



To: Members of the Board of Adjustment, Applicants & Neighboring Property Owners
From: Jonathan B. Kanipe, Town Manager
Date: August 14, 2024
Re: **Board of Adjustment Meeting – August 26, 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 August 20, 2024.

*****PROPOSED AGENDA*****

The following items of business will be considered by the Biltmore Forest Board of Adjustment on Monday, August 26, 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 June 24, 2024 regular meeting will be considered.
3. Hearing of Cases (Evidentiary Hearings, Deliberations & Determinations).

Case 1: 105 Stuyvesant Road – Special Use permit request for Accessory Building; Variance Requests for Location of Accessory Building within Side Yard Setback and to Exceed More Than One Accessory Building (REVISED TO REFLECT CORRECT SETBACK INTRUSION)

Site Visit – 2:30pm

Case 2: 2 Arboretum Road – Special Use Permit request to Install Deer Fence within Rear Yard and Construct New Greenhouse; Variance Request for Installation of Greenhouse within Setback

Site Visit – 3:00pm

Case 3: 56 Forest Road – Special Use Permit request for Accessory Structures; Variance Request for Placement Location within Front Yard.

Site Visit – 3:20pm

5. Adjourn

MINUTES OF THE BOARD OF ADJUSTMENT
MEETING HELD MONDAY, JUNE 24th, 2024

The Board of Adjustment met at 4:00 p.m. on Monday, June 24th, 2024.

Chairman Greg Goosmann, Ms. Martha Barnes, Ms. Lynn Kieffer, Mr. Robert Chandler, and Ms. Janet Whitworth were present. Mr. Jonathan Kanipe, Town Manager, Mr. Tony Williams, Town Planner, and Town Attorney Mr. Billy Clarke were also present. Ms. Rhoda Groce was not present.

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

Chairman Goosmann swore in the following:

Mr. Jonathan Kanipe

Mr. Tony Williams

Mr. Julian Moore

Ms. Leigh Jackson

Ms. Mary Goodkind

Ms. Gloria Trujillo

Mr. Paul Mashburn

Ms. Emily Mashburn

Mr. Tim Wright

Ms. Michelle Koon

Mr. Fred Koon

Ms. Megan McCreary

Ms. Cindy Pomeroy

Mr. T.J. Finger

Ms. Kirby Finger

A motion was made by Mr. Robert Chandler to approve the minutes from May 20, 2024, Ms. Janet Whitworth seconded the motion. The minutes were unanimously approved.

HEARING (Evidentiary):

The first matter is a request for an Amendment to an existing Special Use Permit at 25 Ridgefield Place. Mr. Tony Williams said the property owner would like to increase the size of their pool in the rear yard that was previously approved. The approved size was 16'x20' and the new proposed size is 16'x32'. The length would increase by twelve feet. It is within the rear yard and meets the setbacks. Ms. Barnes said she knew there was a side fence and a back fence but also asked what they are going to do about entry from the front. Property owner, Mr. Julian Moore said he will get this removed to get the machinery in. Ms. Lynn Kieffer asked if it was fenced all the way around. Mr. Moore said yes. Ms. Kieffer said on the previous approval there was less room and now all of a sudden, he is increasing the footage by twelve feet. Mr. Moore said it is almost double the setback on the side going toward Brenda Lily's home. Ms. Kieffer asked if the Lily's were ok with this project. Mr. Moore said they are upset because the project is taking so long. Ms. Mary Goodkind said the Moore's fence is on her property and he has altered it a bit. There is one section of the fence that is not attached to anything, and she wanted to know if Mr. Moore is going to fix this. Mr. Moore said he will fix it and it will be attached. There were problems with a groundhog that keeps coming in and out through there. Ms. Goodkind also

asked Mr. Moore about the lighting. There has been some bright lighting toward the back of Mr. Moore's house. The back light lines up to Ms. Goodkind's bedroom window. She wanted to know how late lights can be on. Mr. Moore said there will be no additional lighting with the pool. Ms. Gloria Trujillo asked Mr. Moore who is building the pool. Mr. Moore said he is. Mr. Moore said he has a landscaping company since 1988. He has subcontractors he has used for many years, and they are doing the work. Ms. Trujillo asked Mr. Moore when the pool would be finished. Mr. Jonathan Kanipe said there is a two-year permit window. Ms. Leigh Jackson said it is hard to drive on Ridgefield with all the equipment in the road.

