



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners  
From: Jonathan B. Kanipe, Town Manager  
Date: May 8, 2024  
Re: **Board of Adjustment Meeting – May 20, 2024**

**Applicants:**

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

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

**Neighbors:**

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

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

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

Additional information regarding the meeting will be provided on the Town's website no later than May 15, 2024.

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

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, May 20th, 2024 at 4:00 p.m. at the Biltmore Forest Town Hall at 355 Vanderbilt Road, Biltmore Forest, NC 28803.

1. The meeting will be called to order and roll call taken.
2. The minutes of the April 15, 2024 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

**Case 1: 8 White Oak Road – *Rehearing* for a Special Use Permit request for retaining walls, and Variance request for intrusion into side and rear yard setbacks and additional wall location within front yard.**

*Site Visit – 3:30pm*

5. Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT  
MEETING HELD MONDAY, APRIL 15, 2024

The Board of Adjustment met at 4:00 p.m. on Monday, April 15, 2024.

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

Chairman Greg Goosmann called the meeting to order at 4:03 p.m.

Chairman Goosmann swore in the following:

Mr. Jonathan Kanipe

Mr. Tony Williams

Mr. Kerney McNeil

Ms. Katie Jones

Ms. Bonnie Markle

Mr. John Kimberly

Ms. Liz Kimberly

Mr. John Widman

Mr. Wesley Wiseman



A motion was made by Mr. Robert Chandler and Ms. Barnes seconded to approve the minutes from March 18, 2024 . The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is for a Special Use Permit request for an accessory structure (landscaping wall) within the rear yard at 19 Hemlock Road. Mr. Tony Williams shepherded the matter. Mr. Chandler said his wife is involved with Preferred Properties as an agent and the homeowner and his wife are also involved in that company. They would like to construct a stone landscaping wall for a new garden. The wall would be in the rear yard of the home near the garage parking area. It complies with all the setbacks. The dimensions are 60 linear feet in length and 30 feet high. It is not visible to the neighbors. The wall is lower than the driveway.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners would like to construct a stone landscaping wall that will be 60 linear feet in length and 30 feet high.

Ms. Lynn Kieffer moved that a Special Use Permit as requested be granted to Kerney McNeil of 19 Hemlock Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in

accordance with plans submitted to the Town. The motion was seconded by Mr. Robert Chandler and unanimously approved.

HEARING (Evidentiary):

The second matter is for a Special Use Permit request for a retaining wall along an existing drive and boulder installation; A Variance request is also requested for construction within the front yard at 430 Vanderbilt Road. Mr. Tony Williams shepherded the matter. They would like to add a low screen wall at the existing front yard parking area. The wall will be 18” high and there will be a small section within the front setback. They would like to add accent boulders near the drive entries on both sides but outside of the Town’s right-of-way. There will be 2-3 boulders plus or minus two feet in size with a total of four locations. The boulders will be set into the ground. The Variance is for the small corner of the wall. The hardship is the edge of the parking lot has some settling and erosion. This is causing safety and maintenance concerns. The structure of the wall will eliminate these issues.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 430 Vanderbilt are applying for a Special Use Permit and Variance for a low screen wall at the existing front yard parking area. The wall will be 18” high and there will be a small section within the front setback. They would like to add accent boulders at the drive entries. There will be 2-3 boulders plus or minus two feet in size with a total of four locations on the property. The boulders will be set into the dirt. The landscaping will be between the wall and the road.

Mr. Chandler made a motion to approve a Special Use Permit to Tom Bolton of 430 Vanderbilt Road and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no property owners have objected. He further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with

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

Further, he moved that by granting this Variance further satisfies the applicable Sections of 153.110(D) and paragraphs one through four and would not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would, in this case, result in a practical difficulty or unnecessary hardship. 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. Barnes seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The last matter is for a Special Use Permit request for retaining walls and a Variance request for intrusion into the side yard and rear yard setbacks and an additional wall location within the front yard at 8 White Oak Road. Mr. Tony Williams shepherded the matter. They are proposing a 60 linear foot wall and 18" maximum height.

A neighbor across the street, David Hodges, is in favor of the project. Mr. Kimberly said it is 12-18" in height and is a low planting wall that will run along the border of a planting bed that has been there prior to them buying the house in 2004. They are not increasing the area of the bed, they would just like to add a stone border around the existing bed. They need it for

maintenance and erosion control. Ms. Liz Kimberly said it would help prevent washout and look much more aesthetically pleasing. The hardship is they have erosion issues they would like to get rid of. They have existing landscaping that would not show the wall from the street, and they are willing to buffer additionally if needed.

#### DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 8 White Oak Road are requesting a Special Use Permit and a Variance for a landscaping wall within the front yard. The length is 60' and height will be between 12"-18". It will be out of the front setbacks.

Ms. Barnes made a motion to grant a Special Use and Variance to Mr. John and Ms. Liz Kimberly of 8 White Oak Road for a garden wall and retaining of a flower bed and the facts as recited by Tony Williams and his summation be accepted as findings and fact to support this grant. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

HEARING (Evidentiary):

Mr. Williams said the second portion of the matter at 8 White Oak Road entails a retaining wall beside their driveway. It will be approximately 150' long and vary in height from 12"-32" in height and will require various intrusion into the setbacks. The wall is not located within the Town's right of way at the far end. Mr. Kimberly said the retaining wall would line up on the south side of their driveway. It was installed to address water issues they have. The topography of the land and the lot to the south of them means that water comes their way. There are also three gutters on the home adjacent to theirs that direct water over the slope and onto their driveway. It also goes into the basement and the garage. They would like to have approval for this wall that includes a French drain that traps the water and redirects it away from the house.

Mr. John Widman who is the homeowner's son at 10 White Oak asked why the Kimberly's didn't get approval before constructing the project. Mr. Kimberly said they made a mistake and thought this was landscaping. They are here today to seek approval. Mr. Widman said he is frustrated because he said it was done before the property lines were determined and construction continued. Mr. Kimberly said they had a surveyor who has been a licensed surveyor for Buncombe County for many years and didn't think the property lines were in question. Mr. Widman said he had their property surveyed as well and the wall is right on their line. Ms. Kimberly said their survey has something completely different than the Widman's survey. Ms. Kimberly said the Widman's had a surveyor shoot the line and not an actual survey. There was no documentation in the line that was shot. Ms. Kimberly also said they had a survey done before the project was started that was required by their architect. Mr. Widman asked if they have the survey documentation and Ms. Kimberly said yes, the documentation is part of the board packet.

Mr. Widman provided the Board with a Geo-Tech packet which is a report from an engineer who measures slope and soil conditions. He also said he had a survey done which was included in the Geo-Tech report. Mr. Widman said there are three areas of concern with the

retaining wall. The first concern is safety. If a car were to drive off, it would cause bodily harm. The second concern Mr. Widman has is the erosion. When the excavation took place, there was a drop of 44” from the Widman’s driveway downward which Mr. Widman says is significant. The Geo-Tech report talks about erosion control, and they stipulated the excavation would cause additional erosion and there were safety concerns that needed to be addressed. Mr. Widman also said the location of the retaining wall is concerning. He said the retaining wall was built before the property line was established. Mr. Widman requested that a professional civil engineer design a new retaining wall that will address safety and erosion control. Mr. Widman showed a rough drawing of what would be appropriate and said a professional needs to get involved.

Ms. Kieffer said she appreciates the safety concern he has because it is quite a drop off on the driveway. Mr. Widman would like to see the wall set seven feet behind the property line and alleviate the potential for danger.

Mr. Billy Clarke said the survey issue needs to be determined between the two property owners. The property line issue is what needs to be resolved. Mr. Clarke said to grant this Variance, at least four members of the Board would need to vote for it.

