



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: October 10, 2023  
Re: **Board of Adjustment Meeting – October 23, 2023**

**Applicants:**

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

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

**Neighbors:**

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

You may review applications & plans for the projects on this agenda at <http://www.biltmoreforest.org/board-of-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 October 18, 2023.

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

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, October 23, 2023 at 4:00 p.m at the Biltmore Forest Town Hall at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

Remote viewing via Zoom at the link provided below.

1. The meeting will be called to order and roll call taken.
2. The minutes of the September 18, 2023 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 13 Cedar Chine – Appeal to Board of Adjustment regarding Fence Installation at 6 Hemlock Road**

**Case 2: 3 Deerfield Road – Special Use Permit request for swim spa construction in rear yard**

**Case 3: 6 Fairway Place – Special Use Permit request for swimming pool in rear yard**

**Case 4: 11 Forest Road – Special Use Permit request for fence replacement within same location**

**Case 5: 44 Forest Road – Special Use Permit request for fence installation within rear yard**

**Case 6: 6 Eastwood Road – Special Use Permit request for accessory structure construction**

**Case 7: 25 Ridgefield Place – Special Use Permit request for swimming pool construction within rear yard**

**Case 8: 47 Hilltop Road – Special Use Permit Request for Retaining Wall Construction and Variance Request for Setback Intrusion**

**Case 9: 7 Stuyvesant Road – Special Use Permit Request for Access Drive Construction and Variance Request for Side Setback Intrusion**

4. Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT MEETING  
HELD MONDAY, SEPTEMBER 18, 2023

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

Mr. Greg Goosmann, Mr. Lowell Pearlman, Ms. Martha Barnes, Ms. Rhoda Groce, Ms. Lynn Kieffer were present. Mr. Jonathan Kanipe, Town Manager, Mr. Tony Williams, Town Planner, Mr. Harry Buckner Public Works Director 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. Dan Ryan

Ms. Melissa Ryan

Mr. Howard McDill

Mr. Walter Guidry

A motion was made by Mr. Lowell Pearlman to approve the minutes as amended from August 28, 2023. Mr. Rhoda Groce seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter discussed is a for a Special Use Permit request for a fence installation and Variance request to encroach within the rear and side yard setbacks at 9 White Oak Road. Mr. Lowell Pearlman shepherded the matter. The fence is being requested to keep children and animals confined. They have pedestrians and kids coming through the property every day. They would like to move phase two from the plan and extend the southern fence to the existing lattice work. They have spoken to the neighbors about the project.

DELIBERATION AND DETERMINATION:

Mr. Pearlman restated the facts and said Dan Ryan of 9 White Oak Road is requesting a Variance and Special Use Permit to complete the enclosure of the back yard which will require encroachment into the backway which as a result encroaches into the setback requirement. He has spoken to the neighbors, and they approve the project. The fences will be screened.

Ms. Lynn Kieffer moved that a Special Use Permit and Variance be granted to Dan Ryan of 9 White Oak Road for fencing in the rear yard and fencing that encroaches into the side yard and the facts as recited by Lowell Pearlman and his summation be supported as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according

to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

Ms. Robert Chandler seconded the motion. The motion was unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request to extend a previously approved accessory structure at 28 East Forest Road. Mr. Howard McDill represented the homeowners. Ms. Rhoda Groce shepherded the matter. They would like to extend the carport to allow parking

of one additional car. It would be an additional 900 square feet of impervious surface. Ms. Kieffer said it is not visible from the road.

DELIBERATION AND DETERMINATION:

Ms. Groce recited the facts and said Michael Douglas of 28 East Forest Road is requesting a Special Use Permit for an extension of a motor court which is an additional 900 square feet of impervious surface.

Mr. Pearlman moved that a Special Use Permit be granted to Michael Douglas of 28 East Forest Road for extension of a parking area and the facts as recited by Rhoda Groce and his summation be supported as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. He further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Barnes seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Special Use request for an accessory structure installation and Variance request for encroachment within the side yard setbacks at 15 Eastwood Road. Mr. Walter Guidry represented the homeowner. Ms. Martha Barnes shepherded the matter. For new builds, the Board suggested not going into the setback and the planned construction of this home goes into the setback. All parts of the wall will be within the setback. The plans will include changing the steps to a mulch path and moved in setback with the wall.

DELIBERATION AND DETERMINATION:

Ms. Barnes restated the facts and said Crockett and Eliza Dale are asking for a Special Use Permit for a retaining wall that is u-shaped on the west side of the property. It is two feet tall. It will be sixty-two linear feet. A Variance is for the circular driveway. The spheres are portable. They are doing away with the walkway and stairs and replacing it with a mulch path. Mr. Guidry said it will be more like fifty three feet once it is brought five feet into the setback.

Ms. Rhoda Groce moved that a Special Use Permit and Variance be granted to Crockett and Liza Dale of 15 Eastwood Road. The Variance request is for a circular driveway and the Special Use is for a retaining wall on the west side of the house. It will be two feet high and fifty two feet wide and the facts as recited by Martha Barnes and her summation be accepted as findings and facts to support this grant. The Board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan

of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

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

The meeting was adjourned at 4:37 pm. The next Board of Adjustment meeting is scheduled for Monday, October 23, 2023 at 4:00 pm.

ATTEST:

---

Greg Goosmann

Chairman

---

Laura Jacobs

Town Clerk





**BOARD OF ADJUSTMENT MEETING**  
**STAFF MEMORANDUM**  
**OCTOBER 23, 2023**

**CASE 1**

**Property Address:** 13 Cedar Chine

**Property Owner:** James Mullins

**Request:** Appeal regarding Fence on Neighboring Property

---

Background

Mr. Mullins has appealed to the Board of Adjustment regarding a fence installation on the neighbor's property at 6 Hemlock Road. Mr. Mullins's full appeal is included, as well as supplemental information he submitted in July 2023.

A copy of the Town's responses to Mr. Mullins's supplemental questions are included for the Board's review.

## **BOARD OF ADJUSTMENT APPEAL**

**1. MY APPEAL IS THAT THE BOARD OF ADJUSTMENT ADDRESS THE REMMES' (REMMES) VIOLATION OF THE TOWN'S JULY 2020 ORDINANCE PROHIBITING ELECTRIFIED FENCES AND REQUIRING ELECTRIFIED FENCES REMOVAL BY AUGUST 2020. SEE BELOW.**

**Electrified Fences, defined as an above ground fence carrying an electric voltage intended to deliver a shock if touched by a person or animal, are not allowed. Existing electrified fences should be removed within 180 days of the adoption of this ordinance whether or not the fences are currently carrying an electric voltage.**

**THE ORDINANCE IS ABSOLUTE AND DOES NOT PROVIDE ANY EXCEPTIONS. THAT IS FOR GOOD REASONS AS THEY ARE DANGEROUS. BY LAW ELECTRIC FENCES MUST CARRY WARNING SIGNS FOR THE PUBLIC. THE ELECTRIC DEER FENCE CAN SHOCK CAUSING VENTRICULAR FIBRILLATION IN THE HEART AND CAN PREVENT THE HEART FROM BEING ABLE TO PUMP BLOOD; IF TWO HANDS TOUCH AN ELECTRIC DEER FENCE THE CURRENT CAN TRAVEL THROUGH THE HEART AND LUNGS; AND ACCIDENTAL HEAD OR NECK CONTACT CAN CAUSE GREATER SHOCK EFFECTS.**

**THE BOA ELECTRIFIED FENCE ORDINANCE DOES NOT PROVIDE ANY EXCEPTIONS SUCH AS:**

**THE ELECTRIFIED FENCE IS SMALL,**

**THE ELECTRIFIED FENCE HAS BEEN THERE A LONG TIME,**

**THE ELECTRIFIED FENCE IS IN A CERTAIN LOCATION,**

**THE ELECTRIFIED FENCE IS GOING TO BE PAINTED AND REPAIRED,**

**WHETHER OR NOT THE FENCES ARE CURRENTLY CARRYING AN ELECTRIC VOLTAGE,**

**TOWN ADMINISTRATION CANNOT OVERRIDE OR MODIFY THE PROHIBITION OF THE ELECTRIFIED FENCE ORDINANCE,**

**OR PERMIT THE ELECTRIFIED FENCE TO BE MOVED. ETC.**

**GIVEN THE ABOVE, WHY WAS THE PROHIBITED ELECTRIFIED FENCE (PEF) ALLOWED TO REMAIN BY THE TOWN AFTER IT WAS OBSERVED BY THE TOWN? THE PEF IS IN THE REMMES' SETBACK ON BOTH SIDES OF REMMES' YARD AND IN THEIR REAR SETBACK. THE TOWN OFFICIALS OBSERVED THE PEF:**

- 1. WHEN TOWN VIEWED THE PEF IN 2022 APPROVING THE CUTTING OF A FEW TREES AND SMALL SAPLINGS ON REMMES' REAR SETBACK TO THE PROPERTY LINE**
- 2. WHEN TOWN SAW PEF ON INSPECTION IN EARLY 2023.**
- 3. WHEN TOWN SAW WIND DAMAGE TO SMALL AMOUNT OF PEF AND ALLOWED REMMES TO REPAIR AND MOVE ALL OF PEF IN APRIL 2023**
- 4. WHEN PEF VIEWED ON APRIL 20 VISIT BY NUMEROUS TOWN OFFICIALS**

**THE BOARD OF ADJUSTMENT (BOA) HAS NOT GRANTED REMMES A PERMIT FOR THE ELECTRIFIED FENCE AND HAS NOT GRANTED A VARIANCE TO THE PEF ORDINANCE TO THE REMMES. PLEASE SEE INCLUDED PICTURES OF PEF AFTER FIRST MOVE BY REMMES AND AFTER SECOND MOVE BY REMMES. CLEARLY A PEF.**

**I APPEAL TO THE BOA TO ENFORCE IT'S ORDINANCE AND HAVE THE REMMES PROHIBITED ELECTRIFIED FENCE REMOVED IMMEDIATELY.**

**2. MY SECOND APPEAL, IF THE TOWN DOES NOT ENFORCE ITS PROHIBITION OF ELECTRIFIED FENCES, IS FOR THE TOWN TO ENFORCE THE TOWN ORDINANCES AND POLICIES REGARDING FENCE VIOLATIONS. THIS INCLUDES THE REMMES REAR**

**PROHIBITED ELECTRIFIED FENCE ON MY PROPERTY LINE AND PROPERTY HAVING MULTIPLE ORDINANCE VIOLATIONS IN ACCORDANCE WITH THE BOARD'S FENCE PERMIT ORDINANCES AND LANDSCAPE REGULATIONS.**

**THE ORDINANCES AND REGULATIONS VIOLATED ARE:**

**Granting a variance cannot confer upon an applicant any special privileges that are denied to other residents of Biltmore Forest.**

**In granting permission to construct a new fence or wall, or to repair or replace an existing fence or wall, the Board of Adjustment may impose reasonable conditions, including a requirement that the fence or wall be buffered with vegetation so that it is not visible from adjacent properties and that the fence or wall be removed if the purpose or condition for which it was constructed is no longer in effect.**

**Replacement of existing fences and walls. Replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance.**

**Repair of more than half of an existing fence or wall shall be considered a replacement and shall be subject to this ordinance.**

**When a fence or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence or, remove the fence at the property owner's expense. If the property owner fails to repair or remove the fence, the Town may remove the fence and recover the cost from the property owner.**

**REMMES' BOA FENCE ORDINANCE VIOLATIONS:**

- a. WE HAVE PROOF REMMES REAR PROHIBITED ELECTRIFIED FENCE WAS MOVED TWICE WITHOUT BOARD PERMIT.**
  - i. MULLINS' AND PRIOR OWNERS' SURVEYS ATTACHED**



**PROPERTY. TOWN'S CITED EVIDENCE DOES NOT ADDRESS WHERE PEF WAS LOCATED, JUST HEARSAY THAT THERE WAS A "FENCE" ON THE PROPERTY SOMEWHERE.**

- ii. TOWN OMITTS MY SURVEY INFORMATION AND PRIOR PROPERTY OWNERS' STATEMENTS ABOUT THE "FENCE".**
  - iii. TOWN CLAIMS FENCE WAS LOCATED IN SAME LOCATION WHEN TOWN INSPECTED PEF BUT TOWN OBSERVED FENCE AFTER THE MOVES, REPAIRS AND PAINTING OF THE FENCE. THIS VIOLATES TOWN'S ORDINANCES AND PHILOSOPHY. THE ADMINISTRATIVE INSPECTIONS ARE NOT CONCLUSIVE. SEE #3 BELOW.**
  - iv. REMMES ELECTRIFIED FENCE IS NOT SCREENED BY SHRUBBERY ON ANY NEIGHBORS VIEW SIDE OF REMMES FENCE IN VIOLATION OF BOA ORDINANCES AND NOT SET BACK TO PERMIT MAINTENANCE FROM REMMES' PROPERTY. PLEASE SEE PRIOR PICTURES AND HARDSCAPE ADDED.**
  - v. WHY WOULD YOU PAINT A FENCE THAT IS NOT GOING TO BE USED AND MAKE IT MORE VISIBLE? WHY HAVE A PEF THAT SERVES NO PURPOSE?**
- f. REMMES' INVISIBLE FENCE DOES NOT CONTAIN THEIR VERY LARGE DOG ALL THE TIME. HAVE EVIDENCE OF REMMES' DOG ON OUR PROPERTY MULTIPLE TIMES. THOUGH A DOG MAY BE FRIENDLY EVEN A SMALL BUMP TO A HANDICAP PERSON, AN ELDERLY PERSON, OR CHILD IS A SAFETY HAZARD TO HANDICAP, ELDERLY, CHILDREN AND PETS. PLEASE SEE PICTURES OF REMMES' DOG ON MULLINS PROPERTY.**

**IT MAY BE HELPFUL TO ASK HOW THIS SITUATION OCCURRED. IT IS A VERY SIMPLE EXPLANATION. WHEN THE REMMES TOOK DOWN THE PRIOR EXISTING PEF FOR THEIR MAJOR DRAINAGE PROJECT IN THE REAR YARD. THEY THEN HAD SOMEONE CLEAR CUT THE TREES AND SAPLINGS IN THE REAR SET BACK AND BEYOND. NEXT, REMMES HAD SOMEONE PUT INVISIBLE FENCE MARKERS AT THE REAR PROPERTY LINE. HOWEVER, WITH NO SURVEY BUT CLEARED PROPERTY, THE INSTALLER STARTED AT OUR FAR-LEFT REAR PROPERTY POST MARKER THEN VEERED TO GO AROUND THE LARGE 4 FT IN DIAMETER TREE ON OUR SIDE OF THE TREE AND CONTINUED ON MY PROPERTY UNTIL THEY VEERED BACK TO OUR FAR-RIGHT PROPERTY LINE MARKER. THEN THE FENCE INSTALLER, WITH POOR FENCE INSTALLATION SKILLS AND WITH NO SURVEY, PUT THE PEF WITH REPLACED NEW FENCE POSTS, FOLLOWING THE INVISIBLE FENCE MARKERS.**

**ON MAR 2, 2023, REMMES WAS APPROPRIATELY NOTIFIED BY THE TOWN OF MY CONCERNS ABOUT THE PROHIBITED ELECTRIFIED FENCE, ITS PLACEMENT IN THE SETBACK, AND ON THE PROPERTY LINE AND ENCROACHING ON MY PROPERTY. MR REMMES CLAIMED IN RESPONSE THAT THE FENCE HAS NEVER BEEN TOUCHED AND THAT IT IS NOT ELECTRIFIED. THIS ACKNOWLEDGES IT IS AN ELECTRIFIED FENCE BY THE TOWN'S 2020 DEFINITION. ALSO, REMMES CLAIMS, AS OF MAR 3, 2023, HE MADE NO CHANGES TO THE FENCE WHICH WOULD INCLUDE PAINTING ALL THE FENCE POSTS. REMMES LATER ADVISED FENCE WAS PAINTED. WE CAN TESTIFY THAT THE ELECTRIFIED FENCE POSTS WERE NOT PAINTED IN PLACE. SO, HOW WERE ALL THE PEF POSTS PAINTED WHEN NOT IN PLACE WITHOUT MOVING THEM, OR WERE NEW FENCE POSTS JUST INSTALLED? THE PEF ISSUE HAS BEEN ONGOING SINCE BEFORE THANKSGIVING 2022 AND CONTINUES. PLEASE SEE ATTACHED CHRONOLOGICAL LIST OF COMMUNICATIONS AND NOTE**

**REMMES EARLY DESCRIPTION OF HIS PLANS FOR REPLACING THE FENCE.**

**DUE TO THE ABOVE FENCE ORDINANCE VIOLATIONS, I APPEAL TO THE BOA TO REQUIRE THE REMMES TO HAVE A HEARING ON THE PROHIBITED ELECTRIFIED FENCE PERMIT AND VARIANCES FOR FENCE PERMITTING, PROCEDURES AND THEN ARCHITECTURAL REVIEW, IF THE FENCE IS PERMITTED. ALSO, IF THE BOA ALLOWS THE PROHIBITED ELECTRIFIED FENCE TO REMAIN, IT SHOULD REQUIRE THE ENTIRE FENCE TO BE PAINTED AN ALLOWABLE COLOR, INCLUDING THE WIRES, THOUGH THIS MAY BE A SAFETY ISSUE FOR AN ELECTRIFIED FENCE PERMITTED BY THE TOWN.**

**3. I APPEAL TO THE BOA TO ADVISE THE BOA MEMBERS TO NOT RELY UPON THE MAY 9, 2023 EMAIL FROM THE TOWN AS EVIDENCE IN THIS HEARING. THE EMAIL DOES NOT ADDRESS THE ISSUES OF THE APPEAL OR ORDINANCE VIOLATIONS. THE ISSUES WERE DESCRIBED VERY WELL IN THE TOWN'S MAR 2 EMAIL TO REMMES. HOWEVER, THE ISSUES ARE NOT AS PUT FORWARD IN THE MAY 9 EMAIL TO THE MULLINS. THE MAY 9TH EMAIL:**

- a. ONLY ADDRESSED THE REMMES OR THE SELLERS OF THE REMMES PROPERTY HAVING A FENCE BUT NOT THAT IT IS A PEF,**
- b. ONLY ADDRESSED THAT THE PRIOR OWNERS OF THE REMMES' PROPERTY WANTED A FENCE TO PROTECT FROM DEER BUT NOT WHAT TYPE OF FENCE**
- c. ONLY ADDRESSED THAT THE REMMES' DECIDED NOT TO SEEK A PERMIT FOR A NEW FENCE WHICH DOES NOT PROVIDE A PERMIT FOR A PEF.**

**THE REASONS ARE BECAUSE:**



- d. THE TOWN'S CONCLUSIONS ARE BASED ON INCORRECT INFORMATION AND ERRORS OF OMISSION.**
- e. THE MAY 9<sup>TH</sup> EMAIL IS ARTFULLY WRITTEN TO AVOID THE KEY ISSUES, IT SUGGESTS THE EMAIL IS A COMPREHENSIVE REVIEW OF THE ISSUES BUT PROVIDES NO ACTUAL EVIDENCE RELATED TO THE DIRECT ISSUES OF THE APPEAL. THE KEY APPEAL ISSUES ARE:**
- i. THE FENCE IS A PROHIBITED ELECTRIFIED FENCE IN VIOLATION OF THE TOWN'S 2020 ORDINANCE WITH NO PERMIT OR VARIANCE FROM THE BOA.**
  - ii. MORE THAN 50% OF THE PROHIBITED ELECTRIFIED FENCE WAS MOVED ON TO MY PROPERTY LINE AND PROPERTY AND THEN MOVED A SECOND TIME WITHOUT BOA PERMIT OR VARIANCE.**
  - iii. MORE THAN 50% OF THE PROHIBITED ELECTRIFIED FENCE WAS REPAIRED OR REPLACED WITHOUT BOA PERMIT OR VARIANCE AND WITHOUT ARCHITECTURAL DESIGN REVIEW.**

**THE TOWN'S PROHIBITED ELECTRIFIED FENCE REVIEW IS BASED ON AN ON-SITE VISIT ON APRIL 20, 2023, THAT WAS AFTER ALL FENCE MOVES AND REPAIRS OF THE FENCE WERE COMPLETED.**

- iv. THE REVIEW BY THE TOWN WAS ONLY WITH THE REMMES. I WAS NOT NOTIFIED OF THE INSPECTION VISIT AND NOT CONTACTED DURING THE VISIT AND WAS DENIED THE OPPORTUNITY FOR ANY COMMENTS OR INFORMATION TO THE REVIEW TEAM. THERE WAS NO VERIFYING, REQUEST FOR COMMENTS, OR CHECKING OF INFORMATION WITH ME AFTER APRIL 20 VISIT TO THE ISSUANCE OF THE MAY 9<sup>TH</sup> EMAIL AND NONE SINCE THE EMAIL.**

- v. THE REVIEW TEAM HAD NO PRIOR REFERENCE POINT FOR DETERMINING THE PRIOR FENCE LOCATIONS OR SURVEYS AND DID NOT PRESENT ANY IN THE MAY 9<sup>TH</sup> EMAIL.**

**THE TOWN'S EMAIL ONLY STATES THE " FENCE" AVOIDING IDENTIFYING IT AS AN PEF.**

**THE EMAIL ONLY STATES THE "FENCE" WAS "IN PLACE" WHICH AVOIDS ANY LOCATION ISSUES RELATIVE TO THE SETBACKS AND MY PROPERTY.**

**THE EMAIL ONLY STATES THE REMMES HAD THE "FENCE" REPAINTED RECENTLY AVOIDING HOW MUCH OF THE FENCE WAS REPAINTED (MORE THAN 50%) AND AVOIDING MENTIONING THE PROHIBITED SHINY METALLIC COLORS OF BRIGHT GREEN WITH BRIGHT YELLOW INSULATORS AND WITH NEWLY REPLACED BRIGHT SHINY NEW METAL WIRES. THERE IS NO MENTION IF THE TOWN INQUIRED IF THE POSTS WERE TAKEN DOWN TO BE PAINTED, PAINTED IN PLACE, OR WERE DONE PRIOR TO MOVEMENT OF THE "FENCE" .**

**THE EMAIL STATES THE REMMES ELECTED "TO NOT PURSUE A NEW FENCE PROJECT" AS IF THAT HAS ANY EVIDENTIARY BEARING ON THE ISSUES.**

**ALL THE FOLLOW UP BY THE TOWN WAS DONE ONLY WITH REMMES' SOURCES. NONE OF THE FOLLOW UP ADDRESSED ANY OF THE ISSUES.**

**SELLING REAL ESTATE AGENT STATING, "FENCE IN PLACE WHEN HOME WAS SOLD". NOTE, THE AGENT'S EMAIL AFTER THE CONVERSATION WITH THE TOWN, AVOIDS STATING AN ELECTRIFIED FENCE AND ONLY SAYS IN "PLACE" WHICH PROVIDES NO EVIDENTIARY INFORMATION AS TO LOCATION, PROPERTY LINES AND SETBACKS OR TOWN APPROVALS OR VARIANCES. NOTE THERE IS NO REFERENCE TO REMMES' SURVEY EVIDENCE.**

**AGENT STATES HEARSAY THAT PRIOR OWNERS WANTED A “FENCE” FOR DEER PROTECTION” THAT HAS NO EVIDENTIARY VALUE TO THE ISSUES IN QUESTION.**

**THE TOWN CLAIMS ARE BASED ON:**

**THE APRIL 20<sup>TH</sup> SITE VISIT THAT OCCURRED AFTER ALL “FENCE” MOVES, REPAIRS AND PAINTING OF THE PEF OCCURRED,**

**A PRIOR STAFF VISIT THAT OCCURRED AFTER FIRST PEF MOVE WITH NO SURVEY OR PROPERTY LINE MARKING OR SETBACK LINE MARKING,**

**A PRIOR STAFF VISIT THAT OCCURRED WHEN MORE THAN 50% OF THE FENCE WAS ON MY PROPERTY AND ENCROACHED AS MUCH AS 4 FEET DEEP INTO MY PROPERTY PAST THE REAR SETBACK,**