DELIBERATION AND DETERMINATION:

Mr. Tony Williams restated the facts. Mr. Julian Moore is the owner at 25 Ridgefield Place and is requesting an increase to the size of the pool in the rear yard that was previously approved. The original size approved was 16'x20'. The newly proposed size is 16'x32'. It would increase in length by twelve feet.

Mr. Robert Chandler moved that a Special Use Permit requested be granted to Mr. Julian Moore at 25 Ridgefield Place for his new pool installation in his backyard and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no neighboring property owner has objected. 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 second matter is for a Special Use Permit request for Accessory Structures at 423 Vanderbilt Road. Mr. Williams said the property owners are requesting a Special Use Permit for an outdoor living space and play area. It would be a 4'x80' play lawn which would be leveled using multiple stack border walls ranging in height from 1'-3'. A new fire pit area would be roughly 16' in diameter which includes a built-in fire pit. They also have decorative boulders that will connect the fire pit area to an existing patio.

Mr. Paul Mashburn said they would also like to add a fenced in vegetable garden. The fence would be eight feet high and a stained wood frame. The grill pit would be about a 10'x10' set off. There would be two built-in grills and a portable grill. The dimensions of the vegetable garden would be about 20'x30'. Mr. Mashburn said the purpose of the fencing would be to keep our deer and other animals. Ms. Kieffer asked if they would be ok with having a 6' fence to follow the ordinance. Mrs. Emily Mashburn said yes. Ms. Barnes said a wooden 8' deer fence is allowed. Mr. Mashburn said they would like to request an 8' wooden deer fence. Mr. Chandler asked if the fence could be seen from neighboring property owners. Mr. Mashburn said they would prefer it not to be and can add buffering.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 423 Vanderbilt Road are requesting a Special Use Permit to construct an outdoor living area. It would consist of a 40'x80' play lawn which would be leveled using multiple low stack border walls. It would be 1'-3' in height. The fire pit area would be 16' in diameter which includes a built-in fire pit. The decorative boulders would connect from the fire pit to the existing brick patio. They are also asking to add an 8' stained wood deer fence in the side yard with an approximate area of 20'x30' along with a grill area of approximately 10'x10'. There will be two built-in grills and a small retaining wall with a gravel base and buffering as needed.

Ms. Kieffer made a motion that a Special Use Permit be granted to Emily and Paul Mashburn at 423 Vanderbilt Road for a 40'x80' play lawn area, fire pit, grill pad, boulder walls, vegetable garden, and a deer fence and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The Board has inspected this site, and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

Ms. Barnes seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The third matter is for a Special Use Permit Request for a fence placement as part of a new home construction at 33 Busbee Road. Mr. Williams said the property owners would like to present plans for a fence as part of a new home construction project. It will be four feet high and made of ornamental aluminum. It will be black. The fence will be in the rear yard and meets all requirements for setbacks. Mr. George Off said the fence will not be visible by the neighbors.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners are presenting plans for a fence as part of a new home construction project. The fence will be four feet in height and made of black ornamental aluminum and be in the rear yard and meets all setback requirements.

Ms. Martha Barnes moved that a Special Use Permit be granted to George Off of 33 Busbee for a four-foot-high fence and the facts as recited by Tony Williams and his summation be accepted as findings and facts 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.

Ms. Lynn Kieffer seconded the motion and was unanimously approved.

HEARING (Evidentiary):

The next matter is for a Special Use Permit request for a driveway gate and Variance request for width and setback intrusion at 30 White Oak Road. Mr. Williams said the property owners at 30 White Oak are presenting plans for a driveway gate. The gate will stand six feet tall and the opening will be approximately twelve feet wide made of galvanized steel and black coating. The application does not meet requirements set forth in the ordinance for setbacks as well as the side yard and the opening which, therefore, would require a Variance. Mr. Koon said they have 95% of it done now, which was an existing fence when they bought the house, and they are trying to make the backyard more effective for their grandkids and pets.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 30 White Oak Road are presenting plans for a driveway gate. The proposed gate will stand approximately six feet tall

with an opening of approximately twelve feet made of galvanized steel with a black coat finish. It does not meet the requirement of the ordinance, so it does require a variance.

Ms. Barnes moved that a Special Use Permit and Variance be granted to Fred Koon of 30 White Oak Road for a driveway gate and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3) of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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.