Ms. Kimberly said the Board has a certified survey of the property with a stamped seal. Ms. Kieffer asked if the Widman’s had a certified copy of a survey. Mr. Widman said he had a receipt of the surveyor coming out. Mr. Widman said he does not have a stamped survey but says it is accurate.

Ms. Kieffer asked if they could build a small terrace. They Kimberly’s would like to keep the project as is.

Ms. Kimberly said their hardship is they have a water issue and they would like to prevent it and correct the issue. Mr. Widman asked why he didn’t address the issue twenty years ago when it initially started.

#### DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 8 White Oak Road are applying for a stacked stone wall along the driveway. The wall will be 150’ long and 12”-32”

varying in height. The wall is not located within the Town’s right-of-way. The homeowners offered to include the stepping of the wall and offered to raise and terrace it between the carport gutter system that presently exists along with the words hardy and dense landscaping as well.

Mr. Widman would like clarity on the width and height of the terrace. Ms. Barnes said it would be up to 4’ in height between the guttering system. The neighbor Mr. Widman and Ms. Widman at 10 White Oak Road have objected and submitted a report from ECS consulting.

Mr. Chandler made a motion to postpone deciding this proposal so neighbors can bring back more information. Such as additional drawings, stamped surveys, and additional landscaping. Ms. Kieffer seconded the motion. The motion was unanimously approved.

The meeting was adjourned at 5:57pm.

The next meeting is scheduled for Monday, May 20, 2024 at 4:00pm.

ATTEST:

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Greg Goosmann

Chairman

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Laura Jacobs

Town Clerk



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

May 20, 2024

#### CASE 1

**Property Address:** 8 White Oak Road

**Property Owner:** John Kimberly

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

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Note: This project was tabled at last month's meeting. The applicants have provided additional information which is attached to this application packet.

#### Background

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

#### Special Use Permit

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

#### Variance Request

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address

<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>.

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

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

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

### **153.008 SPECIAL USES.**

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

(B) *Development plan/site plan requirement.*

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

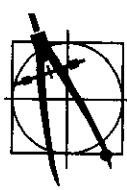
(2) If the special use request is for a subdivision or planned unit development, the development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

- (a) Existing site conditions, including contours, watercourses, identified flood hazard areas, any unique natural or human-made features;
- (b) Boundary lines of the proposed development, proposed lot lines, and plot designs;
- (c) Proposed location and use of all existing and proposed structures;
- (d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;
- (e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);
- (f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;
- (g) Location and/or notation of existing and proposed easements and rights-of-way;
- (h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;
- (i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;
- (j) Where applicable, the following written documentation shall be submitted:
  - 1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;
  - 2. The zoning district or districts in which the project is located;
  - 3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;
  - 4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;
  - 5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and
  - 6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.
- (k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive

a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(C) *Special use standards.*

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



ROD M. HUDGINS, JR. PE  
P. O. BOX 5070  
ASHEVILLE, NC 28813

PHONE 828-712-1201

Rod M Hudgins, Jr. P.E. – Principal

**MAY 2, 2024**

**LOOKING GLASS BUILDERS  
WES WISEMAN**

**RE: STRUUCTURAL OBSERVATION  
DRIVEWAY RETAINING WALL  
#8 WHITE OAK RD., BILTMORE FOREST  
RHE PROJECT #224045**

**I WAS REQUESTED TO PROVIDE AN OPINION ON THE CAPACITY OF THE  
ROCK RETAINING WALL ON THE SOUTH SIDE OF THE DRIVEWAY.**

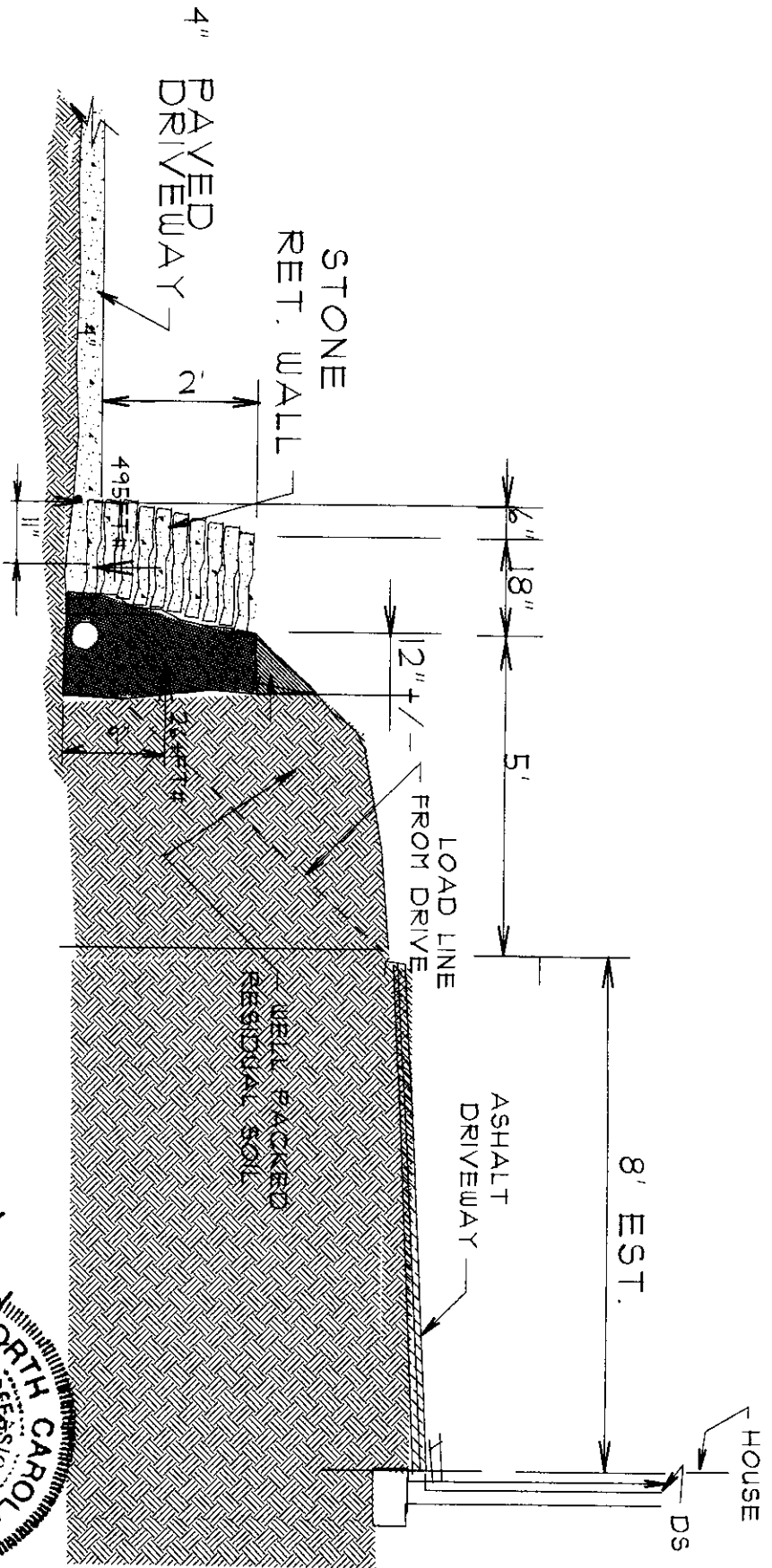
**THE WALL WAS MADE UP OF ROCK SLABS APPROXIMATELY 18"+ W. X  
18-24" L. X 4"+ TK.. THE ROCKS WERE STACKED APPROXIMATELY 32"  
H. AT THE HIGHEST AND THEY HAD AN APPROXIMATE 6" BATTER. A  
4" MIN. CONCRETE DRIVEWAY IS TO BE PLACED AGAINST THE WALL  
BASE TO THE NORTH. THERE WAS AN APPROXIMATE 12" CUT TO THE  
SOUTH TO PLACE 12" OF NC DOT #57 WASHED STONE BEHIND. THE  
STONE WAS WRAPPED IN A MIRAFI FILTER FABRIC WITH A 4"MIN.  
PERF. PIPE AT THE BASE. THE GRAVEL WAS PACKED CLOSE TO THE  
TOP OF THE STONE WALL. BEHIND THE STONE WAS WELL  
COMPACTED RESIDUAL SOIL WHICH CARRIED SOUTH TO THE  
ASPHALT DRIVEWAY AND HOUSE NEXT DOOR.**

