 VANDERBILT RD.**

Lot 26

Biltmore Forest, North Carolina

REVISIONS		
NO.	REMARKS	DATE



DATE:  
3.23.2021  
SHEET TITLE:

## SITE PLAN

SHEET NO.

# L-100

# BOARD OF ADJUSTMENT

## STAFF MEMORANDUM

April 19, 2021



### Case 2 – 57 Forest Road

#### Special Use Permit Request for Accessory Structure in Rear Yard and Driveway Expansion

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The applicant requests permission for a special use permit to construct an accessory structure in the rear yard and expand the driveway footprint by 12 inches to allow for access to the garage. The existing driveway turnaround does not allow for direct entry into the garage. The arbor construction will be detached from the home and constructed within the rear yard in compliance with all setbacks. The applicants purchased the home within the past year and have removed two detached accessory structures that were previously on this property.

#### § 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. § 160A-201.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Kip and Mary Anne Warlick

**Property Address**

57 Forest Road, Biltmore Forest

**Phone**

(828) 691-4598

**Email**

pwwjr1@aol.com

**Parcel ID/PIN Number**

9646-69-1228

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.79 Acres

**Maximum Roof Coverage**

6,100 square feet (Up to 2 acres)

**Proposed Roof Coverage Total**

4,535 SF

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

13,323 SF

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

NA

**Description of the Proposed Project**

The scope of work for this project will be to widen the existing asphalt driveway by 12", and repave with asphalt. The new driveway will feature curbstone edging and a stone apron at the entry on Forest Road. A new stone terrace will be added off the porch in the rear of the house. New tree plantings, arbor, handrail, and new landscaping will be installed. All work will be located within the property and within the front property setbacks as required by the Town of Biltmore Forest Ordinance.

**Estimated Start Date**

5/31/2021

**Estimated Completion Date**

10/31/2021

**Estimated Cost of Project**

\$40,000.00

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

L-100 Prelim Site Plan.pdf

**Applicant Signature**



Amy Farley/SWS

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**Date**

3/29/2021

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Kip and Mary Anne Warlick

**Address**

57 Forest Road, Biltmore Forests

**Phone**

(828) 691-4598

**Email**

pwwjr1@aol.com

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

Accessory Structures

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

**Please provide a description of the proposed project:**

The scope of work for this project will be to widen the existing asphalt driveway by 12", and repave with asphalt. The new driveway will feature curbstone edging and a stone apron at the entry on Forest Road. A new stone terrace will be added off the porch in the rear of the house. New tree plantings, arbor, handrail, and new landscaping will be installed. All work will be located within the property and within the front property setbacks as required by the Town of Biltmore Forest Ordinance.

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

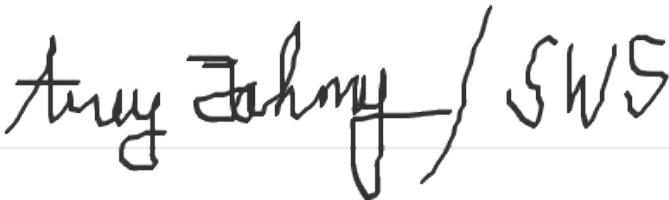
The majority of the updates will not be in public view. The entry drive will be improved with new paving, new stone apron and new curbstone. The materials and design of the driveway will be in keeping with the existing home's aesthetic and will be an improvement in appearance and longevity for the benefit of the neighborhood.

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

**Signature**

**Date**

3/29/2021

A handwritten signature in black ink, appearing to read "Amy Zahmy / SWS", written over a horizontal line.







# BOARD OF ADJUSTMENT

## STAFF MEMORANDUM

April 19, 2021



### Case 3 – 309 Vanderbilt Road Special Use Permit Request for Rear Yard Fence & Driveway Realignment

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The applicant requests permission for a special use permit to construct an eight-foot tall deer fence in the rear yard. The fence type is consistent with the deer fence types noted in the Town's Zoning Ordinance (attached) related to fences, gates, and walls. Specifically, the ordinance states that fences may be 8 feet tall if they are constructed as approved on the NC Wildlife Resources Commission's website under "permanent solid-wire fencing". The proposed fence is wooden and matches these requirements. The applicants note the fence would blend into the environment and be located in compliance with setbacks from the property line. The special use ordinance requirements for fences from the Town's Zoning Ordinance is located on the following page.

An additional request by the applicants is to connect the driveway to the garage to the existing circular driveway in order to correct drainage issues and make necessary repairs. This driveway realignment and connection is permissible within the Town's Zoning Ordinance.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

John Manley

**Property Address**

309 Vanderbilt Road

**Phone**

(828) 215-5941

**Email**

jamanley@mtnkidney.com

**Parcel ID/PIN Number**

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.5 acres.