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

HEARING (Evidentiary):

The fifth matter is for a Special Use Permit request for an accessory structure and Variance request for construction for within the side yard setback and within the front yard at 9 Stuyvesant Crescent. Mr. Williams said the property owners are presenting plans for a wall as part of a home addition project. The boulder abutment wall will range in height from 2'-4' depending on the grade with an approximate length of 120'. The wall meets all setback requirements but is located within the side yard and front yard as seen on the plans which would require a Variance. Ms. Megan McCreary from Sitework Studios represented the homeowner and said the reason for the retaining wall is to age in place and this allows for a new two car garage to be built at that grade. Ms. Barnes said the wall is perpendicular to the street. There will also be landscaping planted within the wall and in front of it.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 9 Stuyvesant Crescent are presenting plans for a wall as part of a home addition project. The boulder abutment wall will range in height from 2'- 4' depending on the grade with an approximate length of 120'. The wall meets all requirements as far as setbacks; however, it is located within the side yard and front yard as seen on the plans which would require a Variance. There is also a full landscaping plan in the packet.

Ms. Lynn Kieffer moved that a Special Use Permit be granted to Cindy Pomeroy of 9 Stuyvesant Crescent for a boulder abutment wall and will be in the side yard and protrude past the front of the house but will be nestled and will have a retaining wall and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The board has inspected this site, and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the

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

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.

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

HEARING (Evidentiary):

The last matter is for a Special Use Permit request for an accessory structure (retaining wall) in the side yard and an accessory request for an accessory structure in the front yard and Variance request for intrusion into the front yard setback at 120 Stuyvesant Road. Mr. Williams said the homeowners are presenting plans for two retaining walls, eight concrete balls that line the driveway. The first wall is located at the end of the home and would range in height from 24"-36". It has a small section within the rear setback. The second proposed wall will be in the rear of the home and 24" high. It is located within the rear setback. The balls are placed lining each side of the driveway and six of the eight balls are located within the front setback. The application does not meet the requirement set forth in the ordinance so it will require a Variance.

Mr. T.J. Finger said they would like to move four back on the front of the setback and the other four will be put within the setback on the other side of the driveway to balance it out. Ms. Kirby Finger showed the Board where the balls will go. Ms. Barnes asked to describe the

hardship with the wall. Mr. Finger said the purpose of the wall is to prevent the water from eroding. It will also tear into the foundation of the garage. It is unsafe. The back wall will appease his neighbor.

DELIBERATION AND DETERMINATION:

Mr. Williams restated the facts and said the property owners at 120 Stuyvesant Road are presenting plans for two retaining walls and eight concrete balls. The first wall located at the end of the home and will range in height from 24"-36". The second proposed wall will be located within the rear of the home and is 24" high and is located within the rear setback. The balls have been amended to allow four balls on each driveway entrance outside of the setback. The application does not meet the requirements for the walls and would therefore require a Variance from the Board.

Ms. Martha Barnes moved that a Special Use Permit and Variance be granted to T.J. Finger of 120 Stuyvesant Road for two walls and eight balls, and the facts as recited by Tony Williams and his summation be accepted as findings and facts to support this grant. The board has inspected this site and no neighboring property owner has objected. She further moved the Board define that granting this Special Use Permit (a) would not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and improved, (b) met all required conditions and specifications of the Town of Biltmore Forest Zoning ordinance, (c) would not substantially injure the value of adjoining or abutting property, and (d) would be in general conformity with the plan of development of the Town of Biltmore Forest and its environs as set forth in Sections 153.110 (C)(2-3)of the above ordinance. The applicant has been informed that he/she is to report to the Zoning Administrator within seven (7) days of completion of the project in order that the Zoning Administrator can determine that the project has been completed in accordance with plans submitted to the Town.

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

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

Ms. Kieffer seconded the motion and was unanimously approved.

The meeting was adjourned at 4:49pm.

The next meeting is scheduled for Monday, August, 26th 2024 at 4:00pm.

ATTEST:

Greg Goosmann

Chairman

Laura Jacobs

Town Clerk



BOARD OF ADJUSTMENT MEETING

STAFF MEMORANDUM

August 26, 2024

CASE 1

Property Address: 105 Stuyvesant Rd
Property Owner: Charles True
Request: Special Use and Variance Request for a Garage

Background

The property owner is presenting plans for a 24'x30' two car garage. The garage would be located adjacent to the existing gravel drive near the rear of the home. The garage plan has required wing walls that would need to extend into the side setback. The garage would be set in the side and rear yard. There is an existing small garden shed located on the property. The application does not meet the requirements set forth in the ordinance, therefore would require a variance.