**A PRIOR STAFF VISIT THAT OCCURRED WHEN THE TOWN’S ARBORIST VISITED TO APPROVE CUTTING 3-4 TREES AND SOME SCRUB BUSH EXCEPT NOT FOR A SHARED 4 FT IN DIAMETER TREE. THIS LARGE TREE ONLY HAS BARELY A FOOT OF IT ON THE REMMES PROPERTY. THIS IS WHERE NEW DRAINAGE AND 40 FEET OF NEW HARDSCAPE WAS INSTALLED. NOTE THE ENTIRE SETBACK WAS CLEARED.**

**TOWN ONLY REFERS TO THE EXISTENCE OF A “FENCE” AND AVOIDS DESCRIBING IT AS A PEF AND ONLY CLAIMS PROOF OF THE EXISTENCE OF A FENCE WITHOUT ANY DESCRIPTION OF LOCATION, COLORS ETC. OR THE OTHER VIOLATIONS OF ORDINANCES.**

**THE TOWN NOTES “THE SMALL PORTION OF FENCE FROM MY PROPERTY MOVED ON APRIL 12,” SHOWING THE TOWN ON APRIL 12<sup>TH</sup> EITHER DID NOT HAVE ANY IDEA HOW MUCH OF THE FENCE WAS ON MY PROPERTY OR INTENTIONALLY DESCRIBES IT VAGUELY TO AVOID ADDRESSING THE TRUE MAGNITUDE OF**

**THE FENCE MOVED, WHICH IS MORE THAN 50% OF THE “FENCE”. NOTE THERE IS NO REFERENCE TO ANY SURVEYS, SETBACKS ETC. BY THE TOWN.**

**THE MULTIPLE CONVERSATIONS REFERRED TO BY THE TOWN DID NOT INCLUDE ANY OF THE INFORMATION IN THE EMAIL OF MAY 9<sup>TH</sup>. I MADE IT CLEAR I DID NOT AGREE THAT MY CONSENT TO MOVE THE FENCE FROM MY PROPERTY WAS SUFFICIENT TO OBTAIN BOA PERMIT OF THE FENCE TO BE MOVED. I MADE IT CLEAR THAT THE FENCE AND REMMES’ CLAIMS CONTINUED TO BE IN DISPUTE BECAUSE IT DID NOT MEET THE REQUIREMENT THAT THE BOA APPROVE THE MOVE OF MORE THAN 50% OF THE “FENCE.” THE BOA DID NOT APPROVE THE OTHER “FENCE” ORDINANCE VIOLATIONS EITHER. I DO NOT BELIEVE THAT THE BOA WOULD ACCEPT AS AN EXCEPTION TO ITS ORDINANCES, THAT NEIGHBORS CAN AGREE (NOT THIS CASE) TO MOVE A PROHIBITED FENCE WHICH WOULD OVERRIDE THE BOA ORDINANCES PROHIBITING THAT TYPE OF FENCE AND ITS SETBACK LOCATIONS.**

#### **4. PROPOSED ALTERNATIVE RESOLUTION:**

**FOR SETTLEMENT DISCUSSIONS, IF THE BOA IS NOT GOING TO ENFORCE ITS ORDINANCES, THEN BEFORE ANY FURTHER APPEALS, PERMIT ME TO OFFER AN ALTERNATIVE RESOLUTION APPROACH TO AVOID FURTHER APPEALS. PLEASE SEE MULLINS ALTERNATIVE RESOLUTION PROPOSAL ATTACHED.**

# **ATTACHMENT LIST FOR JAMES MULLINS BOA APPEAL**

## **A. MULLINS SURVEYS**

**a. OCT 2021**

**b. JAN 2023**

## **B. 13 CEDAR CHINE PRIOR OWNER SURVEYS**

**a. SEPT 1997 AND 2007**

## **C. PICTURE OF REMMES' FENCE ON MULLINS PROPERTY**

**a. NOV 2022**

**b. DEC 2022 & JAN 2023 FENCE ON MULLINS PROPERTY**

**c. APRIL 2023**

**d. MAY 2023 FENCE WITH LITTLE SHRUBBERY AND NO SCREENING FOR MULLINS' OR NEIGHBORS' IN SETBACKS**

**e. MAY 2023 POST 2<sup>ND</sup> FENCE MOVE AND WITH HARDSCAPE DRAINAGE TRENCH**

**f. DOG ON MULLINS' PROPERTY MULTIPLE TIMES**

## **D. REMMES' AND MULLINS' REAR LOTS DIMENSIONS, AND REMMES' FENCE DIMENSIONS**

## **E. CHRONOLOGICAL LIST OF COMMUNICATIONS REGARDING REMMES' PROHIBITED ELECTRIFIED FENCE BETWEEN:**

**a. REMMES AND MULLINS,**

**b. THE TOWN AND MULLINS,**

**c. REMMES AND THE TOWN.**

## **F. ALTERNATIVE RESOLUTION APPROACH**

**REMMES' &  
MULLINS' REAR  
LOTS DIMENSIONS  
AND REMMES'  
FENCE DIMENSIONS**

**REMMES' LOT AND PROHIBITED STAND-ALONE FENCE DIMENSIONS**

<b>MULLINS LOT AT REAR</b>	<b>273'</b>
<b>REMMES LOT AT REAR</b>	<b>223'</b>
<b>REMMES FENCE AT REAR</b>	<b>215'</b>
<b>REMMES FENCE ON MULLINS</b>	
<b>PROPERTY LINE AND PROPERTY</b>	<b>185'</b>
<b>REMMES FENCE LENGTH + SIDE SUPPORTS</b>	<b>240'</b>
<b>50% OF REMMES FENCE LENGTH</b>	<b>107.5' (1/2 OF 215)</b>
<b>50% OF REMMES FENCE LENGTH</b>	
<b>+ SIDE SUPPORTS</b>	<b>120' (1/2 OF 240)</b>
<b>REMMES FENCE MOVED TO PROPERTY</b>	
<b>LINE AND MULLINS PROPERTY</b>	<b>185'</b>
<b>REMMES FENCE MOVED FROM MULLINS</b>	
<b>PROPERTY AND PROPERTY LINE</b>	<b>185'</b>
<b>REMMES FENCE PAINTED PROHIBITED</b>	
<b>COLORS AND REWIRED</b>	<b>185'</b>
<b>REMMES DRAINAGE HARD SCAPE ADDED</b>	<b>40'</b>

**ALL VIOLATIONS EXCEED 50% OF PROHIBITED FENCE**

**SEPT 7 SURVEY 1997 SHOWS NO REMMES' FENCE ON MULLINS PROPERTY AND SAME SURVEY USED FOR PRIOR PURCHASER IN 2006.**

**OCT 1, 2021 SURVEY SHOWS NO REMMES' FENCE ON MULLINS' PROPERTY**

**JAN 30, 2023 SURVEY SHOWS REMMES FENCE ON MULLINS' PROPERTY**

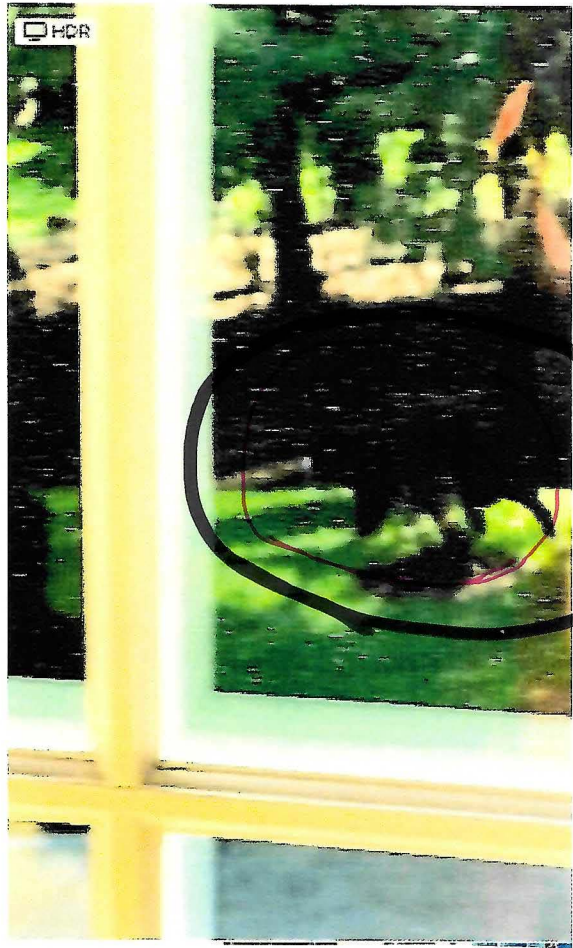
8:28

Camera



April 9  
9:54 AM

Edit



























## **SECTION 1 SUPPLEMENTAL INFORMATION**

**I NOW UNDERSTAND THAT SUBSEQUENT TO THE 2017-2020 TOWN'S ORDINANCE PROHIBITING ELECTRIFIED FENCES THE TOWN CHANGED ITS ORDINANCES TO A REFERRAL TO NC STATE ORDINANCES. THE CHANGE SEEMS TO REMOVE THE CLARITY FOR RESIDENTS TO KNOW WHAT IS ALLOWED AND WHAT IS PROHIBITED WITHOUT INTERPRETATION BY THE BOA.**

**WHAT WAS A CLEAR BAN ON ELECTRIFIED FENCES WHETHER OR NOT THE FENCES ARE CURRENTLY CARRYING AN ELECTRIC VOLTAGE, NOW SEEMS INTERRUPTED BY THE BOA TO BE PROHIBITED ONLY IF ELECTRIFIED FENCES ARE CURRENTLY CARRYING AN ELECTRIC VOLTAGE AT THE TIME OF INSPECTION. OF COURSE, IT ONLY TAKES AN HOUR TO ADD ELECTRIFICATION TO SUCH A FENCE, SO THE BOARD OR OTHER RESIDENTS CANNOT KNOW IF THE FENCE IS ELECTRIFIED POST THE TOWN'S INSPECTION. THERE IS NO TOWN ON-GOING MONITORING OF THE STATE OF SUCH A FENCE FOR RESIDENTS' PROTECTION. THERE REMAINS THE POTENTIAL LIABILITY TO NEIGHBORING RESIDENTS IF SOMEONE FROM THEIR PROPERTY IS HARMED BY AN ELECTRIFIED FENCE THAT IS NOT SO MARKED.**

### **CLARIFYING QUESTIONS:**

- 1. WHY THE TOWN ALLOWS SUCH A FENCE TO BE INSTALLED OR REMAIN DEEP INTO BOTH SIDES AND REAR SETBACKS?**
- 2. WHY THE TOWN DOES NOT REQUIRE CAUTIONARY WARNING SIGNS?**
- 3. WHY THE TOWN DOES NOT REQUIRE PROPER SCREENING OF SUCH A FENCE FROM NEIGHBORS VIEW?**
- 4. DOES THE TOWN NOW HAVE A "GRANDFATHER CLAUSE" FOR EXISTING ELECTRIFIED OR POTENTIALLY ELECTRIFIED FENCES?**

**5. DOES THE TOWN ALLOWS SUCH FENCES, IF NOT ELECTRIFIED,  
AS THEY SERVE NO PURPOSE AND ARE AESTHETICALLY  
UNATTRACTIVE TO THE NEIGHBORS?**

## **SUPPLEMENTAL INFORMATION FOR SECTION 2**

**I NOW UNDERSTAND THAT SOMETIME IN 2020, THE TOWN'S ORDINANCES CHANGED TO A REFERRAL TO NC STATE ORDINANCES. THE CHANGE SEEMS TO REMOVE THE CLARITY FOR RESIDENTS TO KNOW WHAT IS ALLOWED AND WHAT IS PROHIBITED WITHOUT INTERPRETATION BY THE BOA.**

**IT IS NOT CLEAR IF THE TOWN'S ORDINANCES NOW ALLOW:**

**Granting a variance that confers upon an applicant any special privileges that are denied to other residents of Biltmore Forest.**

**In granting permission to construct a new fence or wall, or to repair or replace an existing fence or wall, the Board of Adjustment may impose reasonable conditions, including a requirement that the fence or wall be buffered with vegetation so that it is not visible from adjacent properties and that the fence or wall be removed if the purpose or condition for which it was constructed is no longer in effect.**

**Replacement of existing fences and walls. Replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance.**

**Repair of more than half of an existing fence or wall shall be considered a replacement and shall be subject to this ordinance.**

**When a fence or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence or, remove the fence at the property owner's expense. If the property owner fails to repair or remove the fence, the Town may remove the fence and recover the cost from the property owner.**

**ADDITIONAL QUESTIONS ARE:**

**A. ARE NEW HARDSCAPES ALLOWED IN THE SETBACKS WITHOUT BOA APPROVAL?**

**B. DO NEW HARDCAPES HAVE TO HAVE SCREENING TO ELIMINATE THEM FROM NEIGHBORS VIEWS?**

**C. DO FENCES DEEP IN TO THE SIDE AND REAR SETBACKS REQUIRE SCREENING FROM NEIGHBOR VIEWS?**

**D. WHY DOES THE TOWN NOT ENFORCE ITS POLICIES AND ORDINANCES REGARDING THE REMMES'S FENCE?**

### **SECTION 3 SUPPLEMENTAL INFORMATION**

**I NOW UNDERSTAND THAT SOMETIME IN 2020, THE TOWN'S ORDINANCES CHANGED TO A REFERRAL TO NC STATE ORDINANCES. THE CHANGE SEEMS TO REMOVE THE CLARITY FOR RESIDENTS TO KNOW WHAT IS ALLOWED AND WHAT IS PROHIBITED WITHOUT INTERPRETATION BY THE BOA.**

- 1. THE FENCE IS A POTENTIALLY ELECTRIFIED FENCE THAT HAS NOT BEEN APPROVED BY THE BOA, DOES IT HAVE TO BE APPROVED BY THE BOA?**
- 2. DOES THE MOVEMENT OF MORE THAN 50% OF THE FENCE STILL REQUIRE BOA APPROVAL? DOES IT REQUIRE APPROVAL IF IN THE SETBACK?**
- 3. DOES THE REPAIR OR REPLACEMENT OF MORE THAN 50% OF A FENCE IN A SETBACK REQUIRE A BOA PERMIT OR VARIANCE?**
- 4. SHOULD THE TOWN HAVE CONTACTED ME TO COMMENT ON THE FACTS DURING THE APRIL 20, 2023 FENCE INSPECTION OR ONLY RELY ON REMMES' INFORMATION?**
- 5. DOES THE TOWN HAVE FROM THE REMMES ANY DOCUMENTED SURVEY FROM THE TIME THEY PURCHASED THE PROPERTY SHOWING THE LOCATION OF THE FENCE IN ITS ORIGINAL LOCATION?**
- 6. IF THE ORIGINAL ELECTRIFIED FENCE WAS INSTALLED TO STOP DEAR FROM ENTERING THE PRIOR OWNERS' PROPERTY, IT WOULD NOT HAVE SERVED THE PURPOSE IF NOT ELECTRIFIED AT THAT TIME. I BELIEVE THERE WAS NO PROHIBITION TO ELECTRIFIED FENCES AT THAT TIME. DOES THE REMOVAL OF ELECTRIFICATION AND THERE BY CHANGE IN PURPOSE OF THE FENCE, REQUIRE BOA APPROVAL OF THE FENCE?**
- 7. I DO NOT KNOW WHEN THE TOWN ATTORNEY AND BOARD MEMBERS STARTED THEIR TERMS. BUT THOSE THAT WERE SERVING FROM 2017 THROUGH LATE 2020 WOULD BE VERY**

**FAMILIAR WITH THE TOWN'S THEN ELECTRIFIED FENCE ORDINANCES. THE ATTORNEY WOULD LIKELY HAVE PARTICIPATED IN THE DRAFTING OR REVIEW OF THESE ORDINANCES AND BOARD MEMBERS WOULD HAVE TO APPROVE THE CHANGES TO THE ELECTRIFIED FENCE ORDINANCE. AT MY FENCE HEARING LAST MONTH, THE TOWN'S ATTORNEY ACTED LIKE HE DID NOT KNOW ABOUT THE TOWN'S ELECTRIFIED FENCE ORDINANCE PROHIBITION AND DID NOT ADVISE THE BOARD OR ME THAT IT WAS CHANGED WITH THE ADOPTION OF THE ORDINANCE REFERRAL CHANGE. HE QUESTIONED MY REFERENCES TO THE 2020 ORDINANCE WORDING SEVERAL TIMES AND ASKED WHERE I SAW THAT ELECTRIFIED FENCE WORDING WITHOUT PROVIDING THE HISTORY OF THE ORDINANCE CHANGE. IT MADE ME FEEL MY INTEGRITY WAS BEING QUESTIONED AT THE HEARING.**



## **SUMMARY APPEAL**

- 1. BOA SHOULD REQUIRE POTENTIAL HAZARDOUS ELECTRIFIABLE FENCE TO BE REMOVED.**
- 2. IF NOT, THEN BOA SHOULD REQUIRE A BOA REVIEW OF THE FENCE AT A BOA HEARING AND HAVE IT MOVED OUT OF THE THREE REAR YARD SETBACKS AND SCREENED ON THE NEIGHBORS VIEW SIDES.**
- 3. IF NOT WILLING TO DO 1 OR 2 ABOVE, THEN BOA SHOULD REQUIRE SCREENING OF THE FENCE AND HARDSCAPE ON THE NEIGHBORS VIEW SIDE OF THE FENCE.**
- 4. BOA SHOULD REQUIRE SCREENING ON NEIGHBORS VIEW SIDE OF HARDSCAPES ADDED OR REPAIRED.**

Responses to James Mullins Appeal Questions  
September 28, 2023

Section 1 – Supplemental Information Questions

1. Fences installed prior to the existing ordinance are allowed to remain installed in their location, and from the Town's knowledge, this fence has been in existence for a substantial amount of time. The only regulation the Town has regarding existing fences is if they are substantially replaced they have to come before the Board of Adjustment for a new review, but the Board *is* allowed to render a decision allowing the same location of the fence.
2. The Town does not require a cautionary warning sign for any fence.
3. Screening, and/or the provision of additional buffering, is reviewed by the Board when there is an application before them for a special use permit. If the fence was substantially replaced, the Board may then consider buffering for the fence, but that has not been the case.
4. The Town actively tries to prohibit electrified fences by asking residents to remove electrification, if it is present. If it not present, and the fence was formerly electrified but is no longer electrified, the Town does not have any regulation over the fence. There is no "grandfather clause" specifically for these fences; rather, *any* fence that has been installed in its location is allowed to remain in that location *unless* substantially replaced.

Section 2 – Supplemental Information Questions

1. All new hardscapes within a setback must be approved by the Board of Adjustment as an accessory structure with a variance allowance.
2. The Board considers screening and buffering on a case by case basis for any special use and variance request.
3. New fences, or newly approved fence replacements, that are located within the setback are reviewed as variances and special uses, respectively. Buffering and screening is generally considered by the Board during these times, but that is on a case by case basis as noted above.
4. There is nothing to enforce in regards to the Remmes's fence as it has not been substantially replaced, has been in existence for a substantial period, there has been no application made to amend the fence as it currently exists, and the fence is not electrified.

Section 3 – Supplemental Information Questions

1. No.
2. Yes. Approval is required in all cases if more than 50% movement – no variance is required to remain in the setback if it is an existing fence.
3. Yes. See above.
4. No. We only reviewed the fence in question due to the complaint received, which included information that you submitted previously. Once we reviewed and determined there has been no change and no violation, we alerted you to this finding.
5. No.
6. No.
7. I'm sorry you felt your integrity was being challenged at the meeting. The Town Attorney was providing the Board of Adjustment members the facts regarding the existing fence regulations within the Town, and I'm certain, did not intend to make you feel as that way.

#### Section 4 – Summary Appeal

1. The Town has not mechanism to require previously installed, approved fences to be removed if they are *potentially* electrifiable.
2. The Town has no basis to review existing fences and no ability under our ordinances to require removal out of setbacks. If a fence permit is requested associated with an existing fence, then the BOA can consider these questions.
3. Similar to number 2 above, the Town (and BOA) have no ability to review existing fences unless a new permit is requested.
4. The BOA reviews new accessory structure requests (special use permits and variance) on a case by case basis and may consider screening as part of this review.



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### Case 2

**Property Owner:** Gordon & Catherine Taylor

**Property Address:** 3 Deerfield Rd

#### Project Description

The applicant requests a special use permit for the installation of a swim spa in the rear yard. The application includes a description of the project proposed and is not within the setbacks.

#### Special Use Request

The Town considers a swim spa as an accessory structure, pursuant to Chapter 153.029 of the Zoning Ordinance. This is attached for the Board's review. The specific language of the Zoning Ordinance states that the Town regulates these only as the North Carolina General Statutes allows. This statute is also included for the Board's review.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Gordon & Catherine Taylor

**Property Address**

3 Deerfield Road

**Phone**

(802) 356-4954

**Email**

ghtvt@aol.com

**Parcel ID/PIN Number**

9648-98-1640

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.032 Acres

**Maximum Roof Coverage**

5,060 square feet (Up to 1.2 acres)

**Proposed Roof Coverage Total**

No Change

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

Increase of approximately 470 square feet

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

No change

**Description of the Proposed Project**

See attached

**Estimated Start Date**

11/15/2023

**Estimated Completion Date**

12/13/2023

**Estimated Cost of Project**

\$40,000.00

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

Taylor 3 Deerfield Swim Spa.pdf

**Applicant Signature**

**Date**  
9/27/2023

*Gordon H Taylor*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Gordon & Catherine Taylor

**Address**

3 Deerfield Road

**Phone**

(802) 356-4954

**Email**

ghtvt@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:**

My wife and I would like to install a 15' X 8' X 4' (approximately) swim spa adjacent to the existing raised patio at the back of our house. The swim spa would be installed partially in the ground and would be surrounded with waterproof decking that would match in elevation and color our existing patio. The resulting installation is intended to be designed so that the swim spa would blend seamlessly with - and would be an extension of - our existing patio. The decking would include liftable panels to allow for maintenance of the swim spa. The swim spa would be covered with an insulated cover when not in use, Our existing patio is located roughly in the middle of the back of our house and is well within the existing setbacks - side yards and rear yard - required by the Town. The swim spa and the surrounding decking, when installed, will also be entirely within the Town's required setbacks.

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

When installed, the swim spa and surrounding decking will represent a very modest increase in the total area of our existing patio. Our existing patio - as well as the entire rear of our house - is shielded from our neighbors' view by tall shrubbery and trees, all of which would remain following the installation. The rear of our house - including our existing patio and the proposed swim spa location - cannot be seen from the street. As the purpose of the swim spa is exercise and relaxation, its use should not create any significant noise.

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

**Signature**

**Date**  
9/19/2023

*Gordon H. Taylor*



Gordon & Catherine Taylor  
3 Deerfield Road  
Biltmore Forest, NC 28803

Our proposed project is the installation of in-ground swim spa and surrounding decking in the rear yard of our house at 3 Deerfield Road. The swim spa structure will match up with our existing bluestone patio and will extend the patio further into the rear yard. When completed, however, the patio and the new swim spa structure will be well-within the Town's current side and rear yard setback requirements.

We propose to install a Danube swim spa manufactured by Wellis (<https://wellisspa.com/swim-spas>) adjacent to our existing bluestone patio at the rear of our house and to surround it with Trex decking color-matched to the patio's bluestone. The swim spa will be installed in-ground and will "match up" with the height of our existing patio so that, when completed, our existing patio and the surrounding decking will form one continuous surface, including the swim spa.

The total area of the proposed swim spa and decking installation will be approximately 470 ft<sup>2</sup>, consisting of the swim spa itself at approximately 113 ft<sup>2</sup> (14'9" x 7'8") and roughly 360 ft<sup>2</sup> of surrounding decking. The decking will also incorporate steps so that the rear yard will be able to be accessed from the rear of the house and from the patio. The swim spa and surrounding decking will be appropriately landscaped to blend in with the existing landscaping in our rear yard.

The swim spa and surrounding decking will be located approximately on the mid-line of our house next to the opening in our existing patio into the rear yard. The distance between our property lines at that point in our yard (using measurements obtained from the measurement tool on the Buncombe County GIS website) is approximately 187.5'. The width of our proposed swim spa and decking will be approximately 26'. The edges of the proposed swim spa and decking will thus be roughly 64' from the closest side property line (20 Browntown Road), approximately 98' from the other side property line (5 Deerfield Road) and approximately 88' from our rear property line (24 Browntown Road).