**Maximum Roof Coverage**

5,500 square feet (Up to 1.5 acres)

**Proposed Roof Coverage Total**

n/a

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

n/a

**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**

Reference the Conditional permits that have submitted regarding the backyard fence and the modification of the circular driveway.

**Estimated Start Date**

4/5/2021

**Estimated Completion Date**

4/9/2021

**Estimated Cost of Project**

\$50,000.00

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



**Applicant Signature**

**Date**  
3/11/2021

John Mzenber

# Special Use Permit Application

Town of Biltmore Forest

**Name**

John Manley

**Address**

309 Vanderbilt Road

**Phone**

(828) 215-5941

**Email**

jamanley@mtnkidney.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:**

8 foot wooden backyard fence. The type of wooden fence would blend into the environment. The fence would extend to the rear of my property line with appropriate offset.

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

The fence would be minimally visible from Vanderbilt road. My house almost completely obscures my backyard area. The boundary between 311 Vanderbilt and my house is obscured by a dense amount of trees. The property of 311 Vanderbilt sit at a significant elevation above my property further obscuring my backyard area.

307 Vanderbilt has a fence plus a structure that sits between 307 and my house. I have also received permission from the residents of 307 to place a backyard fence as described.

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

**Signature**

**Date**

3/11/2021



---

# Special Use Permit Application

Town of Biltmore Forest

**Name**

John Manley

**Address**

309 Vanderbilt Road

**Phone**

(828) 215-5941

**Email**

jamanley@mtnkidney.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:**

Circular driveway. We already have a circular drive, however, it is in poor condition and not very user friendly. We would like to connect the driveway going to the garage to the circular drive that already exists. In addition we need to correct water drainage issues that are present.

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

This is a modification of the drive that already exists. Our goal is that it will be more user friendly for people visiting my house.

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

**Signature**

**Date**

3/11/2021

A handwritten signature in black ink that reads "John Manley". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

## § 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)

# BOARD OF ADJUSTMENT

## STAFF MEMORANDUM

April 19, 2021



### Case 4 – 5 Stuyvesant Crescent Special Use Permit and Variance Request for Fencing Located within Side and Rear Yard Setback

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The applicant requests permission for a special use permit to construct a decorative aluminum fence within the side and rear yard setbacks. The applicant requests permission for this variance due to the topography and placement of the home. The applicant has provided examples of screening and existing vegetation that indicate the fence will not be visible from the street or neighboring properties.

One neighbor, Mr. Jim Hughes, contacted me regarding the proposal and indicated that he had no issues with the installation of this fence. The ordinance for fences, gates, and walls is located on the opposite page.

# Zoning Compliance Application

Town of Biltmore Forest

## Name

John

First

Spake

Last

## Property Address

5 Stuyvesant Crescent

Address Line 1

## Phone

(828) 674-3372

## Email

john@spakerealestate.com

## Parcel ID/PIN Number

964693155300000

## ZONING INFORMATION

### Current Zoning

☒ R-1 ☐ R-2 ☐ R-3 ☐ R-4 ☐ R-5 ☐ P-S

### Lot Size

.89 acre

### Maximum Roof Coverage

4,682 square feet (Up to 1 acres)

Choose appropriate lot size

### Proposed Roof Coverage Total

N/A

*Must not exceed maximum coverage allowed*

### Maximum Impervious Surface Coverage

Up to 1 acre (27.5 percent of lot area)

Choose appropriate lot size

### Proposed Impervious Surface Coverage

N/A

*Must not exceed maximum coverage allowed*

### 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

Installation of a new fence along with additional landscaping to be installed for screening of the fence from the road. See attached four (4) documents as exhibits for this project.

\* Note Below: Exact timeline and cost of project still yet to be determined, but will happen ASAP so we can move into the house.

**Estimated Start Date**

4/26/2021

**Estimated Completion Date**

5/28/2021

**Estimated Cost of Project**

\$10,000.00

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

5 Stuyvesant Crescent - Fence Site Plan.pdf

5 Stuyvesant Crescent - Fence - Existing Conditions.pdf

5 Stuyvesant Crescent - Fence - Example of interior yard view & fence material.pdf

5 Stuyvesant Crescent - Fence - Finished Conditions with New Plantings to Screen Fence from Road.pdf

**Applicant Signature****Date**

3/28/2021



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# Special Use Permit Application

Town of Biltmore Forest

**Name**

John Spake

**Address**

5 Stuyvesant Crescent

**Phone**

(828) 674-3372

**Email**

john@spakerealestate.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:**

Installation of a fence along with additional evergreen landscaping to be installed for screening of the fence from the road. Fence would be decorative aluminum installed along our rear property line (immediately adjacent to or replacing the neighbor's existing chain link fence), down the side yard (on inside of existing landscaped hedge and attach to front corner of house (buffered from view of road with new landscaping) to secure the read and side yards.