Special Use

Section 153.029 (attached) of the Town's Zoning Ordinance regulates accessory structures and buildings which require a special use permit from the Board of Adjustment. Special use findings are covered in section 153.110 (C) (attached) of the Town's Zoning Ordinance.

Variance

The proposed garage does not comply with the side setback of 20 feet therefore would require a variance for the wing walls within the side setback of approximately 7'. The garage would partially be in the side yard along with an existing small garden shed in the rear (second accessory structure), all of which would require a variance. Section 153.110 (D) (attached) addresses the approval requirements for a variance.

Zoning Compliance Application

Town of Biltmore Forest

Name

Charles and Mary True

Property Address

105 Stuyvesant Rd, Asheville NC 28803

Phone

(770) 842-5548

Email

charles.true@gmail.com

Parcel ID/PIN Number

9646-84-4653

ZONING INFORMATION

Current Zoning

R-1

Lot Size

0.98 acres

Proposed Roof Coverage Total

3,569 sf total (existing 2,849 sf + new 720 sf)

Proposed Impervious Surface Coverage

6,390 sf total (existing 5,670 sf + new 720 sf)

Front Yard Setback

60 feet (R-1 District)

Side Yard Setback

20 feet (R-1 District)

Rear Yard Setback

25 feet (R-1 District)

Building Height

19.55'

Description of the Proposed Project

Proposed addition of detached 2-car garage with storage (24' W x 30' L)

Estimated Start Date

10/1/2024

Estimated Completion Date

4/30/2025

Estimated Cost of Project

\$60,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

Set-2 w grade BF.pdf

proposed project plants 073124.pdf

105 topo map lot 964616 buncombe GIS.pdf

total land disturbance calculation.pdf

images proposed site location 073124.pdf

stuyvesant exterior paint colors 073124.pdf

Applicant Signature

Date
8/1/2024

Charles True

Special Use Permit Application

Town of Biltmore Forest

Name

Charles and Mary True

Address

105 Stuyvesant Rd, Asheville NC 28803

Phone

(770) 842-5548

Email

charles.true@gmail.com

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

Accessory Structures

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

Please provide a description of the proposed project:

The proposed project is an Accessory Structure - Detached Garage.

The proposed location is at the end of a gravel area which comes off an asphalt circular driveway. The gravel section goes to the lower part of the lot on the south side of the property. The gravel area will remain.

The proposed garage is 720 sf (24' W x 30' L) with 2 wing walls. The proposed building site is the most practical option to build on. The impact is environmentally friendly with the least amount of land disturbance. The gravel area access is already in place. The proposed site is more level than other options and does not require extensive grading. The proposed location does not require trees to be removed. It is the best choice of location to build. Additional shrubs will be used to provide a landscape buffer and to enhance what is already there.

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

The neighborhood will benefit from the addition of the proposed project. A garage is highly desired and a valuable feature for a house to have. The existing house does not have a usable garage and lacks the benefits of having one. The proposed accessory structure will provide a covered area to park vehicles. It will be architecturally consistent with the existing house; incorporating the same siding, paint colors and roof materials. It will have the same character of the existing house and compliment the 'look and feel' of the neighborhood. The proposed garage will provide a privacy buffer between our house and the neighboring property to the south. (The neighbor has a detached garage on the same property line.)

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

Signature

Date
8/1/2024

Charles True

Have you paid the \$100 special use permit application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

Yes

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Charles and Mary True

Address

105 Stuyvesant Rd, Asheville NC 28803

Phone

(770) 842-5548

Email

charles.true@gmail.com

Current Zoning/Use

Residential

Requested Use

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

What would you like to do with your property?

The proposed project is an Accessory Structure - Detached Garage.

The proposed location is at the end of a gravel area which comes off an asphalt circular driveway. The gravel section goes to the lower part of the lot on the south side of the property. The gravel area will remain.

The proposed garage is 720 sf (24' W x 30' L) with 2 wing walls. The proposed building site is the most practical option to build on. The impact is environmentally friendly with the least amount of land disturbance. The gravel area access is already in place. The proposed site is more level than other options and does not require extensive grading. The proposed location does not require trees to be removed. It is the best choice of location to build. Additional shrubs will be used to provide a landscape buffer and to enhance what is already there.

I have reached out to the immediate neighbors; none that I spoke with had a problem with the project.