Our rear yard is surrounded by tall trees and shrubbery and cannot be seen by any of our neighbors. When not in use, the swim spa will be covered with an insulated cover to maintain water temperature and to keep out leaves, lawn debris, etc.

Please see the attached drawings for more detailed information. The following video shows a similar swim spa by the same manufacturer installed next to an existing patio in a manner similar to what we want to do. We intend, however, to install the swim spa parallel to our patio, not perpendicular to it. <https://www.youtube.com/watch?v=ETrfcOXYI0U&t=167s>

SCALE = 1" = 1'-0"

HOUSE

EXISTING PATIO

EXISTING PATIO

STEP

6'-0"  
NEW TREX PATIO  
EXTENSION

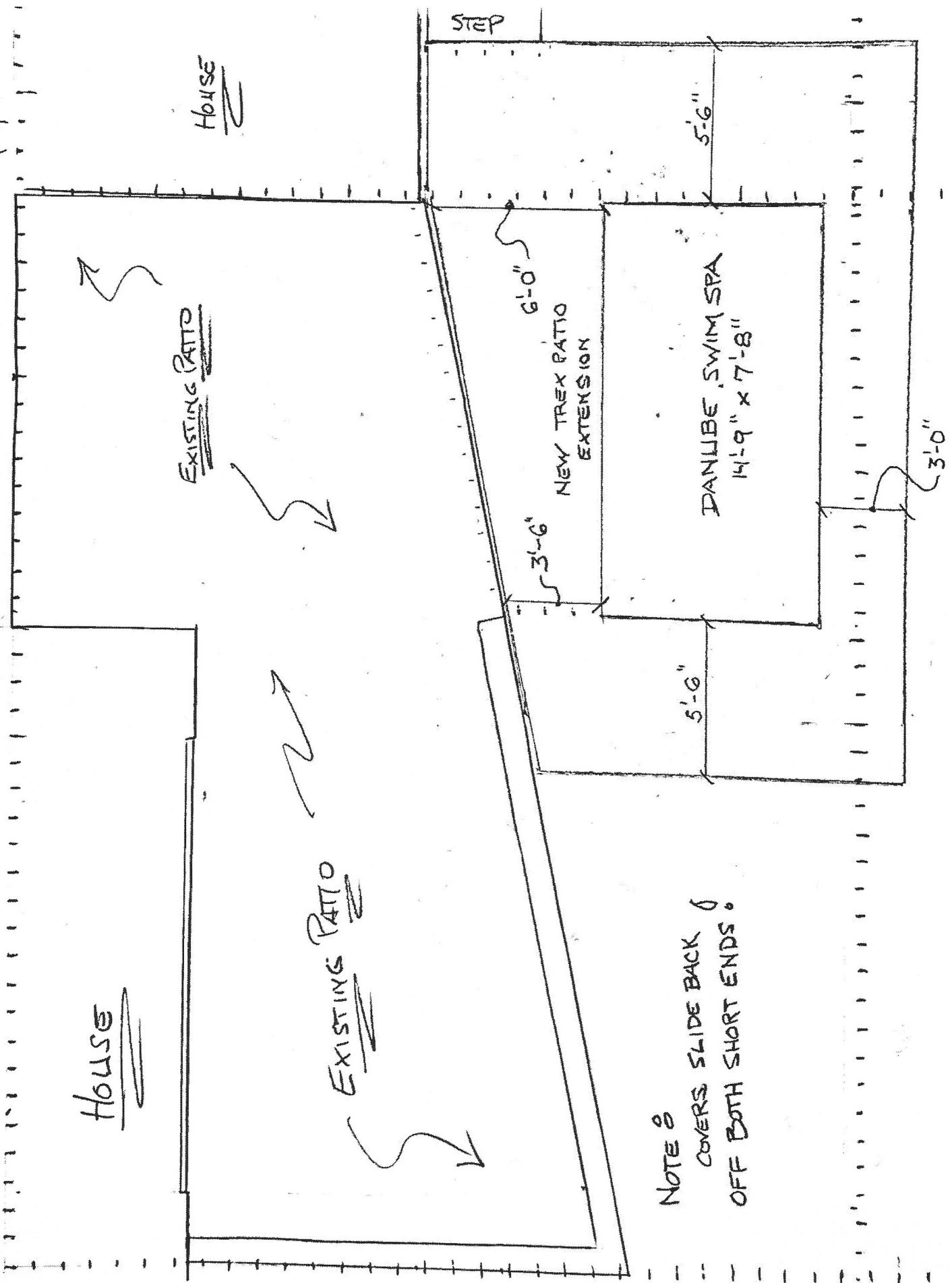
DANUBE SWIM SPA  
14'-9" x 7'-8"

5'-6"

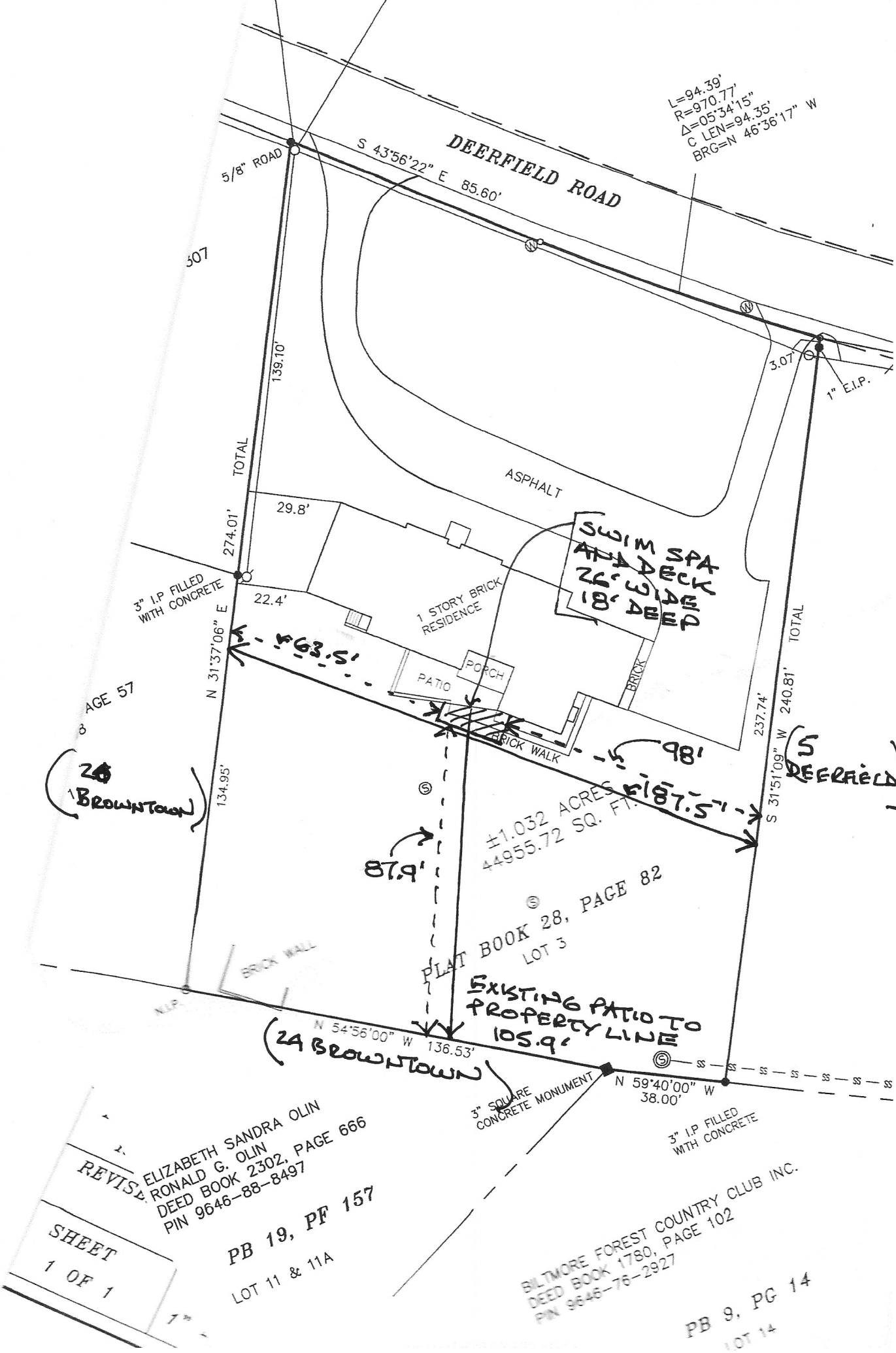
5'-6"

3'-0"

NOTE:   
COVERS SLIDE BACK   
OFF BOTH SHORT ENDS.



L=94.39'  
 R=970.77'  
 Δ=05°34'15"  
 C LEN=94.35'  
 BRG=N 46°36'17" W



AGE 57  
 (20 BROWNTOWN)

(5 DEERFIELD)

±1.032 ACRES  
 44955.72 SQ. FT.

PLAT BOOK 28, PAGE 82  
 LOT 3

EXISTING PATIO TO  
 PROPERTY LINE  
 105.9'

(2A BROWNTOWN)

REVIS: ELIZABETH SANDRA OLIN  
 RONALD G. OLIN  
 DEED BOOK 2302, PAGE 666  
 PIN 9646-88-8497

SHEET  
 1 OF 1

PB 19, PF 157  
 LOT 11 & 11A

BILTMORE FOREST COUNTRY CLUB INC.  
 DEED BOOK 1780, PAGE 102  
 PIN 9646-76-2927

PB 9, PG 14  
 LOT 14



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### Case 3

**Property Owner:** Kenneth Ellington

**Property Address:** 6 Fairway Place

#### Project Description

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

#### Special Use Request

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

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Susan Turner

**Property Address**

6 Fairway Place

**Phone**

(828) 989-4387

**Email**

susan@signature-llc.com

**Parcel ID/PIN Number**

964688801200000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.1499998

**Maximum Roof Coverage**

4,682 square feet (Up to 1 acres)

**Proposed Roof Coverage Total**

0

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 percent of lot area)

**Proposed Impervious Surface Coverage**

~1500 sqft

**Front Yard Setback**

60 feet (R-1 District)

**Side Yard Setback**

20 feet (R-1 District)

**Rear Yard Setback**

25 feet (R-1 District)

**Building Height**

0'

**Description of the Proposed Project**

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

**Estimated Start Date**

1/5/2024

**Estimated Completion Date**

5/31/2024

**Estimated Cost of Project**

\$250,000.00

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

SK1-Site Plan.pdf

**Applicant Signature**

**Date**  
10/2/2023

*Susan Turner*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Susan Turner

**Address**

6 Fairway Place

**Phone**

(828) 989-4387

**Email**

imsturner@yahoo.com

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

Accessory Structures

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

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

custom pool/ spa

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

this is a residential custom swimming pool and spa. It will enhance the beauty of the property and will not negatively affect the community

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

**Signature**

**Date**

*Susan Turner*

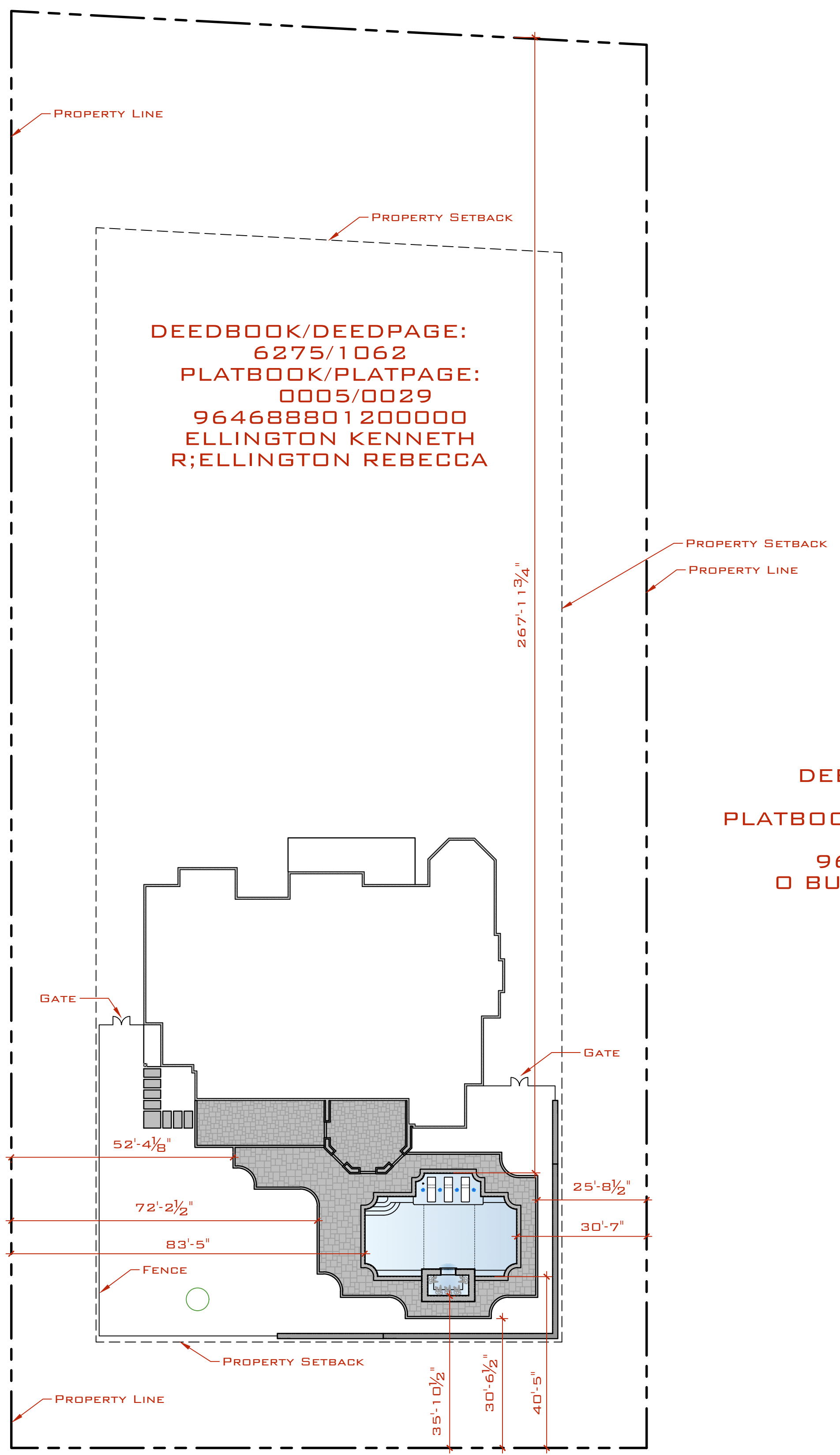


01 4" ALUMINUM FENCE DETAILS  
N.T.S.

EFFORTS HAVE BEEN MADE TO PRODUCE THIS DOCUMENT USING RECYCLED MATERIALS. PLEASE CONTINUE THE CYCLE AND PROPERLY RECYCLE ALL UNNECESSARY COPIES.

DEEDBOOK/DEEDPAGE:  
6194/1303  
PLATBOOK/PLATPAGE:  
0005/0029  
964687887800000  
ELLISTON W LEON

FAIRWAY PLACE



DEEDBOOK/DEEDPAGE:  
6275/1062  
PLATBOOK/PLATPAGE:  
0005/0029  
964688801200000  
ELLINGTON KENNETH  
R; ELLINGTON REBECCA

DEEDBOOK/DEEDPAGE  
6287/562  
PLATBOOK/PLATPAGE: 0232/0029  
964688716600000  
O BUCKLEY MICHAEL J JR

02 SITE PLAN  
1" = 20'-0"

Elegant Backyard  
Retreat with  
Pool and Spa

PREPARED FOR  
The Ellington Family

PROJECT LOCATION  
16 Smokey Ridge Trail  
Arden, NC 28704

SIGNATURE

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

REVISIONS

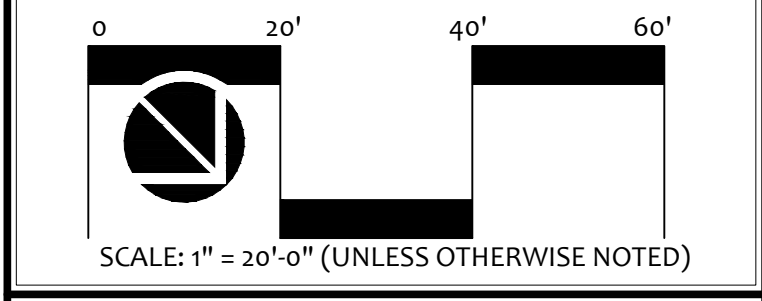
#	DATE	DESCRIPTION	BY
0	09/29/2023	Permit Review	SP
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

CLIENT PROJECT #: 1  
FIRM PROJECT #: 230827  
DR BY: SP RELEASE DATE: 09/29/2023  
AP BY: CD REVISION DATE: 09/29/2023

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

Know what's below.  
Call before you dig.

Site Plan SK1  
Page 1 of 1



SCALE: 1" = 20'-0" (UNLESS OTHERWISE NOTED)

This drawing contains specific and proprietary information and is the property of Signature, LLC. This drawing and the information contained herein may not be scanned, copied, reproduced, modified, published, posted, uploaded, transmitted, or distributed in any way without expressed written consent from Signature, LLC for the specific project named on this sheet.



# Elegant Backyard Retreat with Pool and Spa

PREPARED FOR  
The Ellington Family

PROJECT LOCATION  
6 Fairway Place  
Biltmore Forest, NC 28803

## SIGNATURE

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

### REVISIONS

#	DATE	DESCRIPTION	BY
A	09/13/2023	Rough Draft Presentation	CD
B	09/22/2023	Revised Rough Draft	CD
C	09/28/2023	Revised Rough Draft	CD
D	10/09/2023	Added Paver	SP
E	10/09/2023	Updated Address	SP
F			
G			
H			
I			
J			
K			
L			
M			
N			

CLIENT PROJECT #: 1  
FIRM PROJECT #: 230827

DR BY: CD RELEASE DATE: 09/13/2023  
AP BY: CD REVISION DATE: 10/09/2023

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

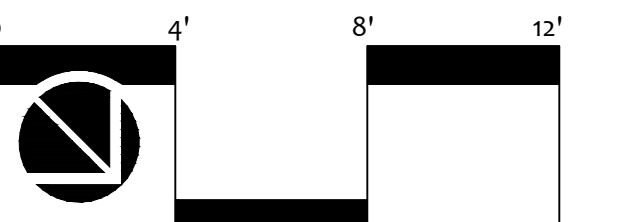


Know what's below.  
Call before you dig.

Concept Plan

C1

Page 1 of 1

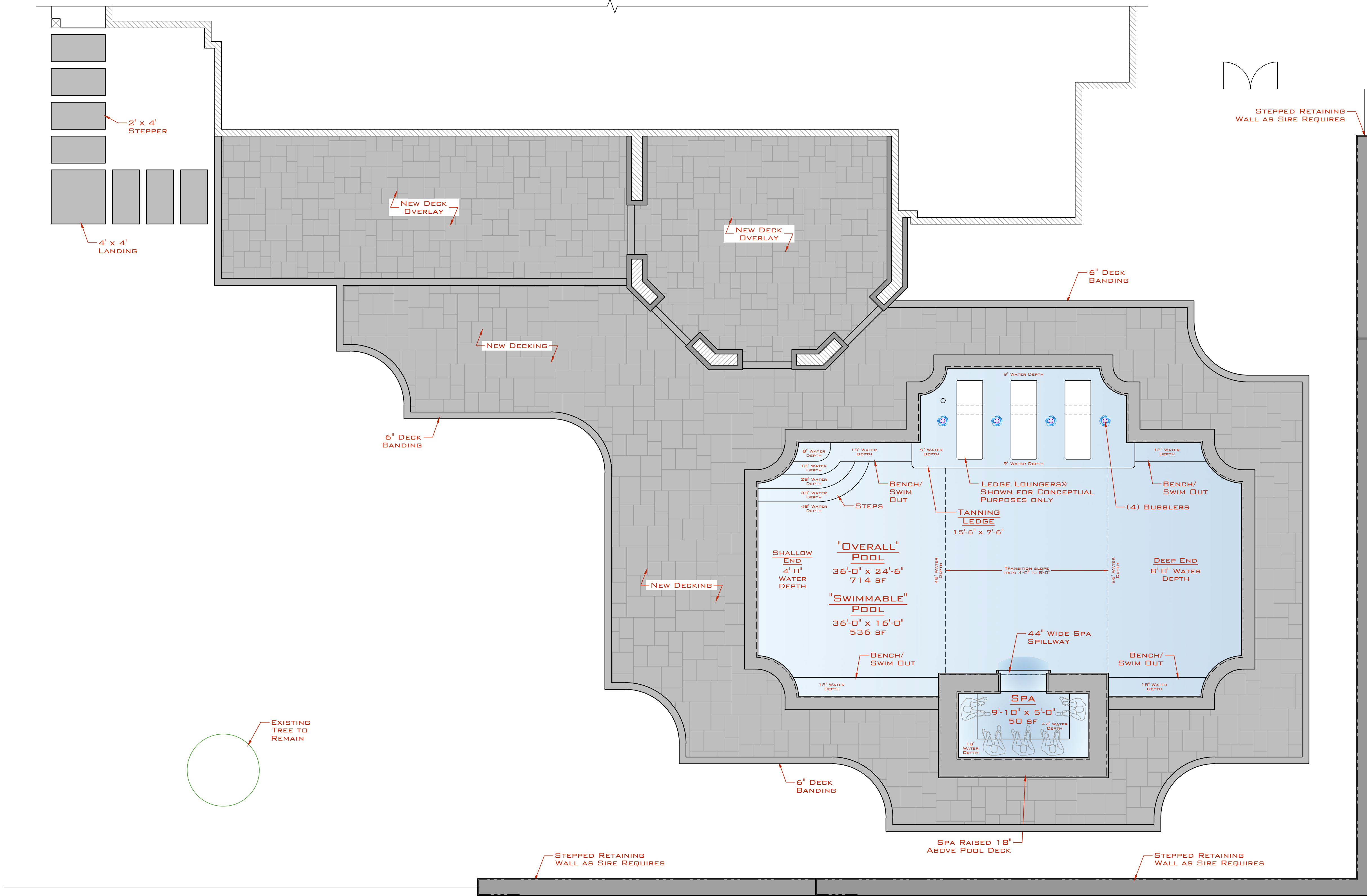


SCALE: 1/4" = 1'-0" (UNLESS OTHERWISE NOTED)

This drawing contains specific and proprietary information and is the property of Signature, LLC. This drawing and the information contained herein may not be scanned, copied, reproduced, modified, published, posted, uploaded, transmitted, or distributed in any way without expressed written consent from Signature, LLC for the specific project named on this sheet.  
© 2023 Signature, LLC



01 BELGUARD PAVER - DUBLIN COBBLE  
N.T.S.



02 CONCEPT PLAN  
1/4" = 1'-0"

1 2 3 4 5

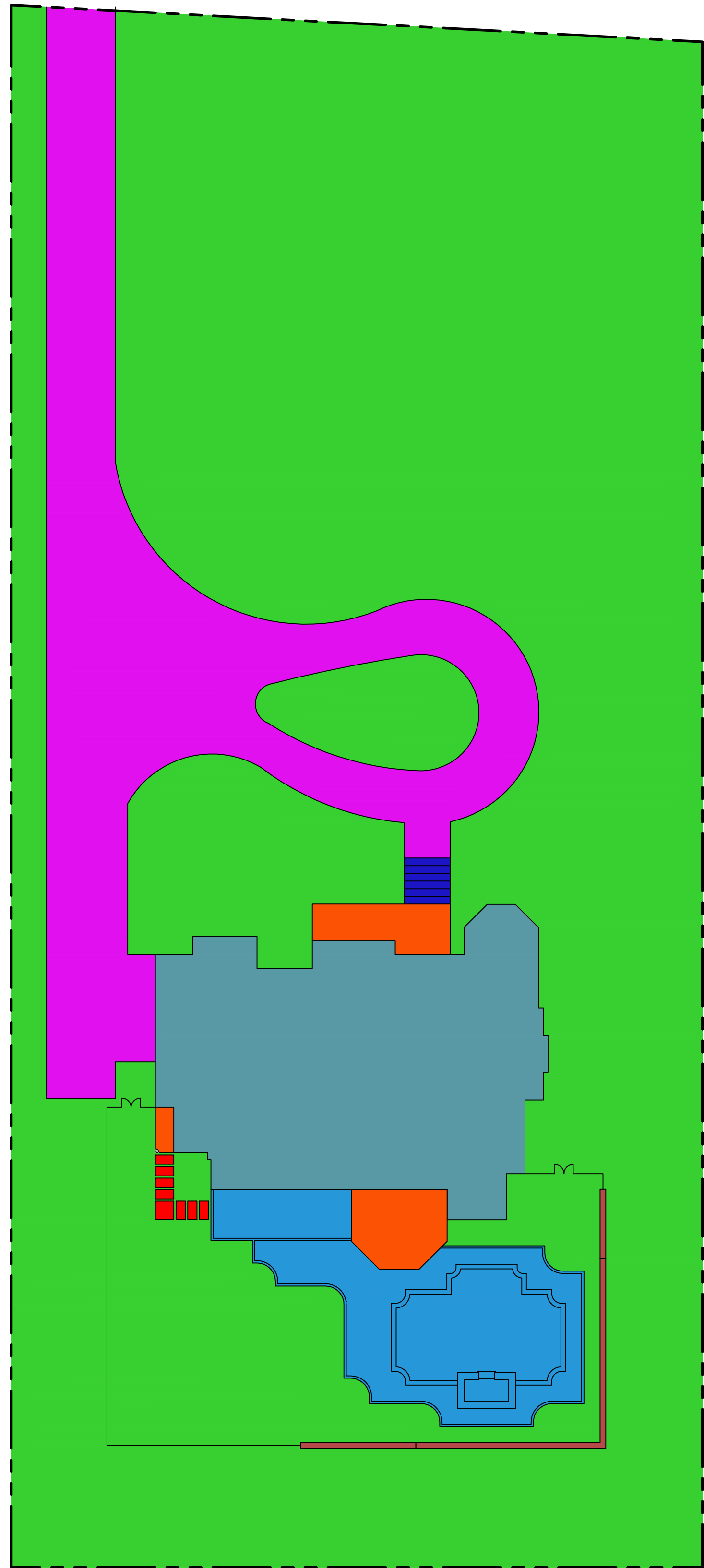
D:\SIGNATURE.LLC\PROJECTS\BILTMORE\BILTMORE-01-ACTIVE\DESIGN\ELLINGTON\230827\3-0-DESIGN\ELLINGTON.DWG 10/20/23 2:48:48 PM

EFFORTS HAVE BEEN MADE TO PRODUCE THIS DOCUMENT USING RECYCLED MATERIALS. PLEASE CONTINUE THE CYCLE AND PROPERLY RECYCLE ALL UNNECESSARY COPIES.