THE LOAD LINE FOR THE ASPHALT DRIVE TRAVELED DOWN AND BEHIND THE ROCK WALL, SO NO DRIVEWAY LOAD SHOULD BE TRANSFERRED TO THE WALL. THE ACTIVE PRESSURE FROM THE GRAVEL CALCULATED TO PRODUCE AN OVERTURNING MOMENT OF APPROXIMATELY 15.4 '#, WHILE THE RESISTING MOMENT FROM THE WALL CALCULATED TO BE APPROXIMATELY 400'#. THE AMPLE GRAVEL AND PIPE SHOULD OFFER SUFFICIENT DRAINAGE TO KEEP HYDROSTATIC PRESSURE AT A MINIMUM. A GOOD VEGETATIVE GROWTH ON THE BANK SURFACE SHOULD KEEP EROSION TO A MINIMUM. IT IS MY OPINION, THE STONE RETAINING WALL SYSTEM WAS CONSTRUCTED PROPERLY AND SHOULD, UNDER NORMAL CIRCUMSTANCES, SUPPORT THE INTENDED LOAD.

HOWEVER, A CONCENTRATED FLOW WITH HIGHER THAN NORMAL VELOCITY OF STORMWATER COULD CAUSE EROSION AND POSSIBLE DAMAGE TO THE RETAINAGE SYSTEM AND WALL. ONE OR BOTH OF THE STORMWATER DOWNSPOUTS FROM NEXT DOOR COULD CAUSE DAMAGE AS DESCRIBED. I HIGHLY RECOMMEND THE FLOW FROM THE DOWNSPOUTS BE CONTROLLED AND DIVERTED AWAY FROM THE NORTHERN PROPERTY INTO AN ESTABLISHED DRAINAGE SYSTEM.

IF YOU HAVE ANY QUESTIONS, PLEASE LET ME KNOW. WE APPRECIATE YOUR BUSINESS.

RESUBMITTED,  
NORTH CAROLINA  
PROFESSIONAL  
46725  
5/2/24 JR  
RODNEY HUBBINS JR  
HUBBINS JR  
NC #0046725



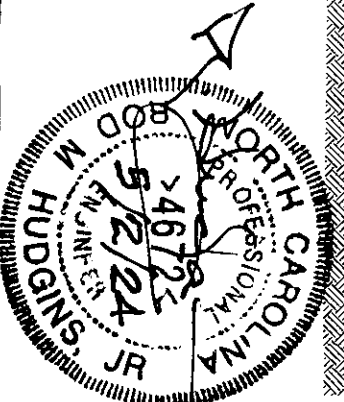
CROSS - SECTION

ROD M. HUDGINS, JR. PE  
 ROD M. HUDGINS, JR. PE - PRINCIPAL  
 P. O. BOX 5070  
 ASHEVILLE, N. C. 28813  
 (828)712-1201

PROJECT NAME & ADDRESS  
 #8 WHITE OAK RD  
 CROSS-SECTION  
 LOOKING GLASS BLDGS.

1 ORIGINAL  
 DATE 5/2

PROPOSED BY RHH  
 DATE 5/2/24  
 PROJECT 224045  
 SCALE NTS  
 SHEET S-1



# INVOICE

B. B. Barns, Inc.  
92 Crayton Rd  
Asheville, NC 28803

brittany.leisey@bbbarns.com  
+1 (828) 650-7300  
www.bbbarns.com



## Kimberly, Liz:Kimberly Screening Sketch Spring 2024

**Bill to**  
Liz Kimberly  
8 White Oak Road  
Biltmore Forest  
North Carolina 28803  
United States

### Invoice details

Invoice no.: 26132  
Terms: Due on receipt  
Invoice date: 04/26/2024  
Due date: 04/26/2024

Sales Rep: BDD  
Job Name: Kimberly Screening Sketch  
Estimate #: EST4562530

#	Date	Product or service	Description	Qty	Rate	Amount
1.		<b>100. Install</b>	Design Drawing	1	\$375.00	\$375.00

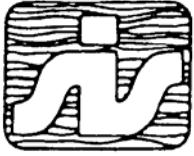
**Total** **\$375.00**

### Note to customer

We would love to hear about your most recent experience with us. Please take a moment to fill out our brief online survey. We would greatly appreciate it!

<https://bbbarns.com/landscape-customer-feedback>





**S.I. Storey**

LUMBER COMPANY, INC.

Since 1920



*StreetGuard™*

*Designed to meet the special needs of Developers and land planners, StreetGuard™ is the safety barrier solution that enhances the landscape. Intended for use along low speed roadways in parks, private developments and subdivisions, StreetGuard™ is the aesthetic alternative to traditional galvanized steel W-beam guardrail.*



Osmose® Wood Products  
Licensed Manufacturer  
Since 1955

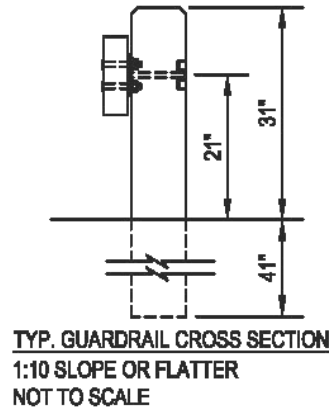
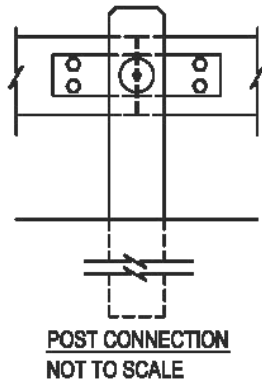
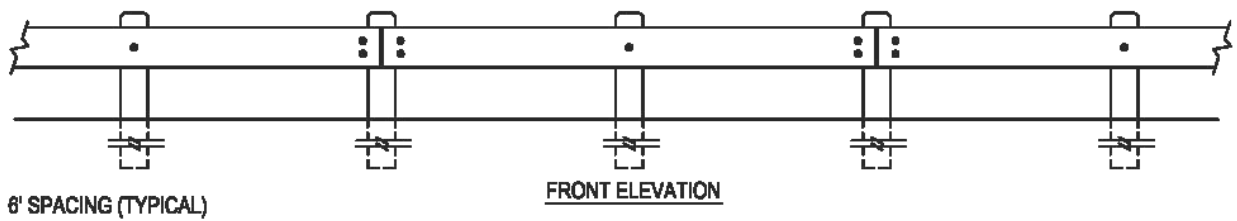
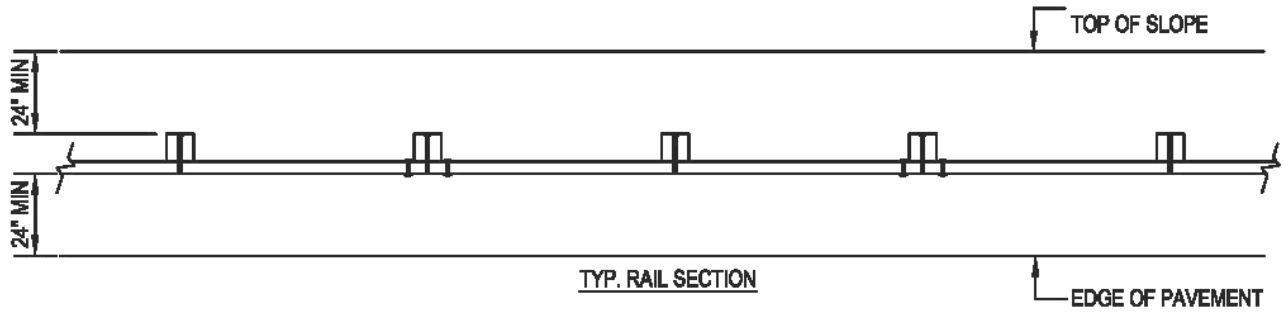
285 Sike Storey Rd. • P.O. Box 99  
Armuchee, GA 30105  
Phone: 888-934-1605 Fax: 706-235-8132