What does the ordinance require?

- 1.No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.
2. The maximum number of accessory buildings permitted on a lot shall be one.
3. The accessory building must be screened by vegetation or other buffer as set forth in § 153.008.
4. The accessory building must be located behind a line parallel to the rear of the principal structure on the lot.
5. The accessory building must be designed in the same architectural style as the principal structure.

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.

1. No accessory structure or building shall be constructed, erected, or located within any front yard or

within any side yard or rear yard setback.

The existing house was built in 1949 with a single car drive under garage that is no longer practical for cars today. The proposed project would create a detached garage to accommodate 2 cars and protect them from the elements.

Considering the lay of the land and due to the existing slope of the lot, strict application of the ordinance would create an unnecessary hardship. Enforcing the "rear yard setback" requirement would make it necessary to push the proposed build site further into the rear yard. That would require cutting into the slope more and additional grading which would cause more land disturbance, tree endangerment and could require trees to be removed.

The ordinance requires a variance for the 2 wing walls that extend into the side property line setback.

The Accessory Structure itself is within the side property line setback requirement. The 2 wing walls will extend 7' or less into the side property line setback. The wing walls are needed to eliminate a drop off and provide safe car access to garage and to storage area in back. The wing walls will provide support and protect the embankment. They will hold the soil back at the front and back of the accessory structure to allow access into garage and storage areas.

(The neighbor to the south has a garage on the shared property line.)

2. The maximum number of accessory buildings permitted on a lot shall be one.

There is a small shed (6.25' W x 8' L x 7.3' H) that was on the property when we purchased the house. The shed is in the back of the property and is well screened by existing trees and shrubs. Strictly applying the "one accessory building" would create an unfavorable hardship for my wife. A favorite hobby of hers is gardening. She gets a lot of joy and satisfaction from working in the yard. The potting shed plays a big role in her gardening enjoyment.

3. The accessory building must be screened by vegetation or other buffer as set forth in § 153.008.

The south side of the property has multiple rows of hemlocks that provide plenty of screening and buffering. Large trees and shrubs are also mingled in along the property line. Additional shrubs will be used to provide a landscape buffer and to enhance what is already there.

4. The accessory building must be located behind a line parallel to the rear of the principal structure on the lot.

The house was built in 1949 with a deeper footprint than it is wide. Because of how the house is positioned on the lot, it would be a hardship to require the entire accessory building be located behind a line parallel to the rear of the principal structure. Enforcing the ordinance would require the building site to be pushed back further into the yard. That would require cutting deeper into the sloping yard and would disturb more of the land. Cutting too many tree roots will endanger the trees and can result in those trees needing to be removed. We would prefer to preserve as many trees as possible and not endanger or remove any trees in that area. The location of the proposed building site would involve minimal disruption to the neighborhood. NOTE: Previous owners added on to the house. The addition extended the rear of the house and makes it difficult to locate the proposed building site entirely in the back yard. (Most of the proposed accessory structure will be behind the house.)

5. The accessory building must be designed in the same architectural style as the principal structure;

The proposed detached garage will be architecturally consistent with the existing house; incorporating the same siding, paint colors and roof materials. It will have the same character of the existing house and compliment the 'look and feel' of the neighborhood.

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

The lot slopes from the high side on the north property line down to the low side on the south property line. The proposed garage will be located on the low side of the lot and be in harmony with the scale, height and character of the existing house. Given the characteristics of the lot, it would be a hardship to require the detached garage to be placed in a different location. The proposed location site requires the least amount

of land disturbance and makes the most sense functionally and architecturally. It will create a screen barrier and privacy between our house and the neighboring property to the south. (The neighbor has a detached garage on the shared property line.)

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

The sloping lot and the mature trees in the area are existing. We prefer to minimize land disturbance and preserve as many trees as possible. The proposed location site requires the least amount of land disturbance and is the most practical and environmentally friendly option.

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 neighborhood overall will benefit from the proposed project. A garage is a highly desired and valued feature of a house in this neighborhood. The existing house does not have a usable garage and lacks the benefits and advantages of a garage. The proposed accessory structure will provide a covered area to park vehicles. It will be architecturally consistent with the existing house and will compliment the 'look and feel' of the neighborhood. The proposed garage will provide a privacy buffer between the existing house and the neighboring property to the south. (The neighbor has a garage on our shared property line.) The addition will improve the aesthetics and maintain the value of properties in the neighborhood; while preserving and enhancing the existing character of this 75-year old home and the surrounding houses.