D C B A

EFFORTS HAVE BEEN MADE TO PRODUCE THIS DOCUMENT USING RECYCLED MATERIALS. PLEASE CONTINUE THE CYCLE AND PROPERLY RECYCLE ALL UNNECESSARY COPIES.

D  
C  
B  
A



LOT COVERAGE LEGEND		
	EXISTING HOUSE	4376 SF
	RETAINING WALL	152 SF
	STEPPERS	72 SF
	STEPS	100 SF
	DRIVEWAY	6786 SF
	PATIO	637 SF
	POOL/POOL DECK	2270 SF
	PERMEABLE AREA	35882 SF
	<b>TOTAL</b>	<b>50274 SF</b>

# Elegant Backyard Retreat with Pool and Spa

PREPARED FOR  
The Ellington Family

PROJECT LOCATION  
6 Fairway Place  
Biltmore Forest, NC 28803

## SIGNATURE


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

### REVISIONS

#	DATE	DESCRIPTION	BY
0	10/09/2023	Site Permeability	SP
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

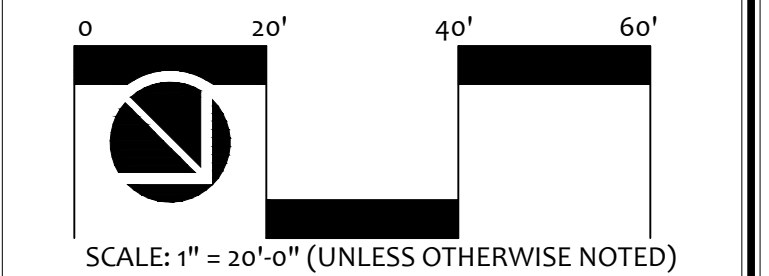
CLIENT PROJECT #: 1  
FIRM PROJECT #: 230827  
DR BY: SP RELEASE DATE: 10/09/2023  
AP BY: CD REVISION DATE: 10/09/2023

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



**Know what's below.  
Call before you dig.**

Permeability Plan SK2  
Page 1 of 1



SCALE: 1" = 20'-0" (UNLESS OTHERWISE NOTED)

**01 SITE PERMEABILITY**  
1" = 20'-0"



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### Case 4

**Property Owner:** Adam Voron  
**Property Address:** 11 Forest Rd  
**Request:** Special Use Permit Request for Replacement Fence Installation

#### Project Description

The applicant requests a special use permit for the replacement of an existing chain-link fence with a black metal fence and extend the wood fence a short way in the same location. The application includes a site plan showing the existing fence location.

#### Special Use Permit Request

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

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Adam Voron

**Property Address**

11 Forest Road

**Phone**

(626) 773-6995

**Email**

adamvoron@gmail.com

**Parcel ID/PIN Number**

964762834000000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.48

**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**

We would like to replace the chain link fence between us (11 Forest) and our neighbor (9 Forest). Please see the attached photos.

**Estimated Start Date**

11/2/2023

**Estimated Completion Date**

11/6/2023

**Estimated Cost of Project**

\$4,840.00

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

image3.jpeg

image0.jpeg

image1.jpeg

image2.jpeg

**Applicant Signature**

**Date**  
10/2/2023

A handwritten signature in black ink, consisting of a stylized, cursive-like script. The signature is composed of several connected strokes, starting with a vertical line on the left, followed by a series of loops and curves that extend to the right.

# Special Use Permit Application

Town of Biltmore Forest

**Name**

Adam Voron

**Address**

11 Forest Road

**Phone**

(626) 773-6995

**Email**

adamvoron@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:**

We would like to replace the chain link fence between us (11 Forest) and our neighbor (9 Forest).

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

The fence is replacing an chain link fence. The fence is in the back part of the property and unviewable from the street.

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

**Signature**

**Date**

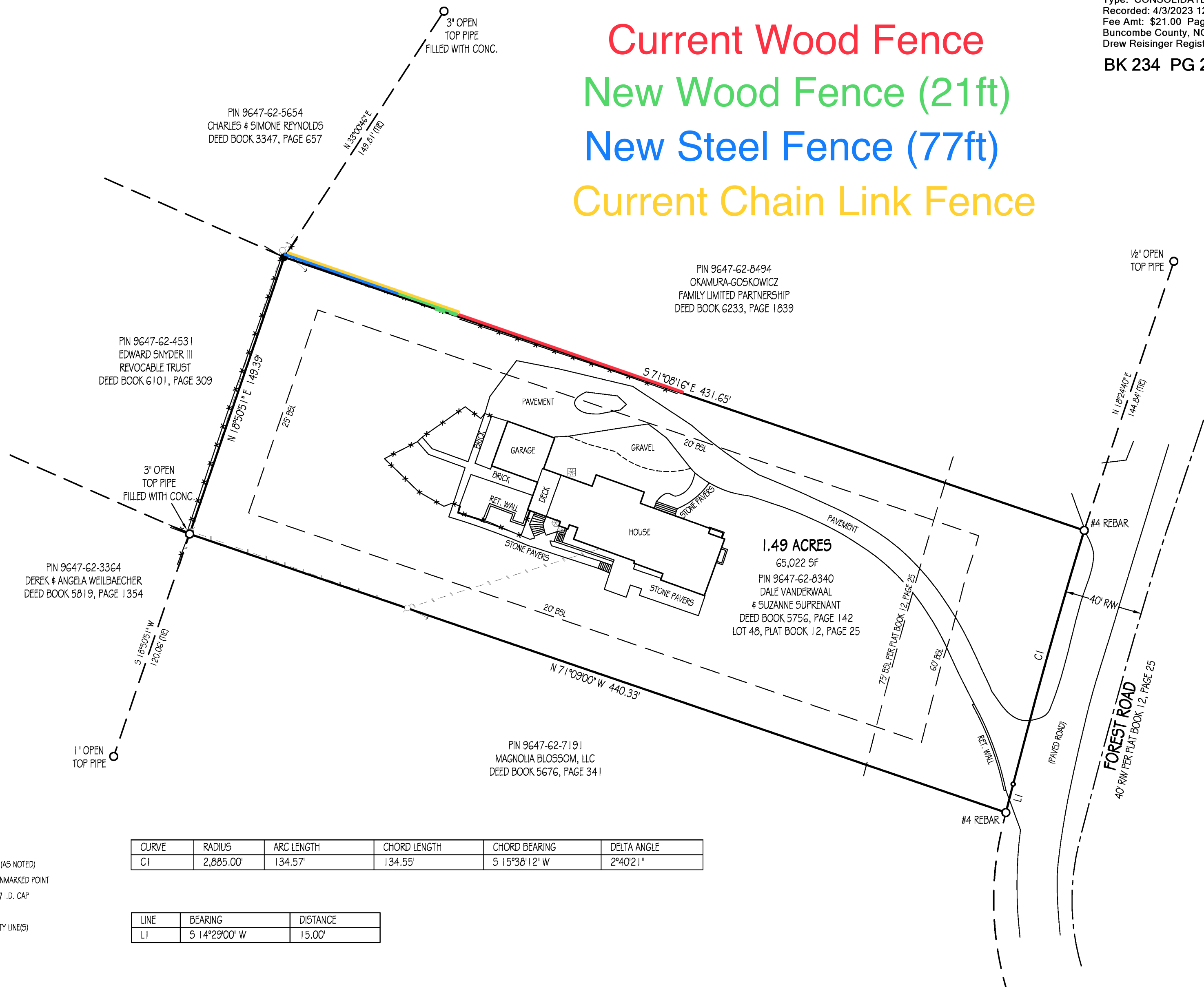
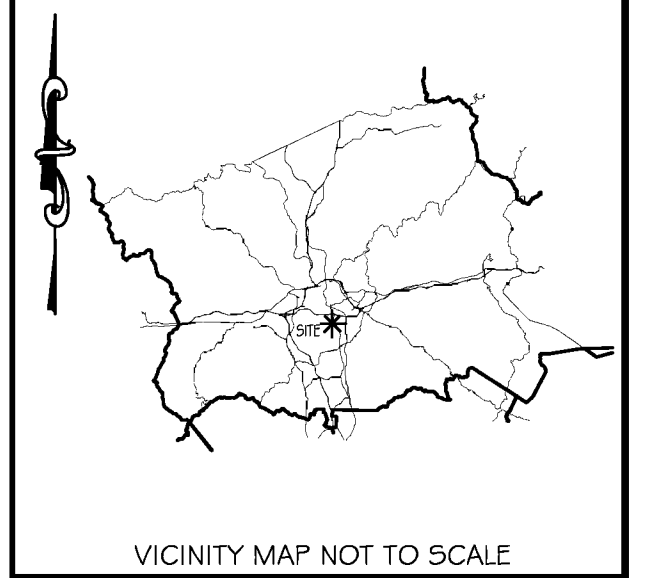
10/2/2023



PLAT NORTH  
PLAT BOOK 12, PAGE 25

**Current Wood Fence**  
**New Wood Fence (21ft)**  
**New Steel Fence (77ft)**  
**Current Chain Link Fence**

Type: CONSOLIDATED REAL PROPERTY  
Recorded: 4/3/2023 12:39:21 PM  
Fee Amt: \$21.00 Page 1 of 1  
Buncombe County, NC  
Drew Reisinger Register of Deeds  
**BK 234 PG 29**



- NOTES:**
- \* THIS SURVEY IS OF AN EXISTING PARCEL OF LAND.
  - \* ALL AREAS CALCULATED BY COORDINATE COMPUTATION METHOD.
  - \* THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.
  - \* THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.
  - \* ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE BUNCOMBE COUNTY GIS WEBSITE.
  - \* NO UNDERGROUND UTILITIES WERE LOCATED. CALL 1-800-632-4949 BEFORE DIGGING.
  - \* NO HORIZONTAL CONTROL FOUND WITHIN 2000'.
  - \* BASED ON GRAPHIC DETERMINATION, THIS PROPERTY DOES NOT LIE IN A FEMA/FIRM SPECIAL FLOOD HAZARD AREA PER COMMUNITY PANEL NO. 3700964700J, DATED 1-6-2010.
  - \* ANY RIVERS, STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC...LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY PERSON(S)/FIRM(S) AUTHORIZED, BY THE PROPER AUTHORITIES, TO MAKE SUCH DETERMINATION.
  - \* ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.
  - \* THIS PROPERTY IS LOCATED IN ZONE R-1 (BILTMORE FOREST), BUILDING SETBACKS ARE AS FOLLOWS:
    - FRONT - 60'
    - SIDE - 20'
    - REAR - 25'
  - \* BUILDING SETBACKS ARE OPEN TO INTERPRETATION. PLEASE CONTACT MUNICIPALITY PLANNING AND ZONING AND/OR HOA COVENANTS FOR FURTHER INFORMATION.

PIN 9647-62-4531  
EDWARD SNYDER III  
REVOCABLE TRUST  
DEED BOOK 6101, PAGE 309

PIN 9647-62-5654  
CHARLES & SIMONE REYNOLDS  
DEED BOOK 3347, PAGE 657

PIN 9647-62-8494  
OKAMURA-GOSKOWICZ  
FAMILY LIMITED PARTNERSHIP  
DEED BOOK 6233, PAGE 1839

PIN 9647-62-3364  
DEREK & ANGELA WEILBAECHER  
DEED BOOK 5819, PAGE 1354

**1.49 ACRES**  
65,022 SF  
PIN 9647-62-8340  
DALE VANDERWAAL  
& SUZANNE SUPRENTANT  
DEED BOOK 5756, PAGE 142  
LOT 48, PLAT BOOK 12, PAGE 25

PIN 9647-62-7191  
MAGNOLIA BLOSSOM, LLC  
DEED BOOK 5676, PAGE 341

- LEGEND:**
- = FOUND CORNER (AS NOTED)
  - = CALCULATED & UNMARKED POINT
  - = SET #5 REBAR W/ I.D. CAP
  - = UTILITY POLE
  - - - = OVERHEAD UTILITY LINES
  - - - = FENCE
  - ⊗ = GAS METER
  - ⊙ = GUY ANCHOR
  - ⊠ = HVAC
  - RW = RIGHT OF WAY
  - BSL = BUILDING SETBACK LINES

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	2,885.00'	134.57'	134.55'	S 15°38'12" W	2°40'21"

LINE	BEARING	DISTANCE
L1	S 14°29'00" W	15.00'



I, JASON D. SPENCER, N.C. P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (PROPERTY DESCRIPTION RECORDED IN DEED BOOKS AND PLATS AS SHOWN IN THE TITLE BLOCK); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY DASHED LINES AS DRAWN FROM INFORMATION FOUND IN DEED BOOKS AS SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 OR GREATER; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORY AS DESCRIBED IN G.S. 47-30(b)(1):  
(c)(1.) THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET;

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS 3rd DAY OF APRIL, A.D., 2023.

DocuSigned by:  
*Jason Spencer*  
20C3C9223870446...  
N.C. PROFESSIONAL LAND SURVEYOR

L-4785  
LICENSE #

BOUNDARY SURVEY FOR  
**ADAM VORON**

REFERENCES  
PIN 9647-62-8340  
DEED BOOK 5756, PAGE 142  
LOT 48, PLAT BOOK 12, PAGE 25  
BILTMORE TOWNSHIP, BUNCOMBE COUNTY, N.C.  
DATE: 3-31-2023 DRAWN BY: MSW  
JOB #230314 CHECKED BY: SMG

40' 0' 40' 80'  
SCALE 1" = 40'

Submitted electronically by "Spencer Surveying and Mapping"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Buncombe County Register of Deeds.

CURRENT OWNER:  
DALE VANDERWAAL &  
SUZANNE SUPRENTANT  
11 FOREST RD  
ASHEVILLE, NC 28803


**SPENCER**  
SURVEYING & MAPPING  
1095 HENDERSONVILLE RD. SUITE 52, ASHEVILLE, NC 28803  
jason@spencer-surveying.com (828)384-1480 P-1720



Proposed Steel Fence Design

Style: Majestic





Current Wooden Fence

5' Tall Ornamental  
Steel Fence  
Start Point

Extend Wooden Fence to Here  
(21')

The new wooden fence would start at 8' and taper to 6'





5' Tall Ornamental Steel Fence (78')  
To End of Property

New Wooden  
Fence End Point



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### CASE 5

**Property Address:** 44 Forest Road

**Property Owner:** David Varbel

**Request:** Special Use Permit request for Fencing in Rear Yard  
and Variance Request for Encroachment into Side & Rear Setbacks

---

#### Background

The applicant requests permission to install a fence within the rear and side yard. The proposed fence is four (4) feet tall and would attach to an existing fence already located along the rear property line. The proposed material, black powder coated steel, complies with the Town's requirements and an example is shown in the attached documents. There are two gates associated with the project as well.

#### Special Use Permit Request

The Town's Zoning Ordinance regulates fences and gates in Chapter 153.049. This regulation is attached to the memorandum and provides additional information regarding the requirements for fence installations. The fence itself is proposed to approximately 261 linear feet of fence added to the property. As noted above, the fence will run into the rear yard setback and connect to an existing fence on the rear property line.

#### Variance Request

The fence is requested to be constructed within the side yard setbacks approximately 5 feet from the property line on one side and meet the setbacks on the other side. The fence proposal also would result in a further intrusion into the rear yard setback to connect to the existing fence. The Town's Zoning Ordinance requires that fences be installed in compliance with setbacks unless the Board issues a variance.

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

David Varbel

**Property Address**

44 Forest Road

**Phone**

(917) 566-0235

**Email**

jesspish@gmail.com

**Parcel ID/PIN Number**

Also under name of Jessica Pishko (wife)

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

.65

**Maximum Roof Coverage**

4,682 square feet (Up to 1 acres)

**Proposed Roof Coverage Total**

n/a

**Maximum Impervious Surface Coverage**

Up to 1 acre (27.5 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**

4 feet

**Description of the Proposed Project**

Residential Ornamental Fencing -- please note the map showing where the fence will be located, which is behind the front of the house, so it will not be visible from the street. There is already a chain-link fence on the back end of the lot from previous owners.

Install approximately 261 linear feet of 4' tall Ameristar Montage Majestic 3-rail black powder-coated ornamental steel fence.

Three 4' walk gates.

-All posts will be set in concrete.

Please see attached material for fencing design and composition.

**Estimated Start Date**

10/1/2023

**Estimated Completion Date**

10/6/2023

**Estimated Cost of Project**

\$12,811.14

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

Estimate\_4432\_from\_Greybeard\_Fence\_Solutions.pdf

drawing-montage majestic.pdf


montage.pdf

fence layout.pdf

**Applicant Signature**

**Date**

9/17/2023

A handwritten signature in black ink, appearing to be 'Jen', written in a cursive style.

# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

David Varbel

**Address**

44 Forest Rd.

**Phone**

(917) 566-0235

**Email**

jesspish@gmail.com

**Current Zoning/Use**

R

**Requested Use**

Request fencing within set backs (partial)

**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?**

We would like to construct a 4-foot fence around part of the property. Some sections may be located within the setbacks.

**What does the ordinance require?**

The ordinance requires 20 foot setbacks on the side and 25 foot in the back

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

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

The topography and natural trees and foliage create a situation such that the fence must naturally be within the setback on the sides. First, there is a firepit placed by a previous owner; following the setback would require removal of the firepit. Second, there are multiple trees on the side yard. The fence should properly go so as to avoid disturbing the foliage and trees on the side; this will ensure that the integrity of the neighborhood appearance is maintained. Third, the topography of the property, including slope of the grounds and the pre-existing fencing in the back, necessitates that any further fencing be located within the set backs.

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

The property has several preexisting structures, including a firepit and fence in the back. There are also multiple trees that require the fence to be within the set back so as to avoid trees roots and other foliage. Finally, the slope of the property limits the number of options for placement of the fence. Placing the fence within the setback will create the optimal appearance for the neighborhood and disturb the least amount of foliage.

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

Both the firepit and existing fence are from the previous owner. The trees were also not planted by us.

**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.**

Our goal is to create fencing that is pleasant to everyone in the neighborhood and prevents the entry of deer and bears into our yard to reduce Lyme disease and other concerns. The style and height of the fence are within guidelines and will allow us full use of the yard without any harm to neighbors. There are no public works or other concerns within the setbacks. Placing the fence within the setback, in fact, will make the fence look the most natural. Please also note that the fence will not be visible from the road; the setbacks here are on the side and back.