Southern Pine Inspection  
Bureau Member  
Since 1943



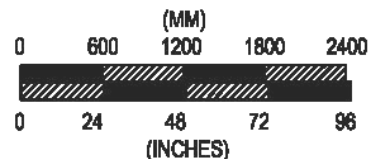
**S.I. Storey**  
LUMBER COMPANY, INC.

S.I. STOREY LUMBER CO., INC.  
285 SIKE STOREY RD NW  
P.O. BOX 99  
ARMUCHEE, GA 30105-0099  
TOLL FREE: (888) 934-1605  
PHONE: (706) 234-1605  
FAX: (706) 235-8132  
www.timbarrier.com



**NOTES:**

1. INSTALLATION TO BE COMPLETED IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
2. DO NOT SCALE DRAWINGS.
3. IF TOP OF SLOPE IS CLOSER THAN 24" INCREASE POST LENGTH TO 7'.
4. DRIVE POSTS OR AUGER, BACKFILL WITH NATIVE SOIL AND COMPACT EVERY 12".
5. ALL TIMBER #1 S4S SOUTHERN PINE, PRESSURE TREATED: AWPA-C14, WOOD FOR USE IN HWY. CONSTR.
6. TYP. POST: 8" X 8" X 6' - TYP. RAIL: 4" X 12" X 11' 11 1/2"
7. FASTENERS: ASTM A307; A242; F436 TYPE 3; A563 DH3.
8. TIMBARRIER™ SPLICE PLATE & PLATE WASHER ASTM-A588.
9. REFER TO DRAWINGS 651-008 OR 651-009 FOR TERMINAL DETAILS
10. CONTRACTORS NOTE: FOR PRODUCT AND COMPANY INFORMATION VISIT [www.CADdetails.com/Info](http://www.CADdetails.com/Info) REFERENCE NUMBER 651-003.







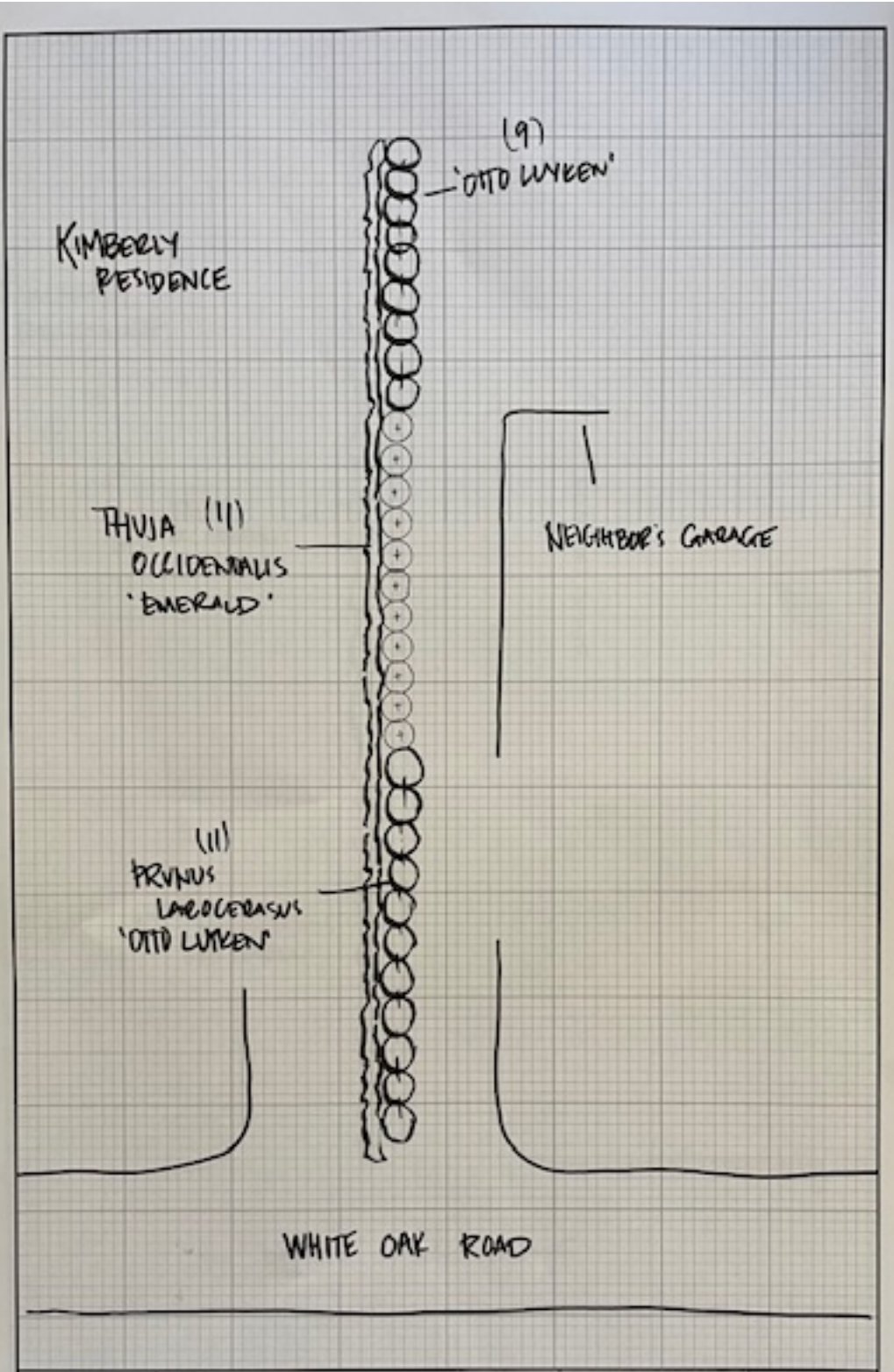
Town of Biltmore Forest  
BOARD OF ADJUSTMENT  
HEARING NOTICE



For More Information Visit:  
[www.biltmoreforest.org](http://www.biltmoreforest.org)

LOOKING GLASS  
BUILDERS LLC  
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828 551-6649  
Uncompromised Quality



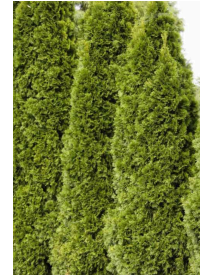


CLIENT  
 KIMBERLY, LIZ  
 8 WHITE OAK ROAD  
 ASHEVILLE, NC 28803

SCALE 1" = 3 1/32"  
 DATE 4/25/24  
 TITLE SCREENING

8 White Oak Road  
Landscape Plant Selections

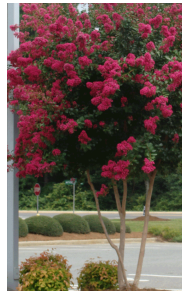
Pachysandra  
Ground cover for erosion control