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

This fence will improve and/or not negatively impact the neighbor to the rear as the new decorative aluminum fence would be installed immediately adjacent to or replacing the neighbor's existing chain link fence. And, this fence will not negatively impact the neighbor to the right as the new decorative aluminum fence would be installed inside of the existing large landscaped evergreen hedge (approx. 8' tall), thus not visible to neighbor and will not impact their existing deer fencing (a portion of which is on our property). Also, this fence will not negatively impact the neighbor to the left as the new decorative aluminum fence would not be installed on that side of our property. Finally, this fence will not negatively impact the other living in the neighborhood as we will also screen the new fence from view of the road by installing new evergreen landscaping on the outside of the fence to hide it from view.

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

**Signature**

**Date**

3/28/2021



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# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

John Spake

**Address**

5 Stuyvesant Crescent

**Phone**

(828) 674-3372

**Email**

john@spakerealestate.com

**Current Zoning/Use**

Residential

**Requested Use**

Fence Installation

**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?**

Installation of a fence along with additional evergreen landscaping to be installed for screening of the fence from the road. Fence would be decorative aluminum installed along our rear property line (immediately adjacent to or replacing the neighbor's existing chain link fence), down the side yard (on inside of existing landscaped hedge and attach to front corner of house (buffered from view of road with new landscaping) to secure the read and side yards.

**What does the ordinance require?**

No fence in the side or rear yard setback

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

**REQUIRED FINDINGS: Please provide a thorough response to each.****Unnecessary hardship would result from the strict application of the ordinance.**

There is no are for a rear yard due to the original placement of this house at the rear of the lot in 1984 and it sitting above the road allows for very little backyard area (and almost none if staying out of the rear setback).

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

The hardship is peculiar to this lot due to the house originally being built in 1984 at the rear of the lot and house site sitting above the road with every little yard (grass) area to easily secure.

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

The placement of the house is an existing condition that we inherited when we purchased the home that was built in 1984.

**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.**

Many other residences in the neighborhood have fences that are present in the side yards (and some in front yards), a lot of them are unscreened from view. We feel the addition of this fence will not negatively impact anyone else living in the neighborhood or the immediate neighbors to the property due to our extra measure of installing evergreen landscaping to screen it from view. Unlike many of the other existing fences in the neighborhood, our installing and maintaining new evergreen landscaping on the outside of the decorative aluminum fence will block it from view of neighbors on that side of our property and the general public passing by on the road.

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

**Signature**

**Date**

3/28/2021

A handwritten signature in black ink, appearing to read "John Spok", written over a horizontal line.

JIMMIE F HUGHES LIVING TRUST  
DEED BOOK 5712 PAGE 1159  
PLAT BOOK 32 PAGE 18

THIS PORTION OF EXISTING  
CHAINLINK FENCE TO BE  
REPLACED WITH DECORATIVE  
ALUMINUM FENCE  
16" HIGH  
FIRE PIT  
MAX. 5' HT  
REBAR W/  
CAP  
"MCMAHAN"

PROPOSED  
FENCE TO BE  
PLACED INSIDE  
OF EVERGREEN  
SCREEN PLANTS  
6.5' TALL DE  
DETERRENT FE

EXISTING  
EVERGREEN  
SCREEN  
PLANTINGS  
TO REMAIN  
NANCY  
A TUN  
DEED  
PLA

NEW PLANTINGS  
TO SCREEN VIEW  
OF FENCE FROM  
THE STREET

PROPOSED FENCING  
SITE PLAN 1"=20'