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

Signature

Date

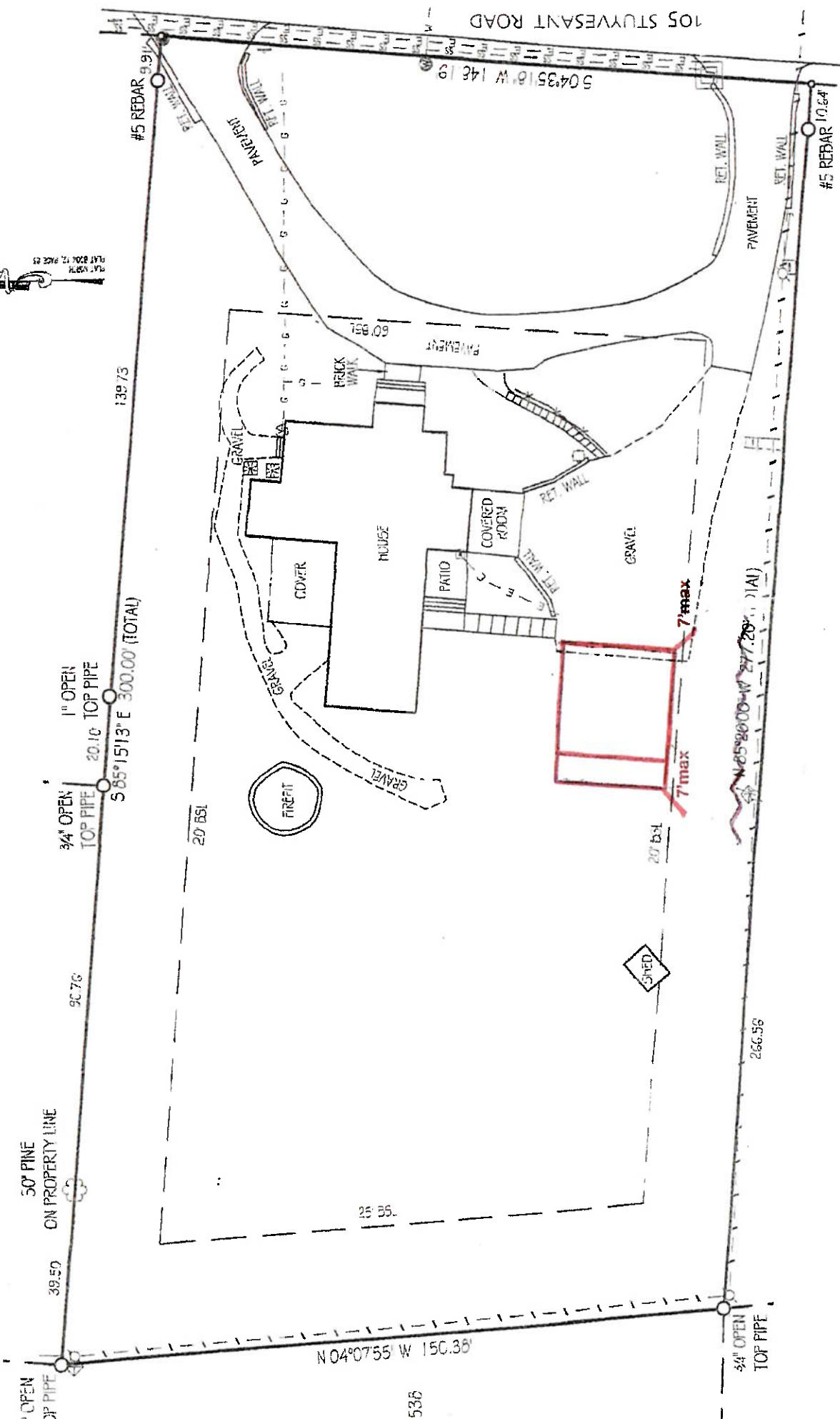
8/1/2024

Charles True

Have you paid the \$300 variance application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

Yes

PROPOSED SITE LOCATION



105 STUYVESANT ROAD
 5043518 W 146 19
 #5 REBAR 9.91'
 #5 REBAR 10.64'

139.73
 5.85°15'13" E 300.00' (TOTAL)
 1" OPEN TOP PIPE
 20.10' TOP PIPE
 34" OPEN TOP PIPE
 9C.76
 39.50

20' BSL
 25' BSL
 60' BSL
 RET. WALL
 PAVEMENT
 BRICK WALK
 HOUSE
 COVERED PORCH
 PATIO
 TRAIL 12.0'