Arborvitae (11) - Conical  
(Thuja Occidentalis)



Liriope



Crepe Myrtle



Otto Luyken Laurel (20)  
(Prunus laurocerasus)  
Evergreen, hedge shrub, 3-4' T x 6-8' W  
Deer resistant, fast growth

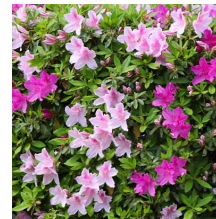
Hydrangea



Boxwood



Azalea



Pine straw



# PREVIOUS HEARING APPLICATION MATERIALS



## BOARD OF ADJUSTMENT MEETING

### STAFF MEMORANDUM

April 15, 2024

#### CASE 3

**Property Address:** 8 White Oak Road

**Property Owner:** John Kimberly

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

---

#### Background

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

#### Special Use Permit

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

#### Variance Request

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

# PREVIOUS HEARING APPLICATION MATERIALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



# PREVIOUS HEARING APPLICATION MATERIALS

- (1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.
  - (2) Non-wooden fencing and gates shall be black, dark green or brown and shall blend with surrounding trees or vegetation.
  - (3) No new chain link fencing or gates shall be allowed.
  - (4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for “Permanent Woven Wire Fencing” and “Permanent Solid-Wire Fencing.” Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).
  - (5) Walls should be constructed of stone or similar material, and shall be compatible with the construction materials of the house located on the same property.
  - (6) When a fence, gate or wall is not properly maintained or fails to comply with condition(s) imposed by the Board of Adjustment, the town shall require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner’s expense. If the property owner fails to repair or remove the fence, gate, or wall, the town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.
- (Ord. passed 2-11-2020; Ord. passed 6-8-2021)

## **153.008 SPECIAL USES.**

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

(B) *Development plan/site plan requirement.*

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

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

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



# PREVIOUS HEARING APPLICATION MATERIALS

- (b) Boundary lines of the proposed development, proposed lot lines, and plot designs;
- (c) Proposed location and use of all existing and proposed structures;
- (d) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites, and similar public or semi-public uses;
- (e) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private);
- (f) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved sedimentation and erosion control plan shall also be submitted where required. Provisions for stormwater drainage shall be shown;
- (g) Location and/or notation of existing and proposed easements and rights-of-way;
- (h) The proposed treatment of the perimeter of the development, including materials and/or techniques such as screens, fences, and walls;
- (i) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features;
- (j) Where applicable, the following written documentation shall be submitted:
  1. A legal description of the total site proposed for development, including a statement of present and proposed ownership;
  2. The zoning district or districts in which the project is located;
  3. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages;
  4. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development;
  5. Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units per acre); and total amount of open space; and
  6. Plan for maintenance of common areas, recreation areas, open spaces, streets, and utilities.
- (k) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

# PREVIOUS HEARING APPLICATION MATERIALS

## (C) *Special use standards.*

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

# PREVIOUS HEARING APPLICATION MATERIALS

## Zoning Compliance Application

Town of Biltmore Forest

**Name**

John Kimberly

**Property Address**

8 White Oak Rd

**Phone**

(828) 713-8630

**Email**

john.kimberly@parknationalbank.com

**Parcel ID/PIN Number**

9647 90 1549

### ZONING INFORMATION

**Current Zoning**

R-2

**Lot Size**

.715 acres or 31,159 SF

**Proposed Roof Coverage Total**

3,470 sf

**Proposed Impervious Surface Coverage**

Site plan provided with prior approval. No increase.

**Front Yard Setback**

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

**Side Yard Setback**

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

**Rear Yard Setback**

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

**Building Height**

25'-3"

**Description of the Proposed Project**

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

**Estimated Start Date**

2/1/2024

**Estimated Completion Date**

4/5/2024

**Estimated Cost of Project**

\$10,000.00

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

White Oak Ret Wall.pdf

PREVIOUS HEARING  
APPLICATION MATERIALS

**Applicant Signature**

**Date**  
3/20/2024

*John Kimberly*

PREVIOUS HEARING  
APPLICATION MATERIALS

## Special Use Permit Application

Town of Biltmore Forest

**Name**

John Kimberly

**Address**

8 White Oak Road

**Phone**

(828) 398-2179

**Email**

john.kimberly@parknationalbank.com

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

Accessory Structures

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

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

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

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

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

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

**Signature**

**Date**

3/20/2024



# PREVIOUS HEARING APPLICATION MATERIALS

## VARIANCE APPLICATION

Town of Biltmore Forest

**Name**

John Kimberly

**Address**

8 White Oak Road

**Phone**

(828) 713-8630

**Email**

john.kimberly@parknationalbank.com

**Current Zoning/Use**

R

**Requested Use**

R

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

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

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

**What does the ordinance require?**

Approval for hardscape and a variance for the setback requirement.

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

**REQUIRED FINDINGS: Please provide a thorough response to each.**

**Unnecessary hardship would result from the strict application of the ordinance.**

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

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

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

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

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

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

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

# PREVIOUS HEARING APPLICATION MATERIALS

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

**Signature**

**Date**

3/20/2024

*John Kimberly*

# PREVIOUS HEARING

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

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

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

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

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

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

- (1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.



## PREVIOUS HEARING

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

8 White Oak Driveway  
PRE-Demolition/Renovation

Notes:

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





Water runs across Widman property downward onto Kimberly property causing damage



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





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



Completion of water retention rock wall

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

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









# PREVIOUS HEARING APPLICATION MATERIALS



# 8 White Oak Road Landscape Plant Selections

Pachysandra  
Ground cover for erosion control

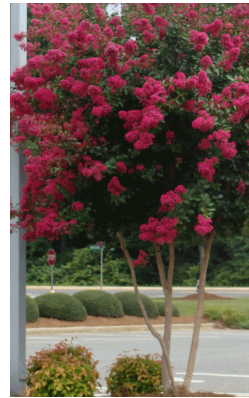


Liriope



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

Evergreen, hedge shrub  
Deer resistant, fast growth



Crepe Myrtle



Arborvitae - Conical

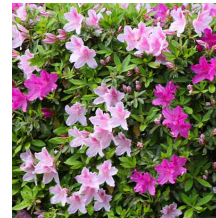
Hydrangea



Boxwood



Azalea



Pine straw







# ECS Southeast, LLC

Report of Geotechnical Observations

## Widman Slope Evaluation

10 White Oak Road

Asheville, Buncombe County, North Carolina 28803

ECS Project No. 31-4769

April 12, 2024





April 12, 2024

John Widman  
4 Brook Forest Drive  
Arden, North Carolina 28704

Reference: Report of Geotechnical Observations  
**Widman Slope Evaluation**  
10 White Oak Road  
Asheville, North Carolina  
ECS Project 31-4769

Mr. Widman:

As requested, ECS has completed a geotechnical visual evaluation of the existing slope adjacent to the northern property boundary at 10 White Oak Road. The following sections of this report provide our understanding of the project, a summary of the evaluation, and our professional opinions. These services were performed under the terms and conditions of ECS Proposal 31-7884-P, dated March 22, 2024, and authorized by Roberta Widman on March 27, 2024.

### **PROJECT UNDERSTANDING**

Our understanding of the project is based on recent correspondence with Roberta and John Widman and ECS' Scott Brinkley and Matthew Fogleman, PE. We understand that the neighboring property owner to the north has recently altered the existing terrain along the shared property boundary between the residences at 8 and 10 White Oak Road. The alterations consisted of the construction of a small retaining wall and the excavation of a slope. You have expressed concerns about the long-term stability of the slope and retaining wall and the potential effects to features of your property, namely to your driveway. You requested that ECS visually assess the current site conditions with regard to the stability of the constructed slope and the potential impacts to your property.