SHEET  
#1

9646931553  
HOLLI ALEXANDREA TOWE. &  
JOHN DAVID SPAKE  
DEED BOOK 6033 PAGE 1660  
PLAT BOOK 46 PAGE 180

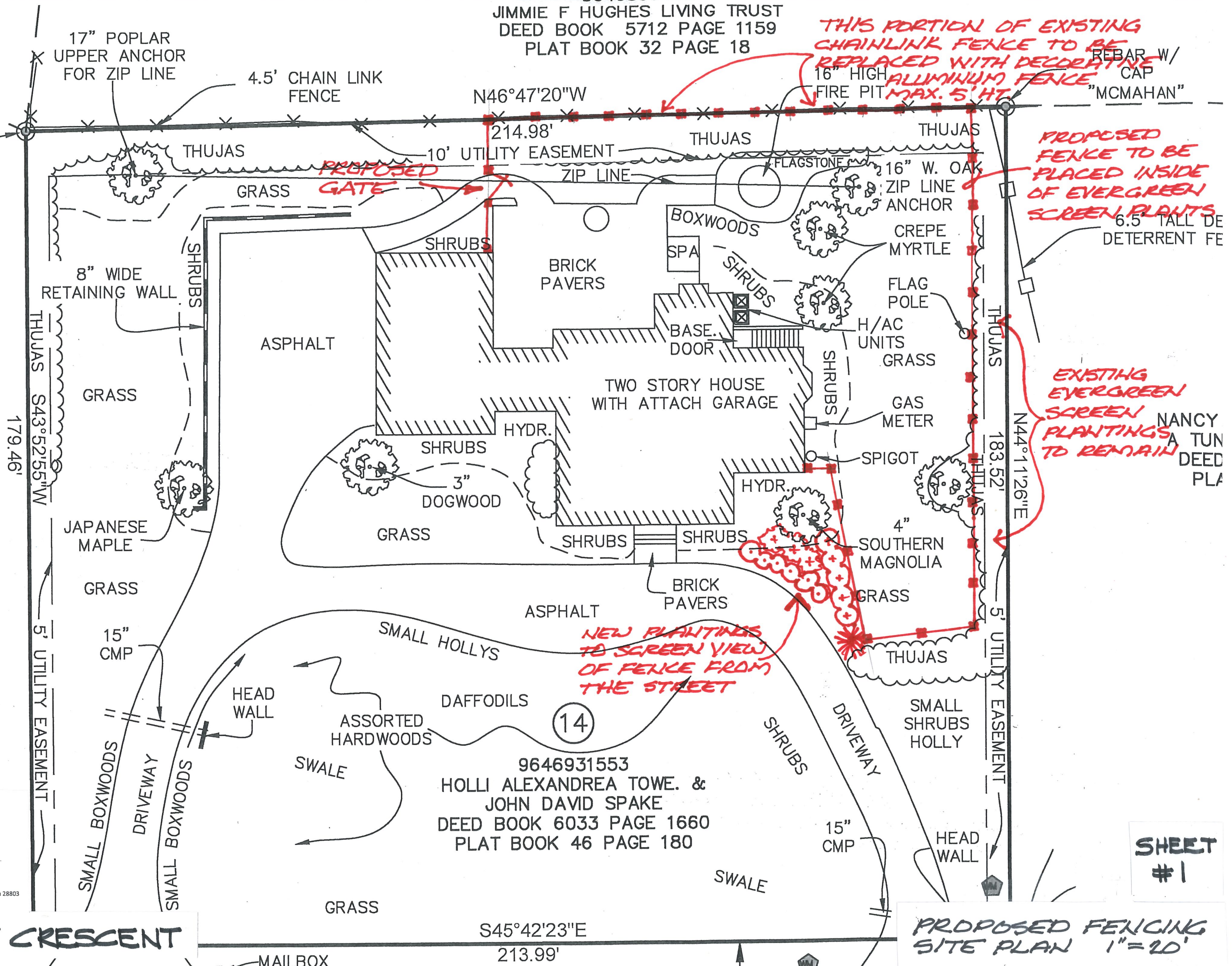
DESIGN  
ASSOCIATES  
LANDSCAPE ARCHITECTS  
& LAND PLANNERS

1293 Hendersonville Road, Suite 21 - Asheville, North Carolina 28803  
Office: 828-277-7410 Fax: 828-277-7413

5 STUYVESANT CRESCENT

13

933309  
R & MONICA L TURBYFILL  
FEBRUARY 10, 2016  
397 PAGE 1156  
46 PAGE 180





## **§ 153.049 FENCE, GATE AND WALL REGULATIONS.**

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(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)





**DESIGN  
ASSOCIATES**  
LANDSCAPE ARCHITECTS  
& LAND PLANNERS

1293 Hendersonville Road, Suite 21 - Asheville, North Carolina 28803  
Office: 828-277-7410 Fax: 828-277-7413

**5 STUYVESANT CRESCENT**

**SHEET  
# 2**

**EXISTING CONDITIONS**





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SHEET  
#3

VIEW OF PROPOSED DECORATIVE  
ALUMINUM FENCE IN SIDE YARD.





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Office: 828-277-7410 Fax: 828-277-7413

# 5 STUYVESANT CRESCENT

SHEET  
#4

PROPOSED PLANTINGS TO SCREEN  
DECORATIVE ALUMINUM FENCE  
FROM THE STREET