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

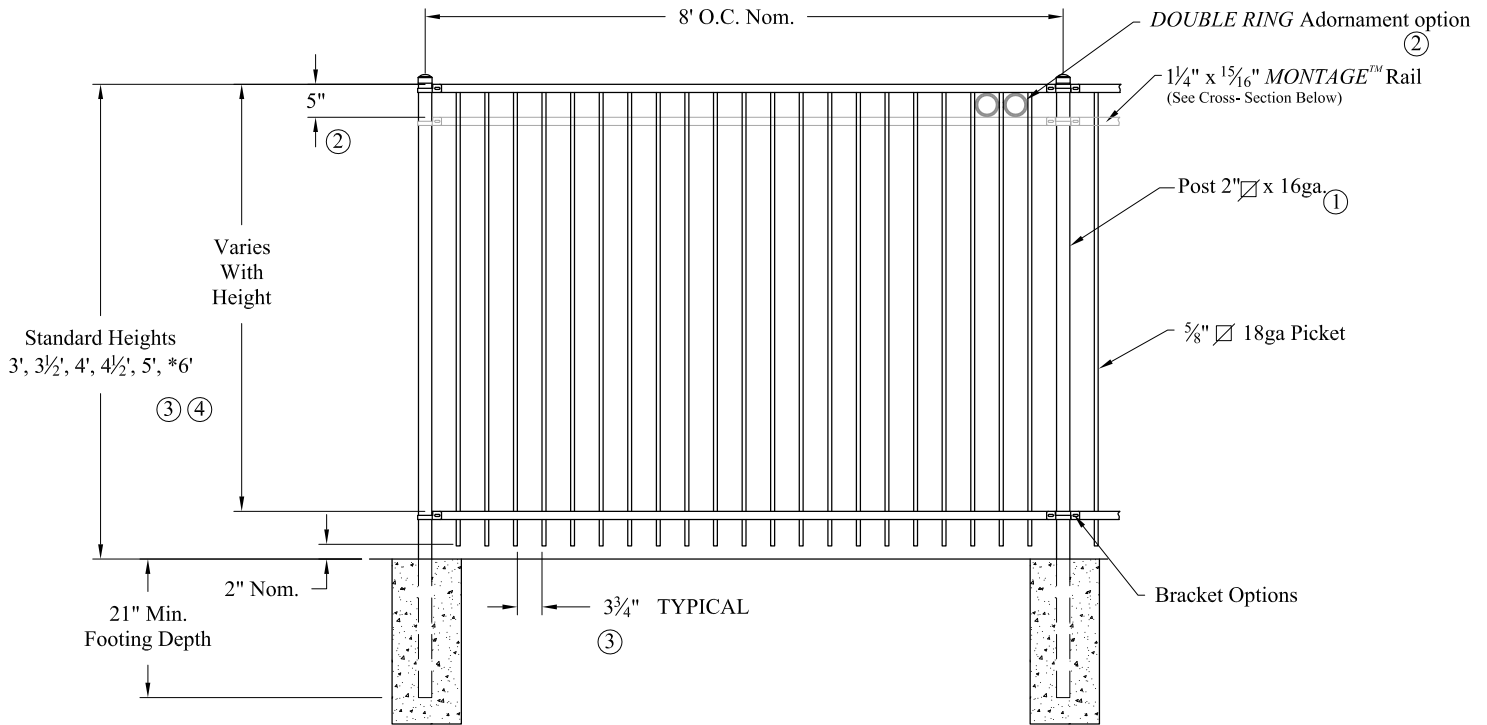
**Signature**

**Date**

9/20/2023

*David Yarbelle*

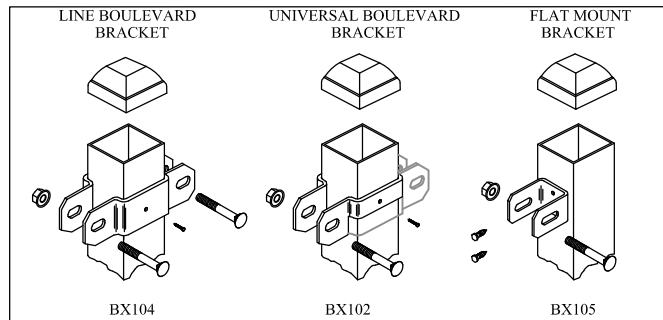
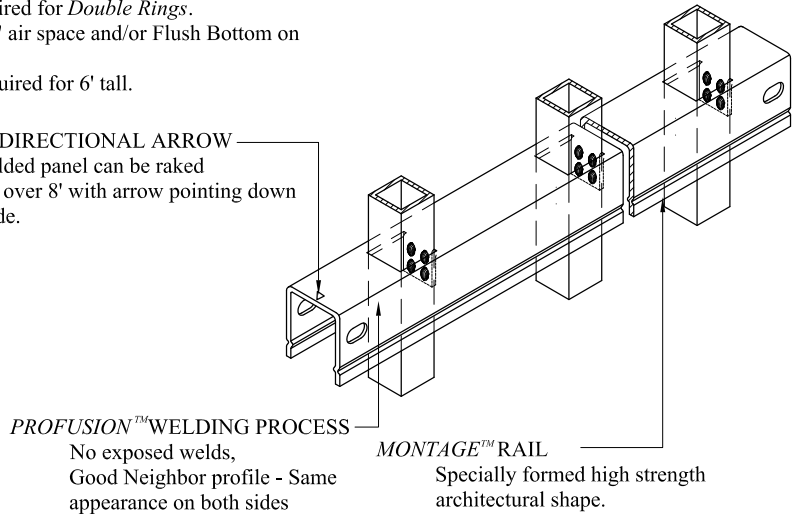
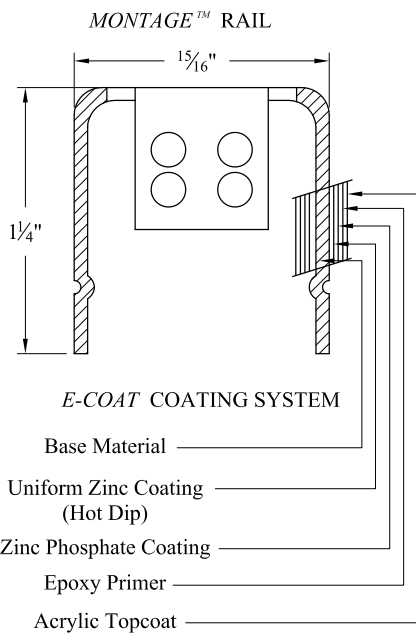




**NOTES:**

- 1.) Post size depends on fence height and wind loads. See *MONTAGE™* specifications for post sizing chart.
- 2.) Third rail required for *Double Rings*.
- 3.) Available in 3" air space and/or Flush Bottom on most heights.
- 4.) Three rails required for 6' tall.

**RAKING DIRECTIONAL ARROW**  
 Welded panel can be raked 45° over 8' with arrow pointing down grade.



Values shown are nominal and not to be used for installation purposes. See product specification for installation requirements.

**RESIDENTIAL WELDED STEEL PANEL**  
**PRE-ASSEMBLED**

Title: **MONTAGE MAJESTIC 2/3-RAIL**

DR: CI	SH . 1 of 1	SCALE: DO NOT SCALE
CK: ME	Date 7-19-11	REV: c



**AMERISTAR®**

1555 N. Mingo  
 Tulsa, OK 74116  
 1-888-333-3422  
 www.ameristarfence.com

RMISO

**Greybeard Fence Solutions**  
375 Duck Dr  
Mars Hill, NC 28754 US  
david@greybeardfence.com  
www.greybeardfence.com



## Estimate

### ADDRESS

Jessica Pishko  
44 Forest Rd.  
Biltmore Forest, NC 28803

**ESTIMATE #** 4432

**DATE** 09/06/2023

**EXPIRATION DATE** 09/13/2023

### SALESPERSON

David Ogburn

### JOB

Steel Fence

DATE	PRODUCT	QTY	RATE	AMOUNT
	<b>Residential Ornamental Fencing</b> Install approximately 261 linear feet of 4' tall Ameristar Montage Majestic 3-rail black powder coated ornamental steel fence. -Install (3) 4' walk gates. -All posts will be set in concrete.	1	12,811.14	12,811.14

TOTAL

**\$12,811.14**


Accepted By

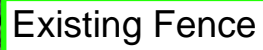
Accepted Date

# Pishko Residence

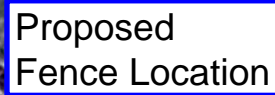
Fence Layout

## Legend

 44 Forest Rd

 Existing Fence

 Approximate Lot Lines

 Proposed Fence Location

 44 Forest Rd





# MONTAGE<sup>®</sup>

RESIDENTIAL ORNAMENTAL STEEL FENCE



AMERISTARFENCE.COM | 888-333-3422

ASSA ABLOY, the global leader in door opening solutions

AMERISTAR<sup>®</sup>

ASSA ABLOY



## THE MONTAGE® DIFFERENCE



### LIFETIME WARRANTY

The Montage families of fencing products are manufactured from superior quality materials by skilled craftsmen with the highest standards of workmanship in the industry. Ameristar is confident in offering Montage with a Lifetime Limited Warranty (*the first of its kind*), backed by an American company with over 30 years of demonstrated excellence in manufacturing ornamental fencing products.



### E-COAT vs PAINTED STEEL

Major corrosion problems start from the inside. That's why all products in the Montage family are coated inside and outside. Our galvanized steel framework is subjected to a multi-stage pre-treatment/wash (*with zinc phosphate*), followed by a duplex cathodic electrocoat system consisting of an epoxy primer, which significantly increases corrosion protection, and an acrylic topcoat, which provides the protection necessary to withstand adverse weathering effects. This process results in years of maintenance-free ownership. Simply painting steel on the outside leaves it vulnerable to corrosion, which in turn destroys the entire fence.



Competitors Painted Rail  
(outside only)



Montage E-Coated rail  
(outside and inside)

-  Acrylic Topcoat
-  Epoxy Primer
-  Zinc Phosphate
-  Galvanic Zinc



## BE SURROUNDED WITH

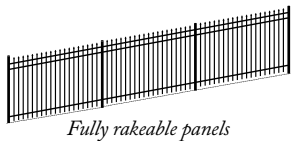
# *Beauty & Protection*

Montage ornamental steel fence is unparalleled in strength and quality, adapts to virtually any terrain, withstands vast shifts in climate yet remains untouched by time in stately elegance. This fence offers an array of customizable options to fit your unique sense of style and application.

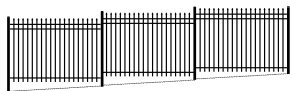


### **PROFUSION WELDED STEEL vs ALUMINUM**

All Montage fence panels are fabricated using Ameristar's ProFusion welding process. This technique combines laser and fusion technology to create a virtually invisible structural connection at every picket to rail intersection. Unlike typical aluminum fence systems that are held together with unsightly screws, the ProFusion weld used with Montage promotes a "good neighbor" profile with sleek lines and no exposed picket to rail fasteners. When compared to residential aluminum fencing, Montage's welded steel construction is unmatched in strength and durability.



*Fully rakeable panels*



*Stair-stepping panels*

### **RAKEABLE vs STAIR-STEP**

The ProFusion welded panel design of Montage enables maximum bias for virtually all terrains. Being the only welded steel fence capable of following steep grade changes, Montage follows uneven ground contours like a second skin. This eliminates stair-stepping panels with the flexibility of a 48" rise in an 8' run.

### **ENVIRONMENTALLY RESPONSIBLE**

Ameristar proudly leads the way in manufacturing programs and practices to reduce our carbon footprint and has developed methods to reduce our energy consumption. We consistently monitor air emissions, storm water runoff, and waste water discharge. We also recycle all of our scrap steel, wood, cardboard, plastics, paper and oil products. Montage is fabricated from domestic steel that contains up to 97% recycled content.





## CLASSIC™

### *Timeless Elegance*

Classic style features extended pickets that culminate to an arrow-pointed spear capture the beautiful look of old style wrought iron fencing. Single, double and arched walk gates that perfectly match this fence style are also available.

- ❖ *2-rail panels in 3', 3½', 4' and 5' heights, with a standard or flush bottom rail*
- ❖ *3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail*



## MAJESTIC™

### *Modern Beauty*

Majestic's flush top rail projects a clean, streamlined look that make it one of the most popular styles in the Montage family. Single, double and arched walk gates that perfectly match this fence style are available as well.

- ❖ *2-rail panels in 3', 3½', 4' and 5' heights, with a standard or flush bottom rail*
- ❖ *3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail (4½' panels available with flush bottom rail only)*



## GENESIS™

### *Creatively Distinct*

Genesis style's extended flat-topped pickets serve as a foundation for your choice of accent finials providing a customized design. Single, double and arched walk gates that perfectly match this fence style are available as well.

- ❖ *2-rail panels in 3', 3½', 4' and 5' heights, with a standard or flush bottom rail*
- ❖ *3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail*



## WARRIOR™

### *Traditional Character*

Alternating picket heights coupled with each picket culminating into an arrow-pointed spear, give the Warrior style a distinctive look that is a hallmark of wrought iron fencing. Single and double swing gates that perfectly match this fence style are also available.

- ❖ 2-rail panels in 3', 3½', 4' and 5' heights, with a standard or flush bottom rail
- ❖ 3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail



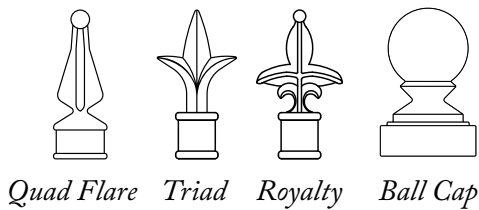
## CRESCENT™

### *Sophisticated Charm*

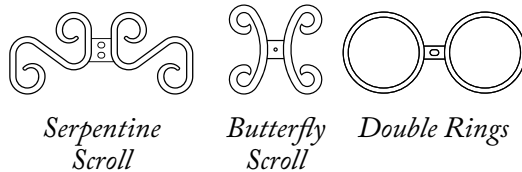
Crescent style is a unique old world look with pressed-spear pickets protected by arched steel loops. Single and double swing gates that perfectly match this fence style are also available. *(Not rakeable).*

- ❖ 2-rail panels in 3', 3½', 4' and 5' heights, with a standard or flush bottom rail
- ❖ 3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail

## FINIALS & ADORNMENTS



Quad Flare   Triad   Royalty   Ball Cap



Serpentine Scroll   Butterfly Scroll   Double Rings

## COLOR OPTIONS



Black   Bronze



# MONTAGE® POOL, PET & PLAY

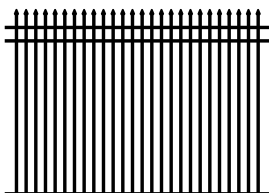


## *Relax or Splash*

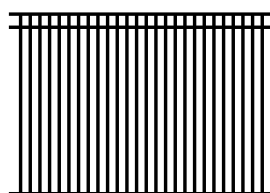
### SAFELY & IN STYLE

Montage Pool, Pet & Play provides additional safety for pets and children with 3" airspace between pickets. The 3" airspace of the Montage Pool, Pet & Play gives these panels a more robust appearance, as well as increased panel strength due to the additional picket to rail connections.

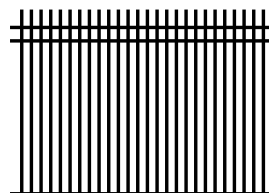
- ❖ *2-rail panels in 3', 3½' and 4' heights, with a standard or flush bottom rail (available in Majestic or Gemini only)*
- ❖ *3-rail panels in 3', 3½', 4', 5' and 6' heights, with a standard or flush bottom rail (4½' Majestic panels available with flush bottom rail only)*



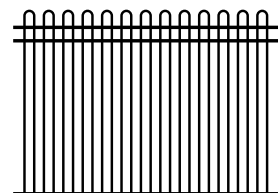
*Classic*



*Majestic*

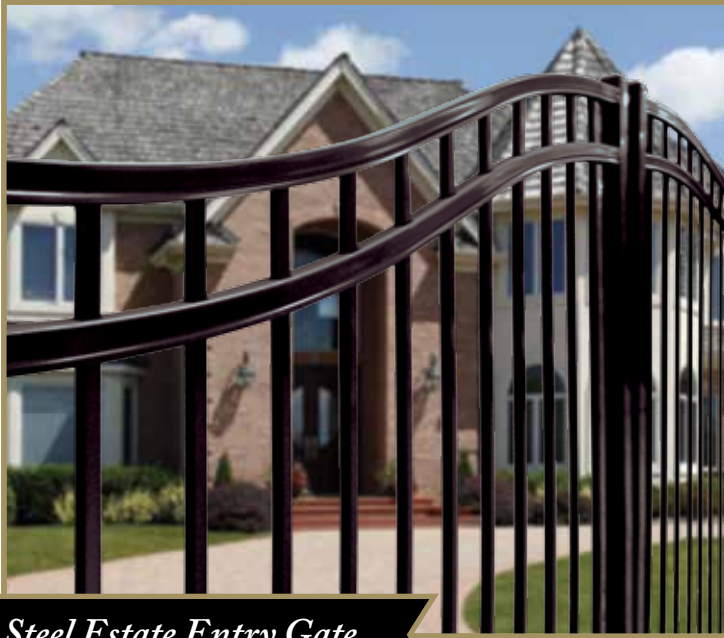


*Genesis*



*Gemini  
(not rakeable)*

## AVAILABLE GATE SYSTEMS



*Steel Estate Entry Gate*



### EXPERIENCE YOUR

# *Grand Entrance*

For the perfect finishing touch to your project, Montage offers several gate options to compliment any installation. Montage's single arched swing gates, traditional single swing and double swing gates are crafted with fully welded construction for years of durability. Fabricated with the same components as the fence panel these Montage gates provide a seamless transition from ornamental fence to decorative gate. A variety of steel Estate® Entry Gates are also available to accent any entry.



# WHY CHOOSE AMERISTAR

## KNOWLEDGE & EXPERIENCE

Ameristar was chartered 30 years ago in response to the demand by consumers and specifiers for specialty fence products. Ameristar offers an aesthetically pleasing product that is both high in quality and affordability. This has been achieved by maximizing high-volume productivity, increasing product design strength, and promoting simplistic installation.

## PROVEN CAPABILITY

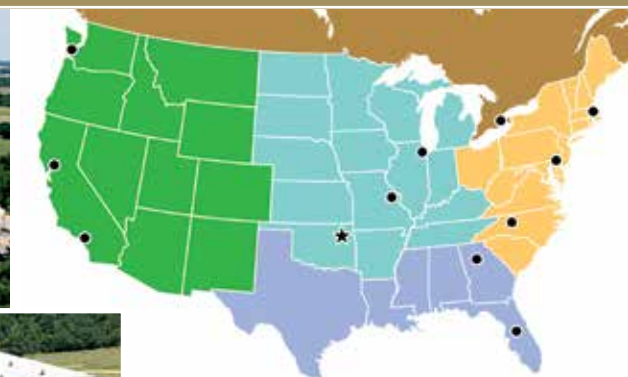
Ameristar's integrated in-house process and extensive raw material inventory results in much improved productivity and availability compared to the competition. By having a vast finished goods inventory, Ameristar is capable of delivering finished products faster than competitors who sublet the majority of their operations.

## INDUSTRY LEADERSHIP

Over the years Ameristar has continually raised the bar across the board in the manufacturing of high quality, innovative fencing products. Our demonstrated commitment to upholding higher values translates into superior products that go far beyond merely meeting minimum industry standards.



*Ameristar's world headquarters, manufacturing & coil processing facilities in Tulsa, Oklahoma, USA.*



### LEGEND

- ★ Ameristar Headquarters
- Sales & Service Centers



Part #9719 | Revised 07/2015



AMERISTARFENCE.COM | 888-333-3422

ASSA ABLOY, the global leader in door opening solutions

AMERISTAR®

ASSA ABLOY

# Pishko Residence

Fence Layout

## Legend

📍 44 Forest Rd

Existing Fence

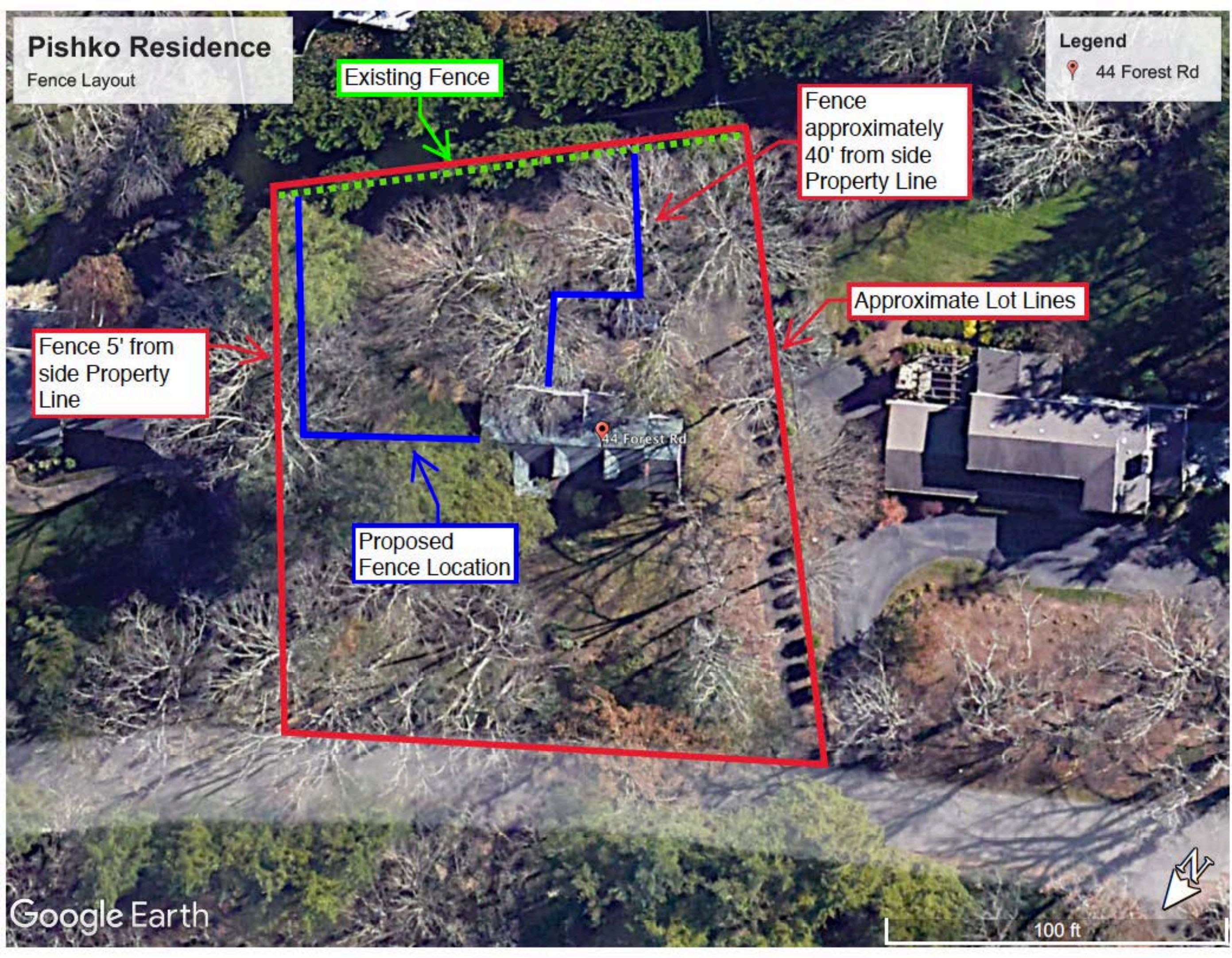
Fence approximately 40' from side Property Line

Approximate Lot Lines

Fence 5' from side Property Line

Proposed Fence Location

44 Forest Rd





## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### Case 6

**Property Owner:** Andrew Stephens  
**Property Address:** 6 Eastwood Road

#### Project Description

The applicant requests a special use permit for the installation of a building on the property. The proposed project consists of a 24'x30' open air structure on a concrete slab. The application includes a description of the project proposed and is not within the setbacks.

#### Special Use Request

The Town considers detached open-air structures as accessory structures/building, pursuant to Chapter 153.029 of the Zoning Ordinance which requires a special use. This is attached for the Board's review.

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

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

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

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in § [153.008](#);

(e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;

(f) The accessory building must be designed in the same architectural style as the principal structure;

(g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ [153.043](#) and [153.048](#); and

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

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with § [153.049](#) of this Zoning Ordinance.

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

***Editor's note:***

*This amendatory language was passed during a Board meeting, July 9, 2013*

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

Andrew Stephens

**Property Address**

6 Eastwood

**Phone**

(303) 881-1595

**Email**

drew@thegisinstitute.org

**Parcel ID/PIN Number**

964696617400000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

2 acres

**Maximum Roof Coverage**

6,100 square feet (Up to 2 acres)

**Proposed Roof Coverage Total**

720

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

520

**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**

16

**Description of the Proposed Project**

The accessory structure application is for a 24' x 30' pole barn, which is an open-air structure without heat, electricity, doors, or water. The structure will have a concrete slab, and eight 6"x6" posts holding up a 4/12 gable-style brown metal roof. The north and west sides will have siding (see siding examples from other structures attached), and the south and east sides will be completely open air. The site is outside of the side and back setback requirement zones of R-1.

The neighbors with the highest visual access at 6 Hilltop Rd. are in complete support of the project and have stated that they will write a letter stating their support. The house at 2 Hilltop Rd. is vacant, and the applicant is pursuing support from the trust administrator.

Please note, access to the property is only available from 4 Hilltop Rd., the primary residence of the Eastwood lot owners, and the applicant Andrew "Drew" Stephens. BOA site visitors should park at 4 Hilltop Rd.

**Estimated Start Date**

10/23/2023

**Estimated Completion Date**

9/29/2023

**Estimated Cost of Project**

\$8,000.00

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

stephens\_drawings.pdf

stephens\_cedar\_examples.pdf

**Applicant Signature**

**Date**

9/24/2023

*Andrew T. Stephens*



# Special Use Permit Application

Town of Biltmore Forest

**Name**

Andrew Stephens

**Address**

6 Eastwood

**Phone**

(303) 881-1595

**Email**

drew@thegisinstitute.org

**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 accessory structure application is for a 24' x 30' pole barn, which is an open-air structure without heat, electricity, doors, or water. The structure will have a concrete slab, and eight 6"x6" posts holding up a 4/12 gable-style brown metal roof. The north and west sides will have siding (see siding examples from other structures attached), and the south and east sides will be completely open air. The site is outside of the side and back setback requirement zones of R-1.

The neighbors with the highest visual access at 6 Hilltop Rd. are in complete support of the project and have stated that they will write a letter stating their support. The house at 2 Hilltop Rd. is vacant, and the applicant is pursuing support from the trust administrator.

Please note, access to the property is only available from 4 Hilltop Rd., the primary residence of the Eastwood lot owners, and the applicant Andrew "Drew" Stephens. BOA site visitors should park at 4 Hilltop Rd.