### **SITE EVALUATION**

Scott Brinkley and Matthew Fogleman, PE of ECS visited the property on March 29 and April 9, 2024 to observe the site conditions and to take measurements. Photographs showing representative conditions observed on these dates are included on the attached Photo Log sheets.

The subject property is currently developed as an existing single-family residence. The adjacent property to the north is developed similarly. The topography generally slopes downward to the north, and while the subject property has been graded relatively flat, it is slightly higher in elevation than the adjacent property to the north. Subsequently, a small slope has historically been present near the northern property line based on Street View imagery from Google Earth dated September 2023. The slope was generally located between the two driveways, as the driveway at 10 White Oak Road is on the north side of the house, and the driveway at 8 White Oak Road is on the south side of the house.

A summary of our observations made during our site visit is provided below:

- A retaining wall was present near the property boundary. The wall was approximately 2 to 3 feet tall and appeared to be constructed of dry-stacked stone. The horizontal distance from the face of the retaining wall to the property line (based on wooden stakes at the site) ranged from approximately 26 to 53 inches.
- We understand that this wall was constructed relatively recently (subsequent to the September 2023 Google Earth imagery) and was constructed in a cut condition by excavating and removing a portion of the slope. The slope extends above and behind the new wall and was covered in recently applied mulch. The angle of the slope behind the retaining wall extending to the Widman driveway was approximately 30 degrees or about 1.75H:1V (Horizontal:Vertical).
- The slope extends beyond what we believe to be the property line (based on wooden stakes at the site) with the crest of the slope located onto the Widman's property and immediately adjacent to their asphalt driveway. The Widman's asphalt driveway is within 11 inches of the northern property boundary (based on wooden stakes at the site) and is approximately 62 inches behind the face of the retaining wall.
- The Widman driveway is severely cracked along the outer edge near the crest of the slope and the surface is sloping towards the northern property boundary.
- Qualitatively, the proximity of the slope behind the retaining wall being immediately adjacent to the edge of the Widman's driveway creates a very narrow path for the driveway which is difficult to navigate.

## **FINDINGS AND OPINIONS**

We offer the following summary of our findings and professional opinions regarding the geotechnical aspects of the current site conditions.

- ECS did not observe the construction of the retaining wall, and therefore we cannot determine the long-term stability of the wall. Since this wall is less than five feet tall, the wall would not have been required to be designed by an engineer and meet minimum factors of safety against failure. Similarly, the wall would not have been required to be inspected during construction.
- Given the proximity of the wall and the slope to the driveway, a failure of the retaining wall would result in a failure of the outside edge of the driveway.
- ECS did not perform an invasive investigation of the soil conditions of the slope behind the retaining wall, nor did we perform engineering calculations for slope stability. Nevertheless, the inclination of the slope is steeper than what would be considered an acceptable industry standard for long-term stability. Slopes of 26 degrees (2H:1V) or flatter are typically recommended in order to provide acceptable long-term stability, and that includes being properly compacted, incorporating adequate surface vegetation, and controlling surface water runoff. The subject slope was measured to be about 30 degrees (1.75H:1V) which increases the susceptibility to failures over time.
- Given the proximity of the slope to the driveway, a failure of the slope would result in a failure of the outside edge of the driveway.
- Both the new retaining wall and the slope behind the wall will create a loss of support for the outside edge of the asphalt driveway.
  - Regardless of how well they are designed and constructed, all gravity retaining walls will rotate outward due to the active earth pressures that develop behind the wall. This

outward rotation results in an inevitable deformation of the retained zone, and any hardscapes supported by the retained soil will be subject to settlement and a loss of ground support.

- Similarly, surface loads such as wheel loads should not be applied near the face of a soil slope, since there is reduced support at the edge of a slope. The ground surface under loads applied near the face of a slope are subject to excessive settlement. For light vehicle loads, a minimum of two to three feet of lateral clearance should be provided between the face of the slope and the wheel path.
- The outside edge of the asphalt driveway is already failing due to a loss of support resulting from the proximity to the edge of the slope. This condition will continue to deteriorate with time and become progressively worse.
- The proximity of the slope behind the retaining wall to the edge of the driveway creates a narrow corridor for the driveway around the north side of the house which could be dangerous, especially at night.
- In order to reduce the potential for additional settlement of the outside edge of the driveway and continued deterioration of the asphalt, as well as to create a safer corridor for vehicle traffic around the north side of the house, ECS recommends that the slope between the retaining wall and the driveway be flattened to a lesser inclination, and a flat shoulder be provided along the outside edge of the driveway.
  - This will require that the height of the retaining wall be increased.
  - The shoulder along the outside edge of the driveway should be at least 2 feet wide, and preferably 3 feet wide if possible.
  - The slope should be flattened to no steeper than 18 degrees (3H:1V). Any soil used to flatten the slope should be placed in 6-inch thick lifts, and each lift should be thoroughly compacted. The face of the slope should include appropriate temporary erosion control matting and should establish permanent vegetative cover.
  - Reflectors should be installed along the edge of the driveway to provide better visibility to this area at night.

## **CLOSING**

ECS has prepared this letter to provide our visual evaluation of the existing conditions of the subject property along the northern property boundary. Other areas of the property were not evaluated, and ECS did not perform any invasive subsurface exploration or engineering calculations. The measurement locations were based on preexisting wooden stakes marking the property boundaries. As such, any measurements should be considered approximate and only as accurate as the methods used to determine them. Our understanding of the property and recent construction is based on information provided to ECS by the property owner. If any of this information is inaccurate, either due to our interpretation of the information provided or site or design changes that may occur later, ECS should be contacted immediately so that we can review this letter in light of the changes and provide additional or alternate recommendations, as required, to reflect the changed conditions.

We appreciate the opportunity to assist you with this property. If you have any questions concerning the information provided in this letter, please contact us at 828-665-2307.

Respectfully submitted,  
ECS SOUTHEAST, LLC



Scott Brinkley  
Geotechnical Project Manager  
[SBrinkley@ecslimited.com](mailto:SBrinkley@ecslimited.com)



Matthew Fogleman, P.E.  
Principal Engineer  
[MFogleman@ecslimited.com](mailto:MFogleman@ecslimited.com)

Attachments: Photograph Log





ECS Southeast, LLP  
1900 Hendersonville Road  
Suite 10  
Asheville, NC, 28803  
Phone: 828-665-2307

# PHOTO LOG

Project Name: Widman Slope Evaluation  
Project Location: Asheville, NC

Project Number: 31:4769  
Date: 4/2024



**Photograph 1:** Position of Widman Residence (left) in relation to property boundary.



ECS Southeast, LLP  
1900 Hendersonville Road  
Suite 10  
Asheville, NC, 28803  
Phone: 828-665-2307