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

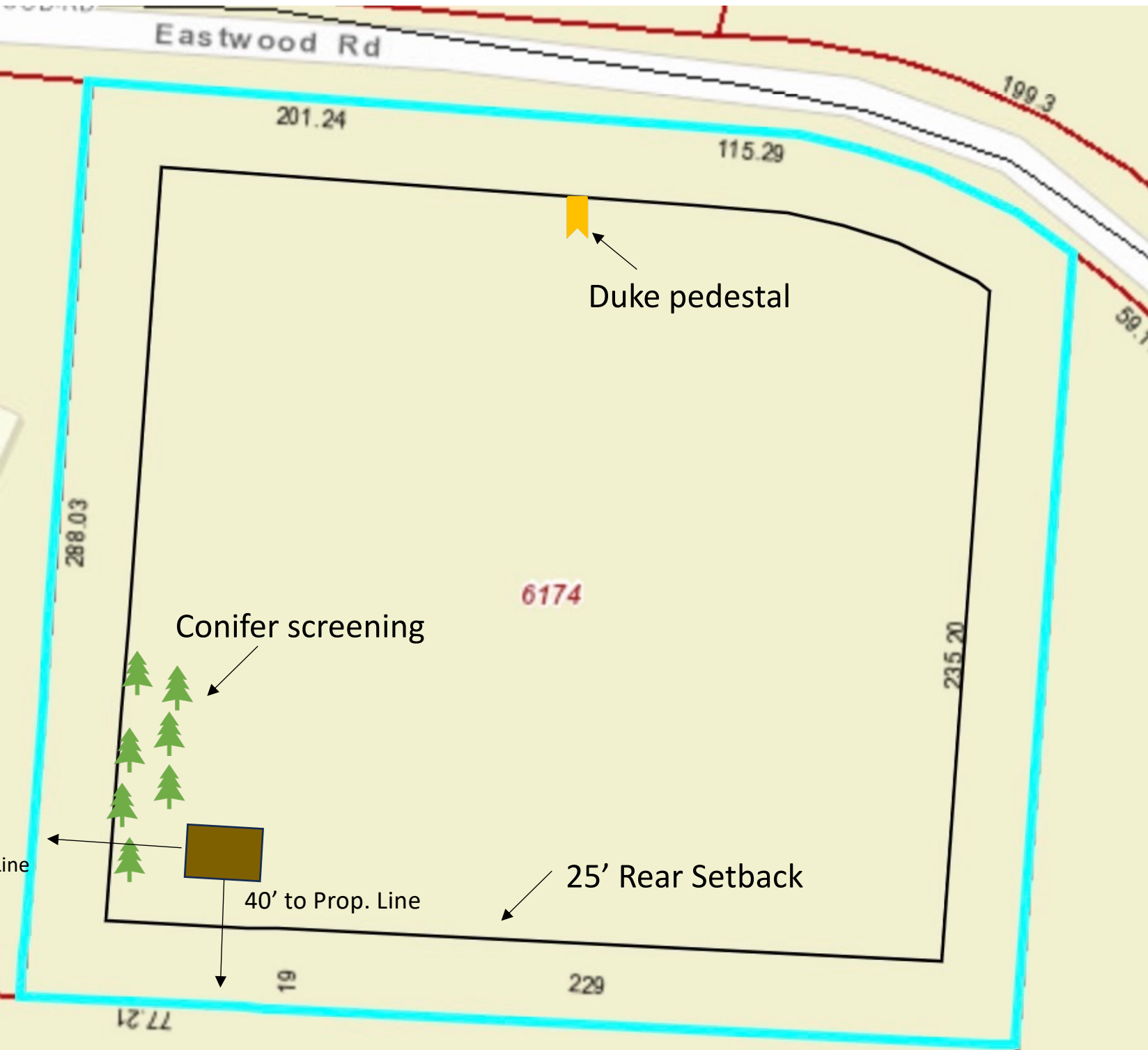
The accessory structure will be well-screened with a variety of magnolias, white pine, arborvitae, and holly, and it will be situated well outside of side and rear setbacks. The structure kit is built and produced by a local company with many years of design and manufacturing expertise, creating safe and reliable structures. The structure will not like be visible from the road, and there will be no electricity generating noise or light. The neighbors at 6 Hilltop have expressed enthusiastic support for the project.

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

**Signature**

**Date**  
9/25/2023

*Andrew T Stephens*



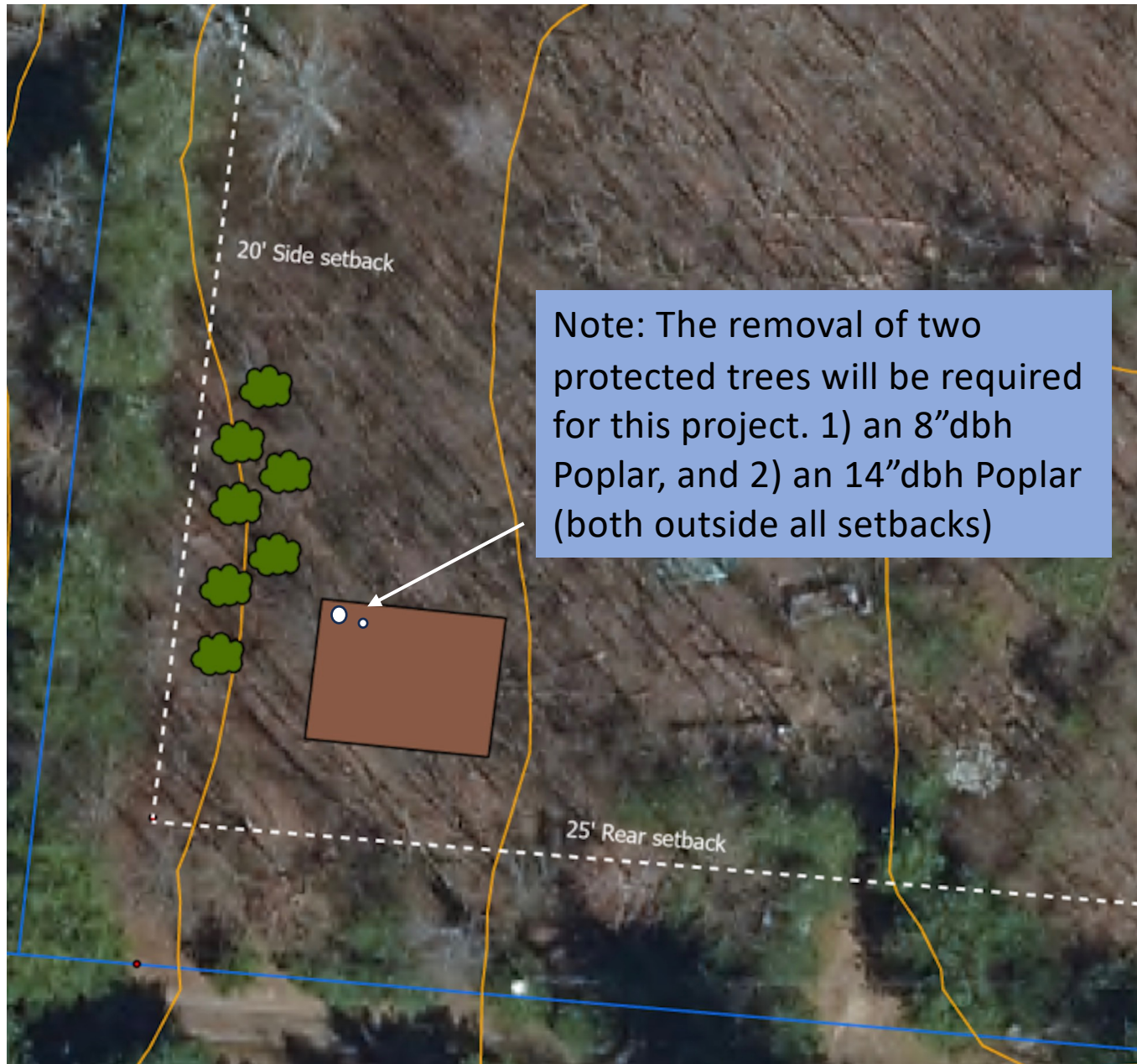
# Full property view w 5' contours



# Detail/ zoom of site w 5' contours



# Detail/ zoom of site w 5' contours



### Project Site Plan checklist

- Lot dimensions: +-299' x 288' (1.98 acres/ 82,328sq ft) – see site plan for detail
- Is this a corner lot? 153.007(B)(3): **No**
- Right of way location: **None**
- Location of any easements or utilities on site: **Duke underground along Eastwood**
- Existing site w/contours, waterways, and flood hazard areas, (Chap 151 Flood Prevention):  
**(Attached)**
- Location of any accessory structures on the lot per definition 153.004: **N/A**
- Setbacks shown on plans 153.007(A)/153.009(B): **Yes – see attached site plan**
- Setbacks of neighbors if exception 153.009(B) will be used. **N/A**
- Structures will need to locate the highest point of the structure (Max Height) 153.004:  
**16'6"**
- Structures will need the average height of the entire building 153.004/153.007(B) (7):  
**14'3"**
- Structures will need chimney height if applicable 153.004 **N/A**
- Structure size per 153.041: **720 sq ft**
- Structures roof coverage calculation per 153.029(B)(1)(b)/153.007(B) (8)/153.043:**750 sq ft**
- Impervious surface calculation per 153.048: **720 sq ft**
- Land disturbance per 153.034 (20% or more requires professional design) **.87% of lot**
- Driveway location with measurements and setbacks 153.004 (front/side Yard): **N/A**
- Landscape plan per 153.060-153.071: **See site plan for screening.**
- Buffer strip per 153.062/153.063/153.035: **See site plan for screening.**
- Visibility per 153.031: **Structure cannot be seen from road, and is not placed on a corner.**
- Parking spaces 153.004/153.038: **N/A**
- Material and colors per 153.044: **Brown roof, fit in woods well, shake siding on west and north sides.**
- Any fence, gates or walls located on property 153.049: **N/A**

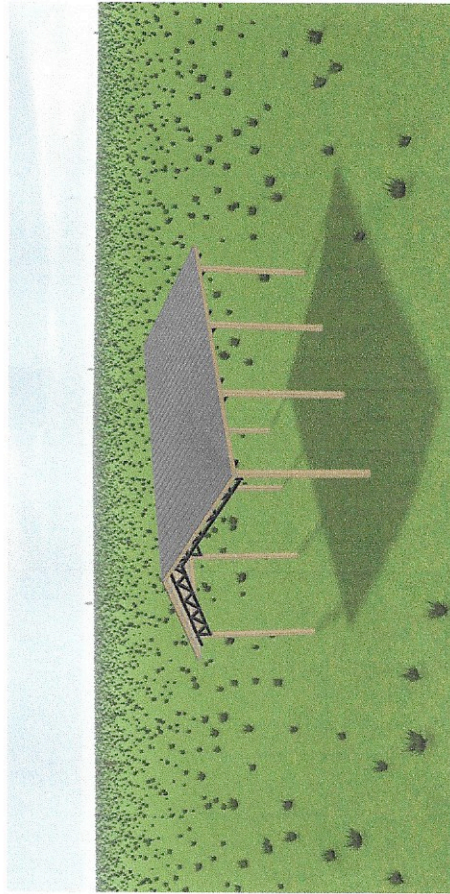
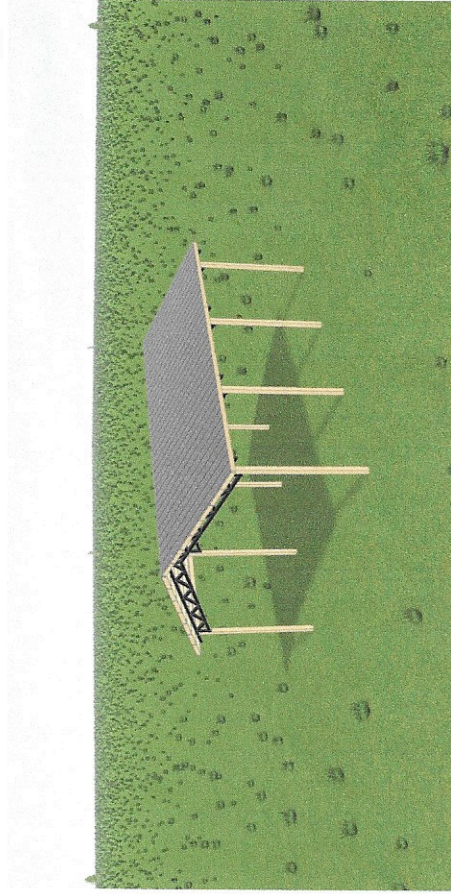




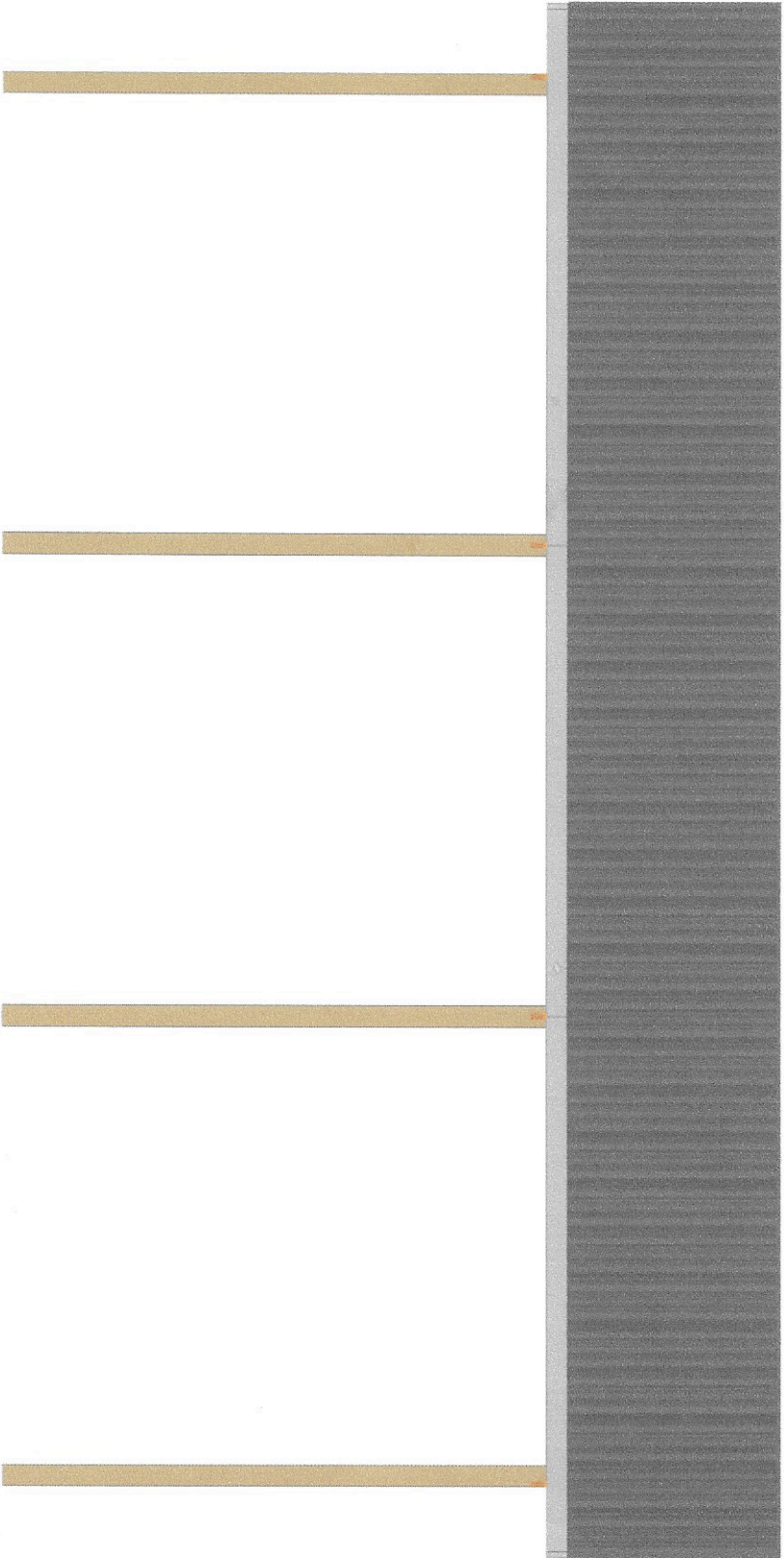
# Summary Sheet

<b>Summary</b>	
Width	24'
Length	30'
Ceiling Height	12'
Slab Depth	0'
Overhangs	4
Roof Pitch	4/12

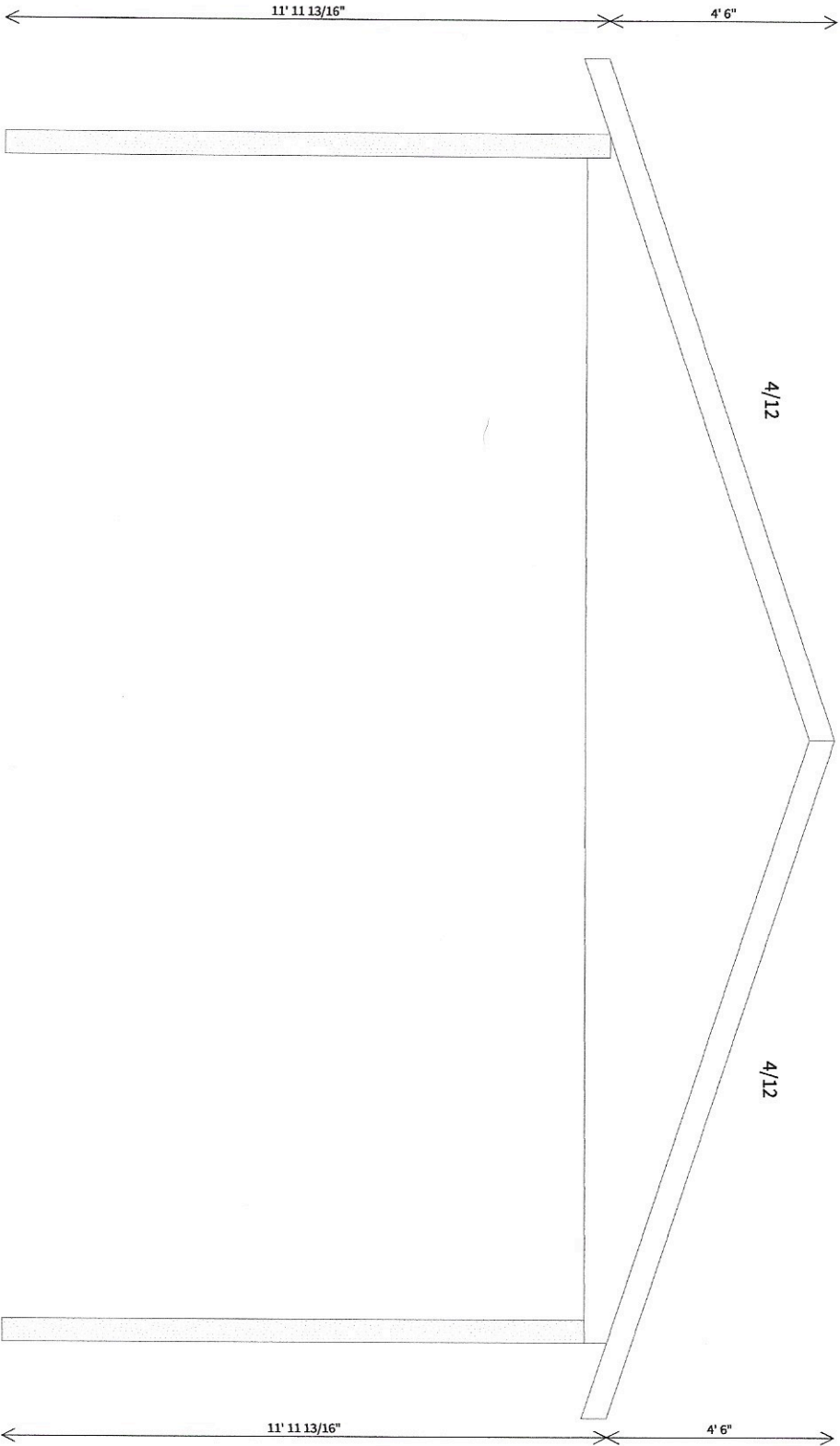
<b>Job Information</b>	
Project Name	ASHE - DREW STEPHENS
Company Name	
Contact	Drew Stephens
Email	
Phone	
Delivery Address	
ZIP code	
Desired Date	
Comments	



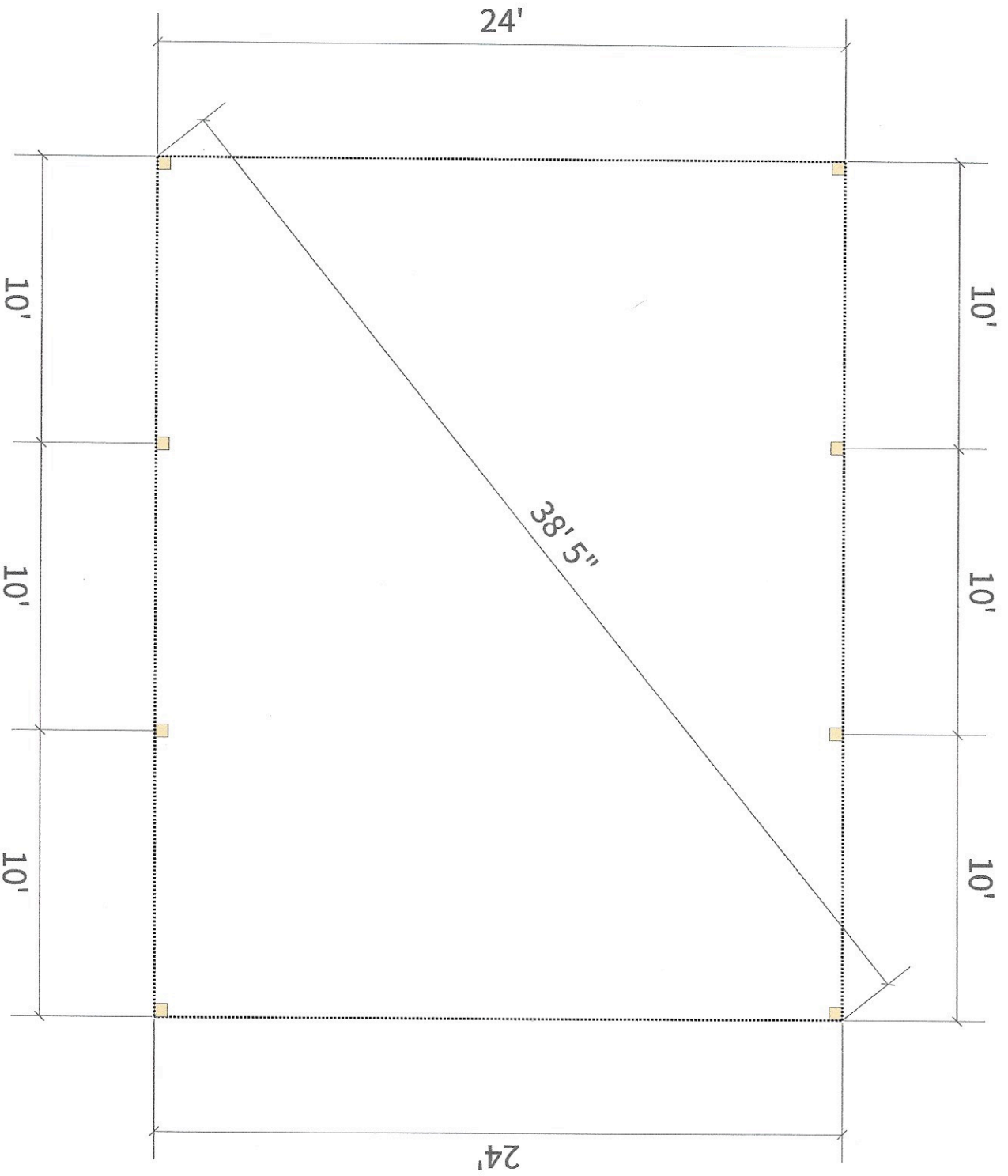
**Left Elevation**



**Front Elevation**



### Post Layout



## Jonathan Kanipe

---

**From:** Jonathan Gach <jgach@energyhomeinspection.com>  
**Sent:** Wednesday, October 11, 2023 7:16 PM  
**To:** Jonathan Kanipe; Tony Williams  
**Subject:** Letter of support to the Board of Adjustment for Stephens Accessory Structure

**WARNING:** This email originated from outside of the Town of Biltmore Forest Network.

### Neighbors and Town Staff

Please accept this letter of support for the accessory structure application submitted by Drew Stephens on behalf of Hilltop Associates, on the 1.98 acre Eastwood-facing parcel between Hendersonville Rd and Hilltop Rd, approximately addressed at 8 Eastwood. We live 'next-door' at 6 Hilltop Rd, though technically we are across the driveway of 4 Hilltop... both of those parcels are directly south of the southern edge of the Hilltop Associates parcel. We are excited for and look forward to supporting this project, and we have no reservations or concerns about placement, appearance, or visibility. The current screening is sufficient, and we appreciate the young white pine trees that Mr Stephens has already planted.

Sincerely,

Jonathan and Chrissie Gach,  
6 Hilltop Rd



The image is a composite graphic for Energy Home Inspection. On the left is a portrait of Jonathan Gach, a man with glasses and a beard, wearing a blue plaid shirt and a white safety vest. Below his name 'Jonathan Gach' is a signature. To the right of the portrait is the company logo, a stylized star with five points in blue, red, green, and black. Below the logo is the text 'ENERGY HOME INSPECTION'. Further right is a dark blue banner containing a white telephone icon, the phone number '828-222-0620', and a white globe icon with the website 'EnergyHomeInspection.com'. At the bottom of the graphic are five social media icons: a house icon with 'Schedule Service' below it, a red 'G' for Google, a red and white Instagram icon, a blue 'in' for LinkedIn, and a blue 'f' for Facebook.



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### Case 7

**Property Owner:** Julian Moore  
**Property Address:** 25 Ridgefield Place

#### Project Description

The applicant requests a special use permit for the installation of a pool in the rear yard. The application includes a description of the project proposed and the application states it is not within the setbacks.

#### Special Use Request

The Town considers a swim spa as an accessory structure, pursuant to Chapter 153.029 of the Zoning Ordinance. This is attached for the Board's review. The specific language of the Zoning Ordinance states that the Town regulates these only as the North Carolina General Statutes allows. This statute is also included for the Board's review.

# Zoning Compliance Application

Town of Biltmore Forest

Name *Julian Moore*

Property Address *25 Ridgelyield Pl*

Phone *828-329-7705*

Email *Incredible Landscapes@gmail*

Parcel ID/PIN Number

## ZONING INFORMATION

Current Zoning *R-1*

Lot Size *- 1/2 ac*

Maximum Roof Coverage *45%*

Proposed Roof Coverage Total

Maximum Impervious Surface Coverage *45%*

Proposed Impervious Surface Coverage *20%*

Front Yard Setback *30'*

Side Yard Setback *20'*

Rear Yard Setback *25'*

Building Height *-*

Description of the Proposed Project  
*Small inground pool*

Estimated Start Date  
*11-5-23*

Estimated Completion Date

Estimated Cost of Project *10,000*

Supporting Documentation (Site Plan, Drawings, Other Information)

Applicant Signature  
*Julian Moore*

Date *10-5-23*

# Special Use Permit Application

Town of Biltmore Forest

Name *Julian Moore*

Address *25 Ridgefield Pl*

Phone *828-329-7705*

Email *Incrediblelandscapes@gmail.com*

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

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: *Install an in-ground pool*

Explain why the project would not adversely affect the public interest of those living in the neighborhood: *it is in the back yard away from any neighbors houses we are old, no noise*

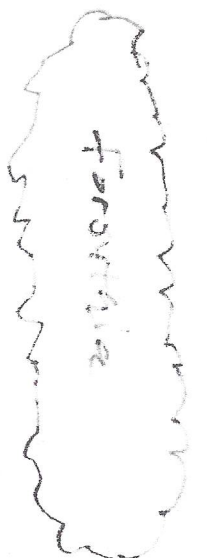
I hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Signature *Julian A Moore*

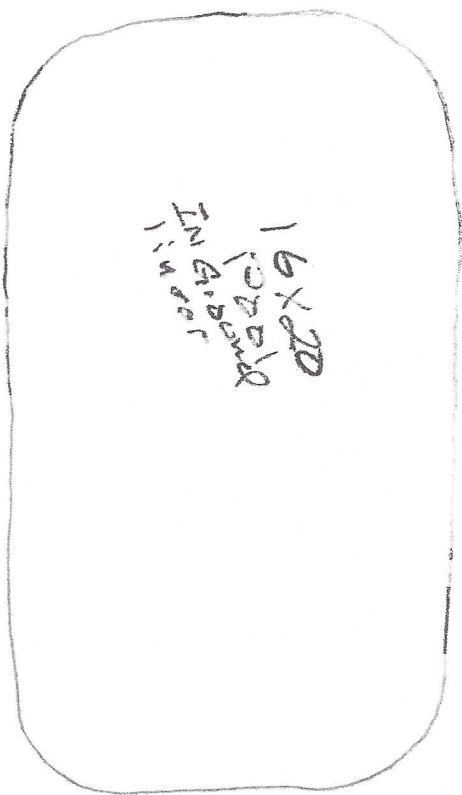
Date *10-3-23*



Meishler's fence



38'



To Meishler

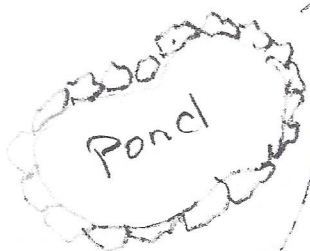
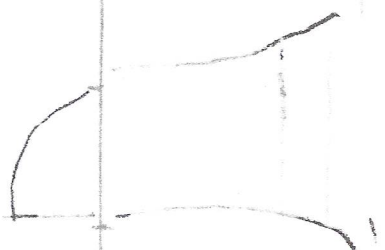


garden

25 Ricks Field Pl

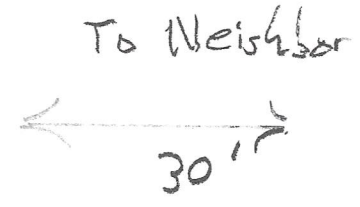
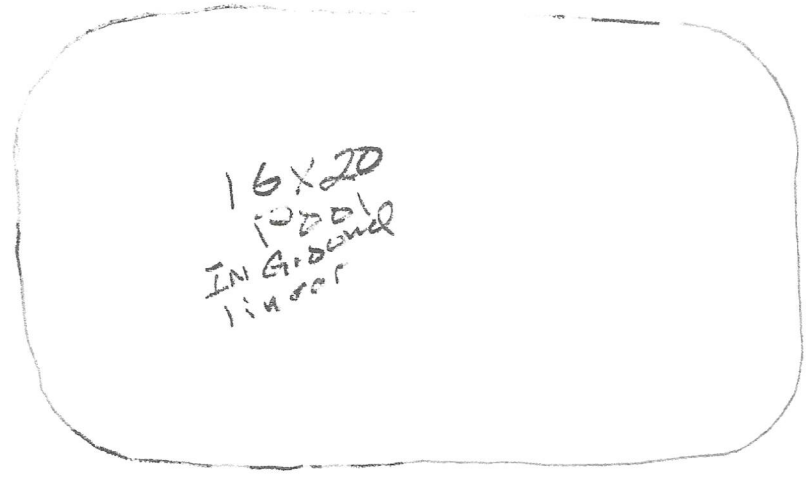
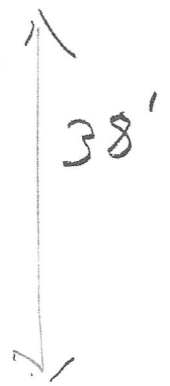
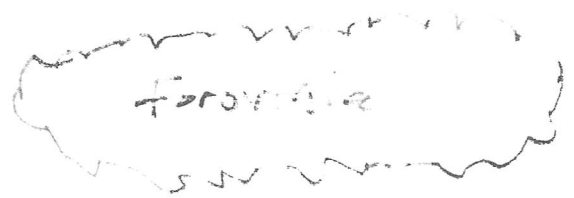


House



Pond

Neighbor's fence

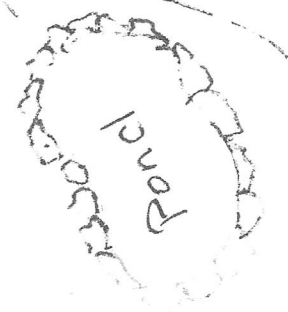


Garden

25 Ridge Field Pl



House





## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

October 23, 2023

#### CASE 8

**Property Address:** 47 Hilltop Rd

**Property Owner:** James Wilson

**Request:** Special Use Permit request for Stone Wall in Front Yard  
Variance Request for Installation within Front Yard Setback

---

#### Background

The property owner requests permission to install a stone retaining wall within the front yard. The applicant states the purpose of this wall is to prevent the water runoff from adjacent properties. The applicant's proposed wall material is Tennessee river stone.

The Town's Zoning Ordinance, Chapter 153.049, governs new fences, gates, and walls. The applicant began this project prior to applying for a permit from the Town, and the Town subsequently stopped work and required the applicant to remove the installation or file an application for the work.

#### Special Use Permit Requirements

Section 153.049 (attached) of the Town's Zoning Ordinance regulates fences, gates, and walls as accessory structures. The ordinance requires approval by the Board of Adjustment before new walls may be constructed. These new walls must meet the following requirements:

*153.049 (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.*

### Variance Request

The applicant has filed a variance request to allow this installation within the front yard, and specifically, within the front yard setback. The proposed location of the wall is not within the Town's right of way and is located 6-14 feet from the edge of pavement. Specific information regarding the wall's dimensions and location are noted below.

### Wall Dimensions

Front Setback for R-1 District = 60 feet

Distance from Hilltop Rd = 6-14' from edge of pavement (Town right of way is 5')

Wall height = 18-20"

Wall Length = 81 feet

Wall Depth = 1 foot

# Zoning Compliance Application

Town of Biltmore Forest

**Name**

james wilson

**Property Address**

47 Hilltop Rd

**Phone**

(520) 235-7178

**Email**

jwprivate1@drwilsons.com

**Parcel ID/PIN Number**

964664596200000

## ZONING INFORMATION

**Current Zoning**

R-1

**Lot Size**

1.36 acre

**Maximum Roof Coverage**

5,500 square feet (Up to 1.5 acres)

**Proposed Roof Coverage Total**

4,600 sq'

**Maximum Impervious Surface Coverage**

1-3 acres (25 percent of lot area)

**Proposed Impervious Surface Coverage**

88 sq'

**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**

2 story

**Description of the Proposed Project**

We need to build a short retaining wall to prevent road water runoff pouring onto our property during heavy rains. . Our property sits several below Hilltop Road with the steepest grade near the road. Even though the road slopes to the East side, during heavy rains a large amount of water cascades down our front yard that steeply slopes down toward the house temporarily flooding the gardens at the front of the house. Our landscape designer, Era Keys of Garden of Eatin' required this water restriction to slow the subsurface erosion of our topsoil underneath our lawn due to the steep slope combined with the excessive amount of water flowing down off the road during heavy rains.

We propose to make an attractive hand-built stone wall 16-18" (knee height), approximately 12" thick with slight curves and curving indentations at each end. It will be a credit to the neighborhood.

The wall will have a linear footprint of 88' including the curves, and a linear length of 81' measuring from the beginning to the end of the wall.

Attached is a schematic overview (not exactly to scale) of the project.

**Estimated Start Date**

10/19/2023

**Estimated Completion Date**

10/25/2023

**Estimated Cost of Project**

\$5,000.00

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

enlarged view of wall-47 Hilltop Rd.pdf

top view of wall 47 Hilltop Road.pdf

Driveway at 46 Hilltop Road.jpg

Driveway at 48 Hilltop Road.jpg

live wall view 47 Hilltop Road 1 of 4.jpg

live wall view 47 Hilltop Road 2 of 4.jpg

live wall view 47 hilltop Road 3 of 4.jpg

live wall view 47 Hilltop road 4 of 4.jpg

photo showing how high 18-20 inches is.jpg

**Applicant Signature**

**Date**

9/25/2023

*James Wilson*

# Special Use Permit Application

Town of Biltmore Forest

**Name**

James Wilson

**Address**

47 Hilltop Rd

**Phone**

(520) 235-7178

**Email**

jwprivate1@drwilsons.com

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

Accessory Structures

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

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

The proposed structure is a short wall 18"-20" high (knee high) and 1' thick running for 81 linear feet with a footprint of 88 sq', at least six feet from Hilltop Road. The structure was proposed by our landscape designer to help decrease subsurface erosion, to prevent possible flooding of the lower areas of our yard and possibly more as climate change becomes more prominent. The excess water runoff has become a much more pressing issue since the driveway across from our property at 46 Hilltop was converted from a permeable gravel driveway that absorbed most of the runoff from that property to a concrete driveway creating an impermeable 120+' steeply sloped driveway that now empties all of its water onto our property. The wall will be an attractive hand-built Tennessee Garden Stone wall in keeping with and enhancing the character of the neighborhood. It will gently wind between 6' and 9' from Hilltop Road with each end dipping further on to the property in a semicircle of 13 to 14' continuing the flower bed of colorful flowers that will be from the wall to the road. These flower beds will act as attractive ways to contain as much runoff as possible with a permeable base while beautifying the roadside. the construction of the wall and flowerbeds will be using the suggestions of Chuck Hutchinson, Master Gardner.

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

The structure is on private property set back at least the minimum set back requirement from the road or adjacent properties .

It does not present a health or safety hazard.

Since it is contained totally on the property, it does not interfere with neighbors, traffic or passerbys.

It is in general conformity with the plan of development of the town and is in harmony with the scale, bulk, height, coverage, density, and character of the neighborhood.

We hope to create a practical, but beautiful wall and gardens that, quite contrary to having an adverse effect, will in fact enhance the roadway and aesthetic appeal, adding to the existing charm of Hilltop Road.

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

**Signature**

**Date**  
9/25/2023

*James Wilson*



# VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

james wilson

**Address**

47 Hilltop Rd

**Phone**

(520) 235-7178

**Email**

jwprivate1@drwilsons.com

**Current Zoning/Use**

R

**Requested Use**

no change requested

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

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

Add a small stone wall 18-20" high, along approximately 81' linear feet beside Hilltop Road at least 6' back from the road in front of the house.

**What does the ordinance require?**

Ordinance requires a usual setback from the road of 60'.

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.**

Our House sits below Hilltop Road. During heavy rains, water spills over the road and pours down into our yard, The yard is on a rather steep downward slope from the road toward our house. Upon a recent examination of our yardscape, we were told by our landscape consultant that the front lawn was suffering from slow subterranean erosion. The runoff from the road and highest part of the property was gradually eroding the soil underneath the lawn. She suggested we construct a wall on the upper part of the property, near the road to minimize the runoff and cascading effect of the water during hard rains. That is why we need the variance to put the wall near the road at the top of our property. She added that with the anticipated climate changes, this wall may even protect our house from possible water damage. We have implemented her other suggestion to minimize this problem and only need to complete wall to minimize the erosion and conservation of soil complete.

Since she provided this information, there has been a change that has worsened this situation. The driveway at 46 Hilltop Road, across the road from us, that was previously gravel with a permeable surface has been paved. Now, in a heavy rainfall, most of the water running down that 120'+ X 25' driveway with an impermeable concrete surface on a steep slope that points directly to our front yard will make water runoff a much larger issue for our property.

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

The steepness of the slope of the front of our property as it descends from the roadway, combined with the new significant source of additional runoff plus the already existing subterranean erosion that is occurring with heavy rainfalls and downpours that flood our property, has created a significant erosion problem that needs to be dealt with as soon as possible to prevent further damage.

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

The hardship was an existing problem when we bought the property and has been made significantly worse by the paving of the long steep impermeable driveway at 46 Hilltop Rd. across from our front yard.

**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 want to both prevent the overflow of water onto our yard and enhance the beauty of the property by constructing an attractive low stacked stone wall with gentle curves and creating a colorful flower bed in front of the wall. With plants that produce colors all year as well as acting to absorb some of the water that will gather in front of the wall, this project will enhance the neighborhood while addressing the potential water hazard problem.

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

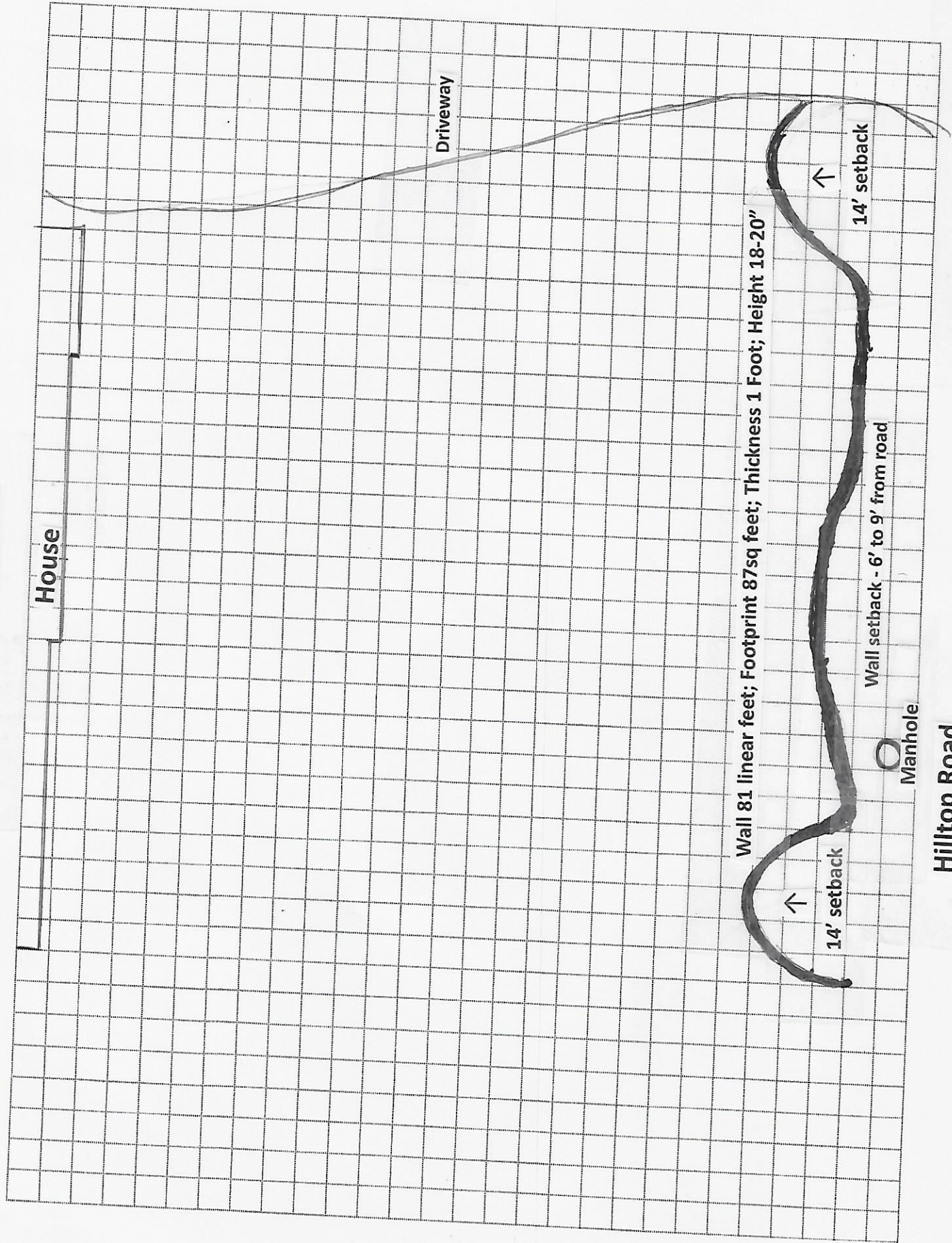
**Signature**

**Date**

9/26/2023

*James Wilson*

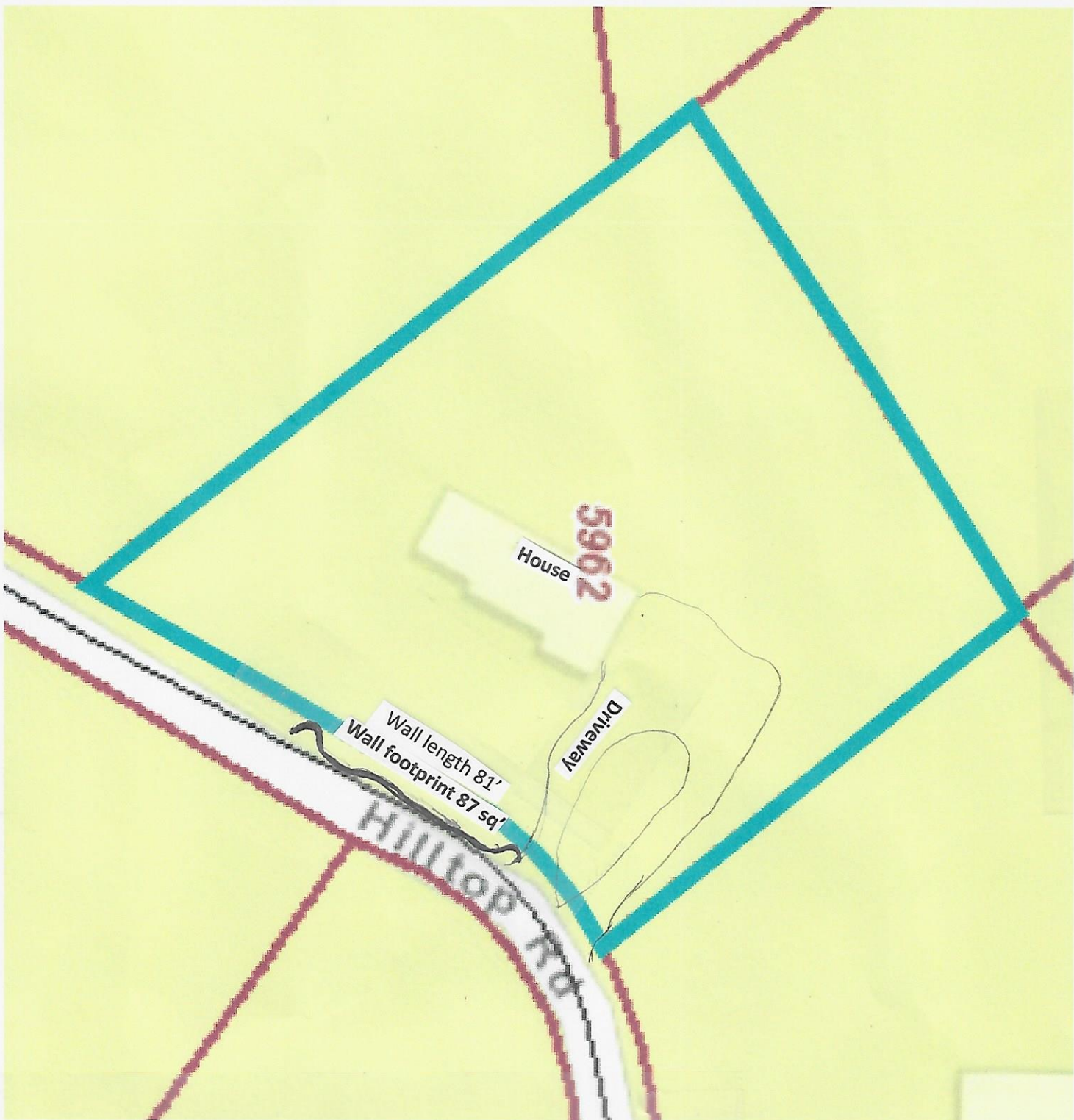
# 47 Hilltop Road



Hilltop Road

Scale: approximately 1 square per 3'

# 47 Hilltop Road



## Summary:

Set back Variance - Needed because protective wall has to be on the highest part of front yard most effective protect from water overflow.

Distance from wall to road varies from 6-9' with 14'semicircles at each end.

Area from wall to road will be a colorful flower bed of permeable soil to absorb water while beautifying roadway.