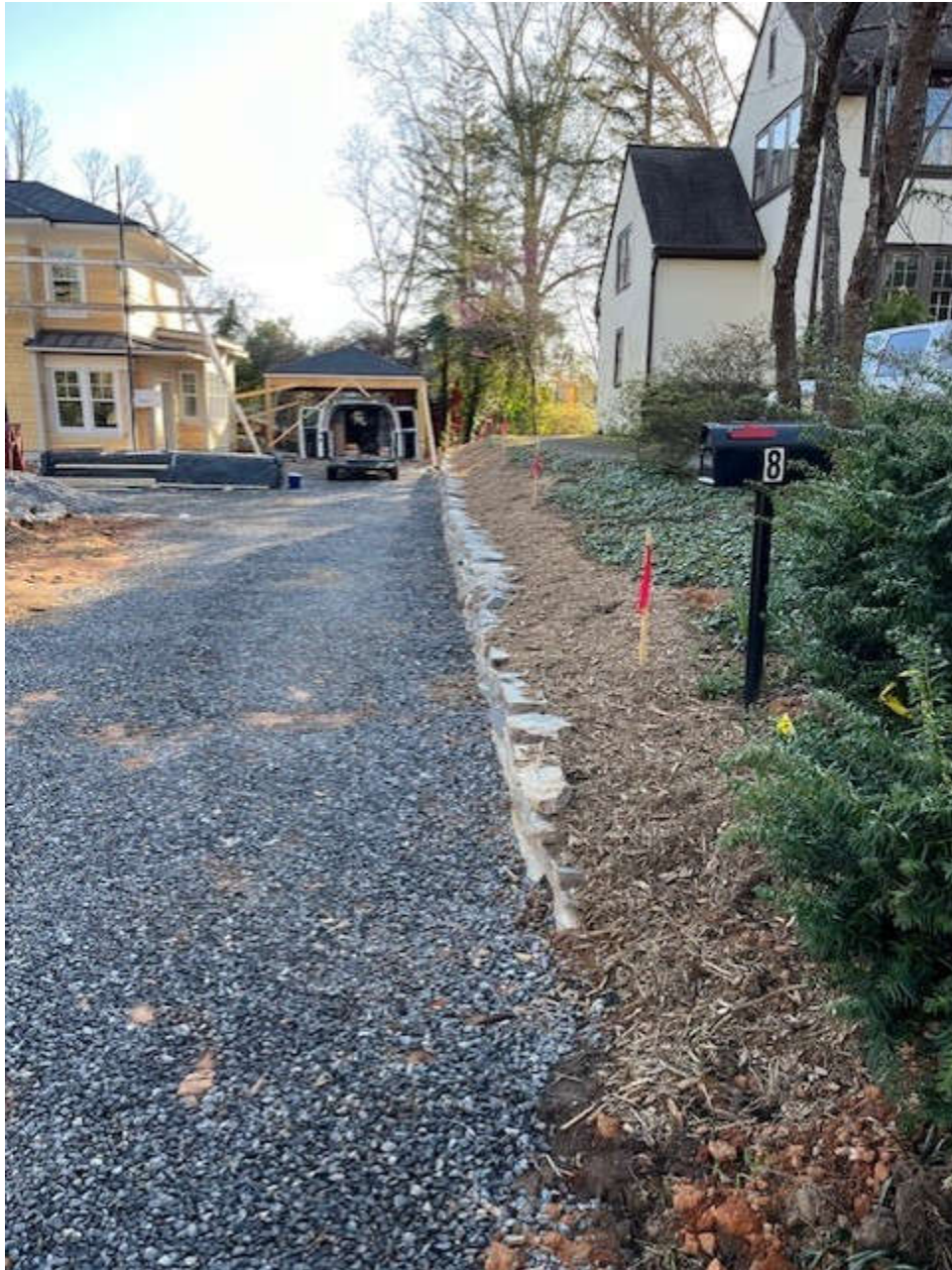
## PHOTO LOG

Project Name: Widman Slope Evaluation

Project Number: 31:4769

Project Location: Asheville, NC

Date: 4/2024



**Photograph 2:** Property boundary viewed from White Oak Road, looking east.  
Widman residence on right.





ECS Southeast, LLP  
1900 Hendersonville Road  
Suite 10  
Asheville, NC, 28803  
Phone: 828-665-2307

# PHOTO LOG

Project Name: Widman Slope Evaluation	Project Number: 31:4769
Project Location: Asheville, NC	Date: 4/2024



**Photograph 3:** Property boundary viewed from White Oak Road, looking east, showing new retaining wall. Widman residence on right.



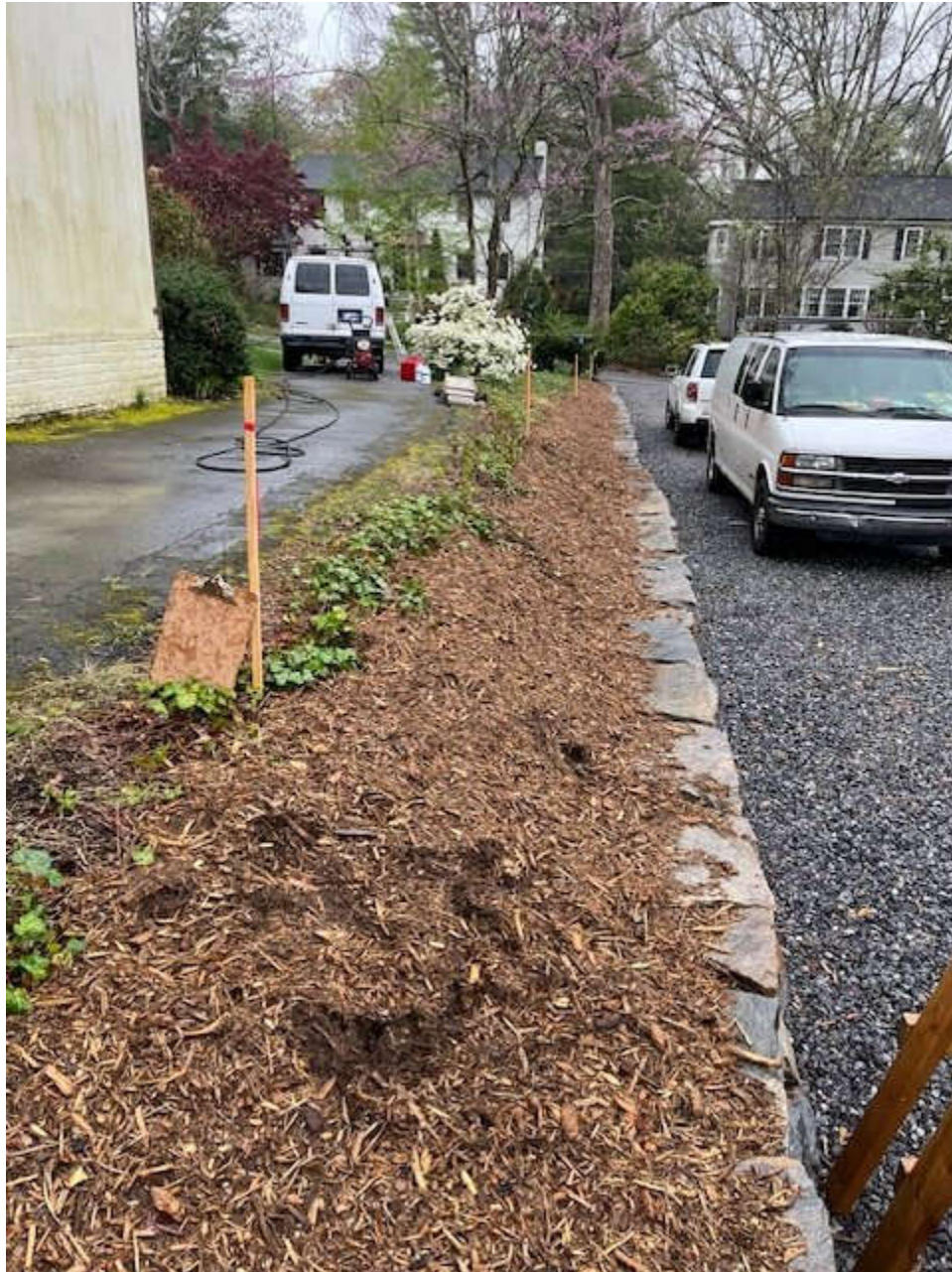


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Asheville, NC, 28803  
Phone: 828-665-2307

# PHOTO LOG

Project Name: Widman Slope Evaluation  
Project Location: Asheville, NC

Project Number: 31:4769  
Date: 4/2024



**Photograph 4:** Property boundary looking west toward White Oak Road. Widman residence on left.





ECS Southeast, LLP  
1900 Hendersonville Road  
Suite 10  
Asheville, NC, 28803  
Phone: 828-665-2307

## PHOTO LOG

Project Name: Widman Slope Evaluation  
Project Location: Asheville, NC

Project Number: 31:4769  
Date: 4/2024



**Photograph 4:** Cracking at outside edge of asphalt driveway. Widman residence on left.



ECS Southeast, LLP  
1900 Hendersonville Road  
Suite 10  
Asheville, NC, 28803  
Phone: 828-665-2307

# PHOTO LOG

Project Name: Widman Slope Evaluation

Project Number: 31:4769

Project Location: Asheville, NC

Date: 4/2024



**Photograph 4:** Sloping at distressed portion of driveway.







**NOTES**

This property is not located in a special flood hazard area as determined by the Federal Emergency Management Agency.