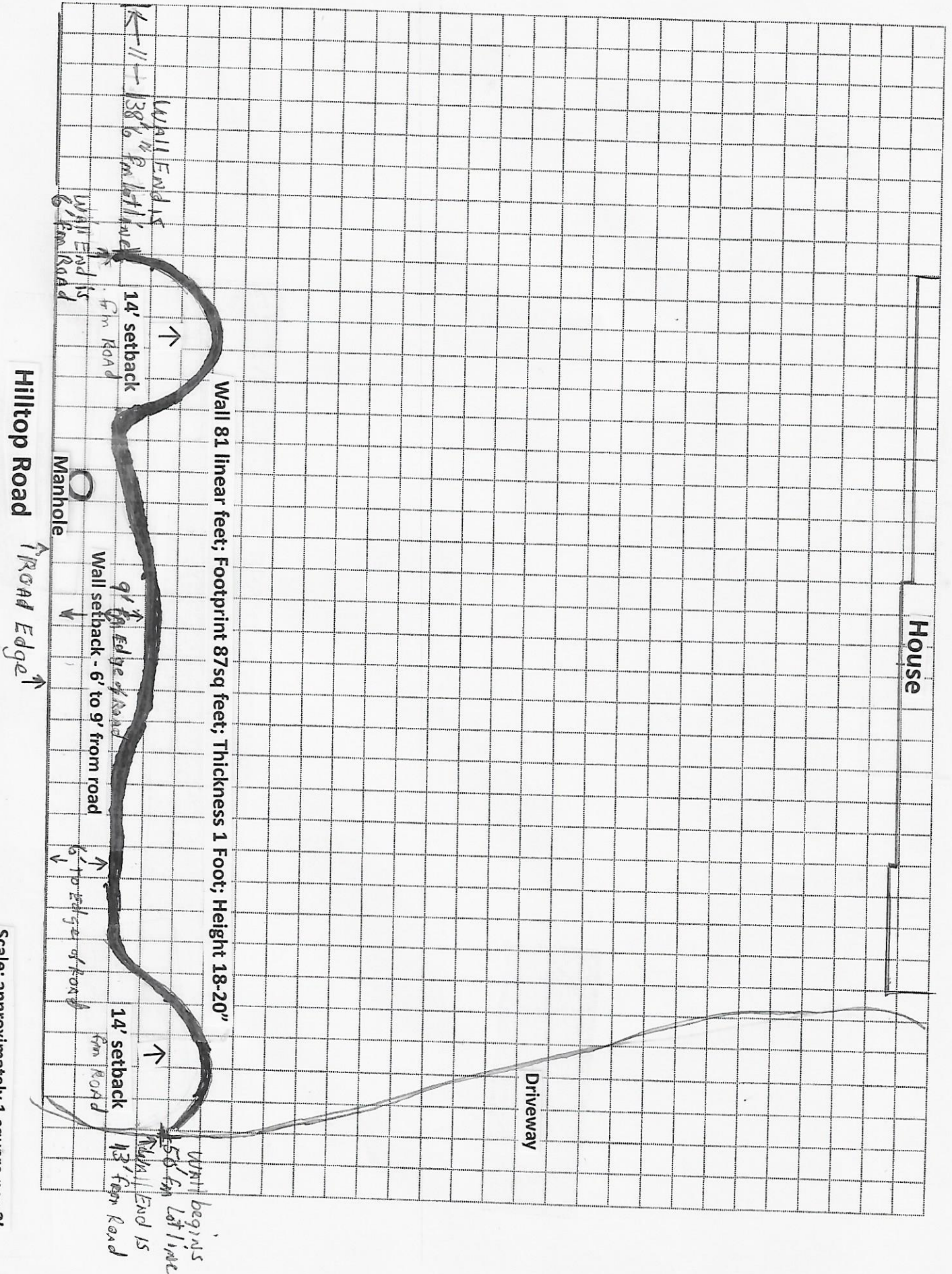
Wall begins 50' from North edge of Property and runs 81 linear feet along the roadside towards the South.

Manhole cover 110' from North edge of property by road

Property has approximately 270' road frontage

Scale: approximately 1/4" to 16'  
Drawing not exactly to scale

# 47 Hilltop Road





















## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

OCTOBER 23, 2023

#### CASE 9

**Property Address:** 7 Stuyvesant Road  
**Property Owner:** Stuyvesant Investments, LLC  
**Request:** Special Use Permit Request for Accessory Structure  
and Variance Request for Placement within Setback

---

#### Background

In May 2023, the Board of Adjustment reviewed a request for a new gravel drive being placed within a side yard and intruding into the side yard setback. The Town had previously requested work stop until the Board could review the proposed scope of work, including the variance for encroachment, and hear from other parties related to the project. The Board agreed to table the matter until such time that the applicant could obtain a survey confirming the side property lines and better formulate a plan for screening the intrusion into the setback.

The Board further reviewed this request at the August 2023 meeting and asked the applicants to return with a revised plan no later than the October 2023 meeting. That revised plan is attached as a proposal from B.B. Barns.

#### Special Use Permit Request

The gravel drive constitutes an accessory structure within the Town's zoning ordinance, and as such, requires a special use permit from the Board of Adjustment. This is provided for in Chapter 153.029 of the Town's Zoning Ordinance, attached to this memorandum.

#### Variance Request

The location of the gravel drive is within the side yard setback adjacent to 388 Vanderbilt Road. A variance is required from the Board of Adjustment to allow the continued use of the gravel drive within the side yard setback.

# Zoning Compliance Application

Town of Biltmore Forest

## Name

Stuyvesant Investments, LLC  
First

c/o Bessemer Trust Company of Florida  
Last

## Property Address

7 Stuyvesant Road, Biltmore Forest, NC 28803  
Address Line 1

## Phone

(732) 694-5796

## Email

hachil@bessemer.com

## Parcel ID/PIN Number

9646-79-9103-00000

## ZONING INFORMATION

### Current Zoning

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

### Lot Size

4.44 acres

### Maximum Roof Coverage

Choose appropriate lot size

### Proposed Roof Coverage Total

*Must not exceed maximum coverage allowed*

### Maximum Impervious Surface Coverage

Choose appropriate lot size

### Proposed Impervious Surface Coverage

*Must not exceed maximum coverage allowed*

### Front Yard Setback

### Side Yard Setback

### Rear Yard Setback

### Building Height

## Description of the Proposed Project

Request that the Board kindly consider issuing/granting a variance / waiver for a pre-existing gravel garden drive on the subject property and renewal of seasonal gravel installation for ongoing maintenance purposes. Significant damage was done to the gravel drive recently from heavy machinery needed to remove fallen tree and repair the hedge. The gravel road has existed for decades and is a permeable (not a permanent and impervious surface). The repair is needed to maintain the existing path / drive and is necessary to prevent mud wash from flowing on to the neighboring property at 388 Vanderbilt Rd. This gravel drive has been part of the property for many years as evidenced by the enclosed GIS aerial photos of the property from 2010 and 2020. The applicant is willing to consider additional buffering along the gravel drive from the neighbor's viewshed.

**Estimated Start Date**

May 2023 (Repair)

**Estimated Completion Date**

June 2023 (Complete Repair)

**Estimated Cost of Project**

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

**Applicant Signature**

Stuyvesant Investments, LLC

**Date**

April 23, 2023 | 10:57 PM EDT

DocuSigned by:

*Wally Hachil*

9B75238DB716426...

# Special Use Permit Application

Town of Biltmore Forest

## Name

Stuyvesant Investments, LLC

First

c/o Bessemer Trust Company of Florida

Last

## Address

7 Stuyvesant Road, Biltmore Forest, NC 28803

Address Line 1

## Phone

(732) 694-5796

## Email

hachil@bessemer.com

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

Variance or special use permit for pre-existing interior gravel drive on the subject property.

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:

Request that the Board kindly consider issuing / granting a variance / waiver for a pre-existing gravel garden drive on the subject property and renewal of seasonal gravel installation for ongoing maintenance purposes. Significant damage was done to the gravel drive recently from heavy machinery needed to remove fallen tree and repair the hedge. The repair is needed to maintain the existing path / drive and is necessary to prevent mud wash from flowing on to the neighboring property at 388 Vanderbilt Rd. The gravel road has existed for decades and is a permeable (not a permanent and impervious surface). This gravel drive has been part of the property for many years as evidenced by the enclosed GIS aerial photos of the property from 2010 (earliest available) and 2020. The applicant is willing to consider additional buffering along the gravel drive from the neighbor's viewshed.

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

The requested variance and repair to the existing gravel road would not adversely affect the public interest but rather improve it as it would continue to allow for safe access for the property owner and other staff/vendors to safely access and maintain parts of the property for purposes of performing needed and ongoing routine maintenance. The requested repair to existing gravel/access road is needed to prevent further damage and wash out in the future. The edges of the gravel / access road will also be cleaned up, graded smooth and mulch to prevent erosion and other issues. The applicant is willing to consider reasonable additional buffering from the neighbor's viewshed.

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



**Signature**

Stuyvesant Investments, LLC

DocuSigned by:  
*Wally Hachil*  
9B75238DB716426...

**Date**

April 23, 2023 | 10:53 PM EDT

# VARIANCE APPLICATION

Town of Biltmore Forest

## Name

Stuyvesant Investments, LLC  
First

c/o Bessemer Trust Company of Florida  
Last

## Address

7 Stuyvesant Road, Biltmore Forest, NC 28803  
Address Line 1

## Phone

(732) 694-5796

## Email

hachil@bessemer.com

## Current Zoning/Use

Residential

## Requested Use

No Change

**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?

Request that the Board of Adjustment consider issuing a variance / waiver for a pre-existing gravel garden drive on the subject property and renewal of seasonal gravel for ongoing maintenance purposes. Significant damage was done to the gravel drive recently from machines needed to remove fallen tree and repair the hedge. The repair is needed to maintain the existing path / drive and is necessary to prevent mud wash from flowing on to the neighboring property at 388 Vanderbilt Rd. The gravel road has existed for decades and is a permeable (not a permanent and impervious surface). With that said, the applicant is willing to consider additional buffering along the gravel drive from the neighbor's viewshed.

## What does the ordinance require?

Requires a specific setback for interior roads/drives along property boundary lines.

**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.**

Potentially result in issues with access and professional maintenance for certain parts of the subject property.

Explain.

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

7 Stuyvesant Road is a large and unique property that requires special care and professional maintenance to preserve the historical character, beauty and attributes of the property.

Explain.

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

This gravel drive has been part of the property for many years as evidenced by the enclosed GIS aerial photos of the property from 2010 (earliest GIS available) and 2020. The current repair/maintenance of this gravel drive is the subject of the complaint. The repair is needed to maintain the existing path / drive and is necessary to prevent mud wash from flowing on to the neighboring property at 388 Vanderbilt Road.

Explain.

**The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

The requested variance would continue to allow for safe access for the property owner and other staff/vendors to safely access parts of the proeprty for purposes of performing needed and ongoing routine maintenance. The requested repair to existing gravel/acces road is needed to prevent further damage and wash out in the future. The edges of the gravel / access road will also be cleaned up, graded smooth and mulch to prevent erosion and other issues. Furthermore reasonable additional buffering will be considered by the applicant.

Explain.

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

**Signature**

Stuyvesant Investments, LLC

DocuSigned by:

*Wally Hochil*

9B75238DB716426...

**Date**

April 23, 2023 | 10:55 PM EDT



**COBB, RHODA**  
**7 STUYVESANT RD.**  
**ASHEVILLE, NC 28803**

**Sales:** Erica Carroll  
**Cobb Back Path Completion 2023**  
 7 Stuyvesant Rd. Asheville, NC 28803

**Est ID:** EST4001341  
**Date:** Jun-29-2023

*Pricing valid for 30 days from date of the Proposal.*

**Crush/Run \$1,774.00**

**Track & Bill**

Finish putting down and smoothing out remaining crush/run as final layer to permeable path.

1 Days	Dingo	Includes trailer and attachmentsCan only trench 5" wide in a single pass
5 Ton	Stock Bulk - Crush Run/ABC-M #17 - Blend	Crushed Base Gravel

**Screening Plants and Mulch \$2,690.00**

5 schip laurels will be installed in perceived openings along woodland edge to block any visual of path from outside of the property.

Pine straw will be laid on top of the path to cover it further and reduce any perceived noise.

60 Each	Installed Mulch - Pine Straw - Bale	Estimated quantity of pine straw spread in bed areas or in tree rings.
5 10 Gallon	Prunus laurocerasus 'Schipkaensis' - Installed	Skip Laurel

<b>Subtotal</b>	<b>\$4,464.00</b>
<b>Taxes</b>	<b>\$0.00</b>
<b>Estimate Total</b>	<b>\$4,464.00</b>

## Track and Bill

This estimate includes track & bill items and/or sections. **Track & bill items and/or sections are intended to provide an estimate of costs for the scope of work listed but are not intended to be a final price.** All track & bill items and/or sections are labeled accordingly and the units listed are estimated quantities and prices only. All track & bill items/sections are subject to change and will be invoiced based on actual amounts used in the course of completing the job. Some track & bill items are unforeseen and may not be listed on the initial estimate and will be accounted for during the job and/or after completion.

## Proposal Terms & Conditions

This proposal/contract, describing the proposed work to be completed, serves as the entire agreement and both parties are not bound by any prior oral agreement. Any additional work requested beyond the scope of this contract is to be **invoiced as a separate change order**, approved by the client/owner before additional construction may/can begin.

A deposit of 50% of the project proposal is required upon signing and acceptance of this contract. **Full payment of the contract will be expected at the completion of the project.** If for any reason the balance on the contract is not paid in full, the warranty is void, and the signatory will be responsible for collection fees, attorney fees, and any other fees incurred while collecting the balance. B.B. Barns does not warranty any workmanship or materials until the full balance of the contract is paid. B.B. Barns is not liable for any additional work performed by other contractors that are not included in this proposal/contract.

In the event of severe weather, precautions will be taken to protect the project site, the project materials, and the project schedule. The impact of such precautions may affect the project and will be discussed with the client at such time. All delays due to inclement weather or otherwise, while completing this contract, shall be at the sole discretion of B.B. Barns. If for any reason, while excavating the site, we find groundwater, rock/boulders, electrical lines, or any other unforeseen/unmarked problems that impact the scope of this project, B.B. Barns will discuss the solution with the customer and a *track & bill change order* will be necessary to resolve the problem. The customer agrees to hold harmless B.B. Barns and its subcontractors from any damage discovered during or after B.B. Barns is on-site to underground utilities, water lines, sewer or septic systems, or any other underground services or structures not marked before the project begins. B.B. Barns is not responsible for damage due to acts of God, vandalism, and/or client/third party negligence.

When plant material indicated in the proposal/contract, or in the design is not available, B.B. Barns reserves the right to substitute similar and appropriate plant materials. Substitutions resulting in major design changes shall be approved by the client.

If the terms and conditions of this agreement meet your approval, please sign and date in the space provided below and return a copy of to B.B. Barns. Your signature on this agreement, along with the aforementioned 50% deposit, will authorize B.B. Barns, upon receipt, to schedule and commence work. We look forward to working with you on this project. If you have any questions regarding this contract, please contact your Landscape Consultant or Garden Coach.

## Refund & Cancellation Policy

Refunds and the cancellation policy apply to all services that have been scheduled with a deposit paid in advance. For all other services, we ask for the courtesy of 48 hours notice to allow us time to reschedule the crews in a convenient manner for other customers.

For work scheduled with a deposit paid, we ask for as much time as possible to cancel services, and you will receive a full refund of any deposits made for that job minus any specially ordered material costs that cannot be returned to our vendors. Most material is ordered more than 2-3 weeks prior to the scheduled job start. We keep a limited supply of hard goods (mostly gravels) and soft goods (mostly soil and mulch) in stock for all jobs. All other materials are considered special ordered and include, but are not limited to: plant materials, natural stone, pavers, wall blocks, water feature components, drainage components, irrigation components, lighting components, and more. If a job cancellation is necessary, please notify your Landscape Consultant or Garden Coach as soon as possible to discuss the status of all ordered materials and the refund amount. We will make every effort to return materials to our vendors when possible to maximize your refund. If a return is not possible, then we will refund the remaining balance of the deposit and we will deliver the materials to your site.

## Release Agreement for Landscape Photos

By accepting this proposal, I authorize B.B. Barns Landscape Company to use photographs of my property to represent their work for advertising purposes. B.B. Barns Landscape Company will ensure your privacy by not showing addresses, street names, or client names.

## B.B. Barns Landscape Warranty

- **Standard Plant Warranty** - Full (one-time) replacement on any loss of hardy trees and shrubs up to 2 years from the original installation date. Full (one-time) replacement on any loss of perennials for the *remainder of the current growing season* (until the first freeze). Labor is covered for 1 year from the original installation date—no warranty on clearance items or annuals. *Replacement plants are not covered by this warranty.*
- **Exclusions** - The guarantee only includes HARDY TREES AND SHRUBS that have been planted in the ground (containers not included). Our plant warranty does not cover plant material neglect (including under or over-watering), natural disasters, *deer, rabbit, vole, or other animal damage*, vandalism, or transplanted material; plant material specifically requested by the customer or other designer considered to be zone marginal or a poor choice by B.B. Barns; or weed germination in plantings, beds or mulch. Only Knockout & Drift Roses are covered as shrubs under this warranty. All other roses are covered under the perennial warranty.
- **Replacement Policy** - Before replacement, plant material will be inspected by a B.B. Barns Landscape Representative. Replacement of plant materials will be at the sole discretion of B.B. Barns Landscape. Individual plants will be replaced with the same species as available one time only unless B.B. Barns Landscape deems the environment unsuitable for the plant. B.B. Barns will make plant replacements during the optimal planting season and based on the availability of the plant material. If a plant appears stressed or is underperforming, please call your Landscape Consultant or Garden Coach as soon as possible, so we might be able to advise you on the best course of action.
- **Sod/Seed Limited Warranty**- B.B. Barns Landscape will warranty sod/seed installations for 2 weeks after installation provided the following conditions are true: B.B. Barns can verify that necessary watering has taken place via irrigation system or temporary sprinkler set up; no heavy traffic has been in the area including foot traffic, pets, and/or vehicles; pesticides or chemicals have not been applied to sod/seed (not in accordance with the B.B. Barns turf maintenance program); pets have not been allowed to soil the newly planted sod/seed.

**To improve the health and establishment of your new plantings, landscape care guides can be found here:**

<https://bbbarns.com/guidelines-warranty/>

**Contractor:** Erica Carroll  
Erica Carroll

**Client:** \_\_\_\_\_

**Signature Date:** 09/12/2023

**Signature Date:** \_\_\_\_\_

**Email:** erica.carroll@bbbarns.com





State Plane coordinates shown on this plot were obtained by a GNSS survey and the following results are:

Horizontal Position Accuracy : 0.02'  
 Vertical Position Accuracy : N/A  
 Procedure Used : Static (CORS) Post Processed using JAVAD DPOS  
 Horizontal Datum : NAD 83 NRSIS 2011  
 Vertical Datum : NAVD 88 Geoid 18  
 Units : US Survey Feet

ALL DISTANCES SHOWN ARE HORIZONTAL GROUND MEASUREMENTS.



- LEGEND:**
- ▲ SN = SURVEY NAIL SET OR FOUND
  - EIP=EXISTING IRON PIPE
  - ⊙ IPS=#4 OR #5 REBAR SET
  - ECM=EXISTING CONCRETE MONUMENT
  - ▲ RR=RAILROAD SPIKE
  - CC=CONTROL CORNER
  - R/W=RIGHT OF WAY
  - ⊕ POLE= UTILITY POLE
  - CAP= SURVEYOR/SURVEY COMPANY ID CAP
  - WM= WATER METER
  - ⊙ SH=SEWER MANHOLE
  - =POINT NOT SET
- FENCE**
- ◆ MW= WATER VALVE
  - ⊞ PMT=PAD MOUNT TRANSFORMER
  - ⊞ UP= UTILITY PEDESTAL
  - ⊞ = AREA LIGHT
  - ⊞ F/H= FIRE HYDRANT
  - ⊞ AC= HVAC COMPRESSOR
- LINES NOT SURVEYED = - - - - -  
 CREEK or STREAM = ~ ~ ~ ~ ~  
 CO = CLEAN OUT

**REFERENCE:**  
 D.B. 4787 Pg. 50  
 P.B. 02 Pg. 34 LOT 10

**NOTES:**

Adjoining property lines and ownership were taken from Buncombe County GIS mapping and is for informational purposes only. No reliance should be placed on this information. This property is not located in a special flood hazard area as determined by FEMA.

This survey is subject to any easements, restrictions, rights of way, previous conveyances or any other facts that may be disclosed by a title examination.

This survey is not intended to be used for site design. Any utilities or drainage pipes shown hereon should be verified by the owner prior to any construction. All underground utilities shown are approximate.

Fences shown along boundary lines neighbor along and with property lines and are not to be considered "line" fences unless otherwise noted.

I, Dale Cipar, certify that this plot was drawn under my supervision from an actual survey made by my supervision from deed description that is recorded in Book 4787 Page 50; that the portions not surveyed are clearly indicated as such from information found in Book N/A Page A; that the ratio of precision as calculated does not exceed 1:10,000; that the Global Positioning System observations were performed to the Spatial Accuracy Standards, Part 2; Standards - Geodetic Networks at the 95% confidence using RS Network (STATIC); and that this plot was prepared in accordance with G.S. 47-30 as amended. I, Dale Cipar, the registration number is 2023.

GS 47-30 F(11)

This survey is of an existing parcel or parcels of land and does not create or alter any property rights or interests.

**PRELIMINARY DRAWING FOR REVIEW ONLY**

Professional Land Surveyor  
 License Number L-3036



Date	Revisions Made	Int.

Registered this the \_\_\_\_ day of \_\_\_\_\_, 2023  
 at \_\_\_\_ M. Recorded in Book \_\_\_\_ , Page \_\_\_\_

Drew Retinger, Register of Deeds, Buncombe County

By: \_\_\_\_\_ Deputy/Assistant

(9-A)  
 RAY PALMER WOODFIN, III TRUST  
 JANE WOODFIN WOODFIN TRUST  
 ELLIOTT TRUST  
 D.B. 6271 Pg. 1104  
 P.B. 02 Pg. 34

(9-B)  
 SARAH G. BUTTRAM  
 MICHAEL A. BUTTRAM  
 D.B. 4126 Pg. 1326  
 P.B. 02 Pg. 34

(11)  
 FRED F. GROCE, JR.  
 CYNTHIA N. GROCE  
 D.B. 1847 Pg. 771  
 P.B. 02 Pg. 34  
 BLOCK G C A

(10)  
 STUYVESANT INVESTMENTS, LLC.  
 D.B. 4787 Pg. 50  
 P.B. 02 Pg. 34  
 BLOCK G C A

(7)  
 STEWART B. COLEMAN  
 GAY W. COLEMAN  
 D.B. 2088 Pg. 318  
 P.B. 02 Pg. 34

(12)  
 WILLIAM P. MORRISON TRUST  
 D.B. 5401 Pg. 987  
 P.B. 02 Pg. 34  
 BLOCK G C A

D.B. 1706 Pg. 266

BILTMORE FOREST COUNTRY CLUB, INC.  
 D.B. 1780 Pg. 102

Property Boundary Survey For:

**Stuyvesant Investments, LLC**

#7 Stuyvesant Rd.

ZONING: R-1  
 PIN NUMBER:  
 9646-79-9103

TOWN OF BILTMORE FOREST  
 BUNCOMBE COUNTY, N.C.

JUNE 30, 2023  
 SCALE: 1"=50'

0' 50' 100'

SCALE IN FEET

(FIRM LICENSE No. C-0260)

Cipar, Ingle, Anders & Associates Inc.  
 Land Planning

Surveying Mapping  
 29 N. MARKET ST. ASHEVILLE, NC

Professional Surveyors  
 (828)-268-0287 www.ciasurveying.com

## § 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

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

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

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;
- (e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;
- (f) The accessory building must be designed in the same architectural style as the principal structure;
- (g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and
- (h) Solar collectors shall be regulated in accordance with G.S. § 160D-914.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

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

**Editor's note:**

*This amendatory language was passed during a Board meeting, July 9, 2013*