Surveyor was not provided with a legal title search. There may exist easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts pertinent to this property that an accurate and current title search may disclose that are not shown on this survey.

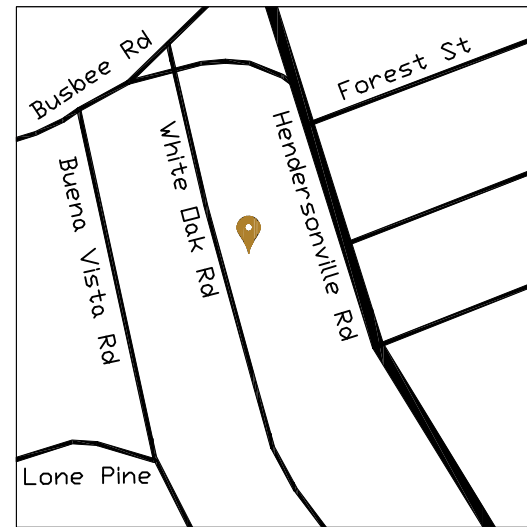
No underground utilities were located. Call 1-800-632-4949 before digging.

All buildings, surface and subsurface improvements on an adjacent to the site are not necessarily shown. Subsurface and environmental conditions were not surveyed or considered as part of this survey.

No evidence or statement is made concerning the existence of underground or overhead conditions, containers, or facilities that may effect the use of development of this property.

JOHN &  
LISBETH KIMBERLY  
9647901549

CACHE REED  
9647903602



**LEGEND**

- NC Geodetic Control Monument
  - Concrete Monument (CM)
  - Existing Iron Pin (EIP)
  - 5/8" Rebar Set (NIP)
  - Existing Stone Marker
  - Magnail Found or Set
  - Unmarked Point (CP)
  - Utility Pole (PP)
  - Utility Lines
  - Fire Hydrant (FH)
  - Water Meter or Well
  - Water Valve (WV)
  - Sanitary Sewer Manhole
  - Storm Drain Manhole
  - Cleanout
  - Drain Inlet
  - Curb Inlet
- Now or Formerly (N/F)  
Deed Book & Page (DB)  
Plat Book & Page (PB)  
Right of Way (R/W)

**REFERENCE DATA**

SURVEYED: 04-15-2024  
PIN: 9647901475  
DEED: 5712/1309  
PLAT BOOK: 2/86

I, Amos J. Glaspy, professional land surveyor, certify that this survey is of an existing parcel of land within the area of a county or municipality that has an ordinance that regulates parcels of land. GS 47-30 (f)(1)c1. I hereby certify, to the best of my knowledge, information and belief, and in my professional opinion, that this plat was drawn under my supervision from an actual survey made under my supervision, taken from deed description recorded in Deed Book 5712, Page 1309; and that, the boundaries not surveyed are clearly indicated from information found in Deed Books and Plat Slides as shown on survey plat hereon; and that the ratio of precision as calculated is greater than or equal to 1:10000; and that this plat/map meets the requirements of the standards of practice for land surveying in North Carolina (21 NCAC 56.1600), witness my original signature, registration number and seal this 15th day of May 2024.

*Amos Glaspy*  
Amos J. Glaspy, PLS No. L5388



Amos J. Glaspy, PLS-5388  
784 Glaspy Mountain Rd  
Hendersonville, NC 28792



glaspylandsurveying.com  
amos.gls@gmail.com  
828-974-1811

1" BENT PIPE

MANHOLE

1" OPEN TOP PIPE

WATER METER

SCRIBE

2" OPEN TOP PIPE

CARPORT

REBAR

UTILITY POLE

WIRE FENCE POSSIBLE ENCROACHMENT

LORNE &  
JEFFREY PACE  
9647903438

1" OPEN TOP PIPE

SOIL

UTILITY POLE

LYNN SALLEY  
9647901395

WILLIAM WHITT  
9647903358

**NOTES (CONTINUED)**

Area by coordinate computation.

Property lines showed as dashed were not field surveyed. They were plotted from record documents.

Subject property currently Zoned R2 by The City of Biltmore Forest.

All distances are horizontal ground distances unless otherwise noted.

GRAVEL DRIVE

WALL

S 79°14'09" W  
158.3052'

15' SIDE SETBACK

ASPHALT DRIVE

HOUSE

15835 Sq. Feet  
0.3635 Acres

ROBERTA AUSTIN WIDMAN  
LIVING TRUST  
9647901475  
5712/1309

CONCRETE WALKWAY

8' WALKWAY EASEMENT PER PB 2/86

N 79°30'14" E  
160.4083'

CONCRETE DRIVE

S 12°38'44" E  
100.0394'

WHITE OAK RD

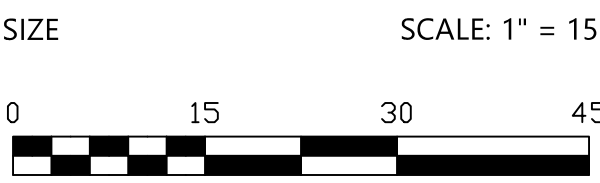
NORTH INDEX GRID  
NAD83(2011)

**GLASPY**  
LAND SURVEYING

BOUNDARY SURVEY | PREPARED FOR PROPERTY OWNER

**ROBERTA AUSTIN WIDMAN LIVING TRUST**

10 White Oak Rd  
Buncombe County  
Biltmore Township  
PIN: 9647901475  
DEED: 5712/1309





PLEASE REMIT TO: **NOTE: New REMIT TO Address**  
**ECS SOUTHEAST, LLC**  
**14030 THUNDERBOLT PLACE, SUITE 500**  
**CHANTILLY, VA 20151**

Invoice Date	Invoice Number
4/5/2024	1159702
Always Refer To Above Number	

PROJECT NAME: Widman Slope Evaluation  
 Buncombe County, NC

TO: John Widman  
 Homeowner  
 4 Brook Forest Drive  
 Arden, NC 29607

PLEASE DETACH AND RETURN DUPLICATE COPY WITH YOUR REMITTANCE

CUSTOMER CODE	PROJECT NO.	BILLED THRU DATE	TERMS
31:Z68W00	31:4769	3/30/2024	DUE UPON RECEIPT

<b>Please Pay This Amount:</b>	<b>\$3,000.00</b>
--------------------------------	-------------------

Description	Quantity	Units	Unit Price	Extension	Total
Lump sum for geotechnical services.					\$3,000.00
				Subtotal:	<b>\$3,000.00</b>

<b>Invoice Total - Please Remit =&gt;</b>	<b>\$3,000.00</b>
---	-------------------

If you have any questions regarding this invoice, please contact **Scott Brinkley** at 828.665.2307

**\* BUDGET SUMMARY \***

Budget Estimate: \$3,000.00  
 Previously Invoiced: \$0.00  
 Amt. This Invoice: \$3,000.00  
 Amt. Remaining: \$0.00

**Paid in full via check 7950 dated 3/22/2024**