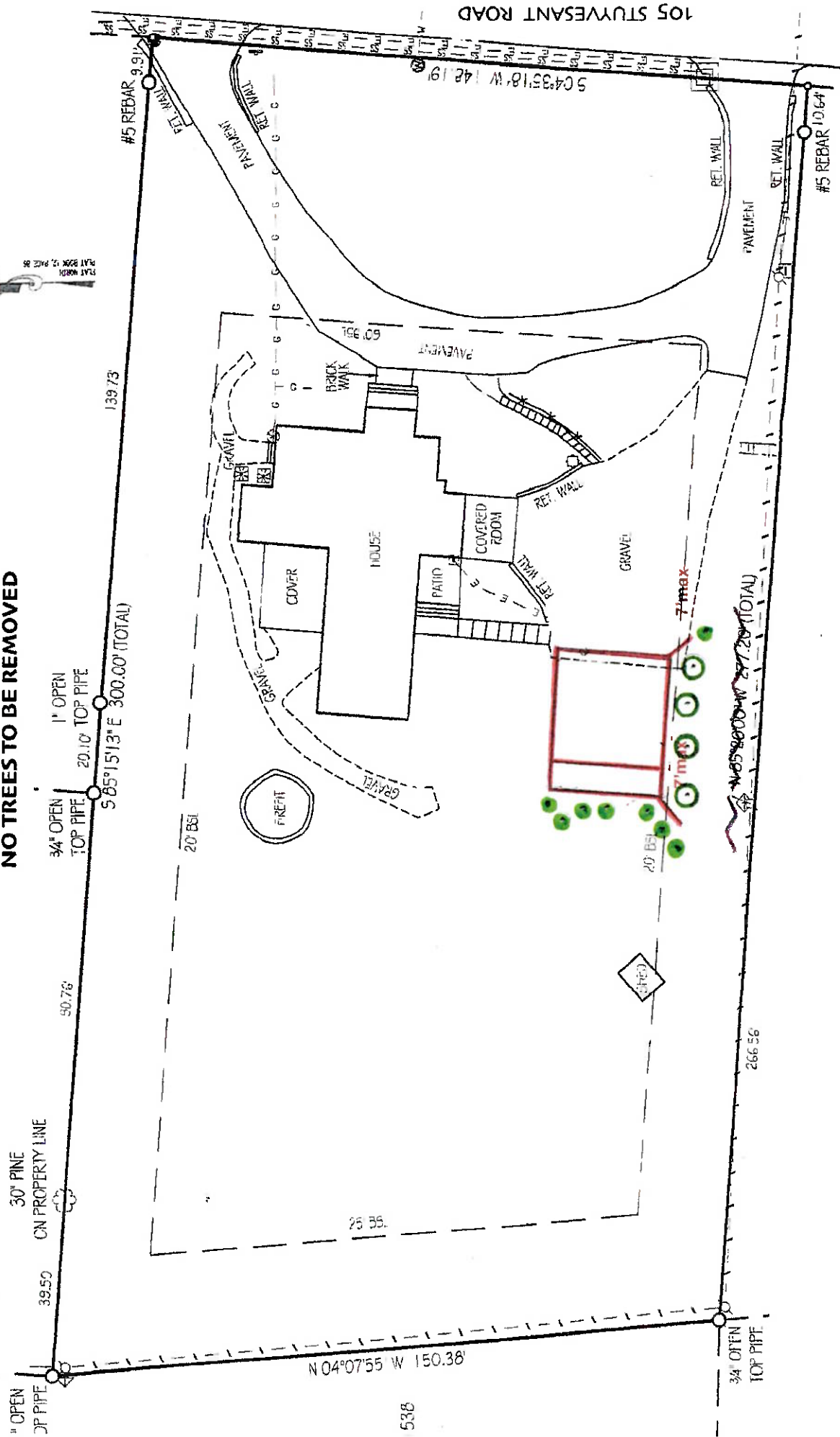
GRAVEL
 FIRE PIT
 COVER
 RET. WALL
 GRAVEL
 20' b.t.l.
 7' max
 7' max

SHED
 266.56
 34" OPEN TOP PIPE
 277.20' (1A)

N04°07'55" W 150.38'

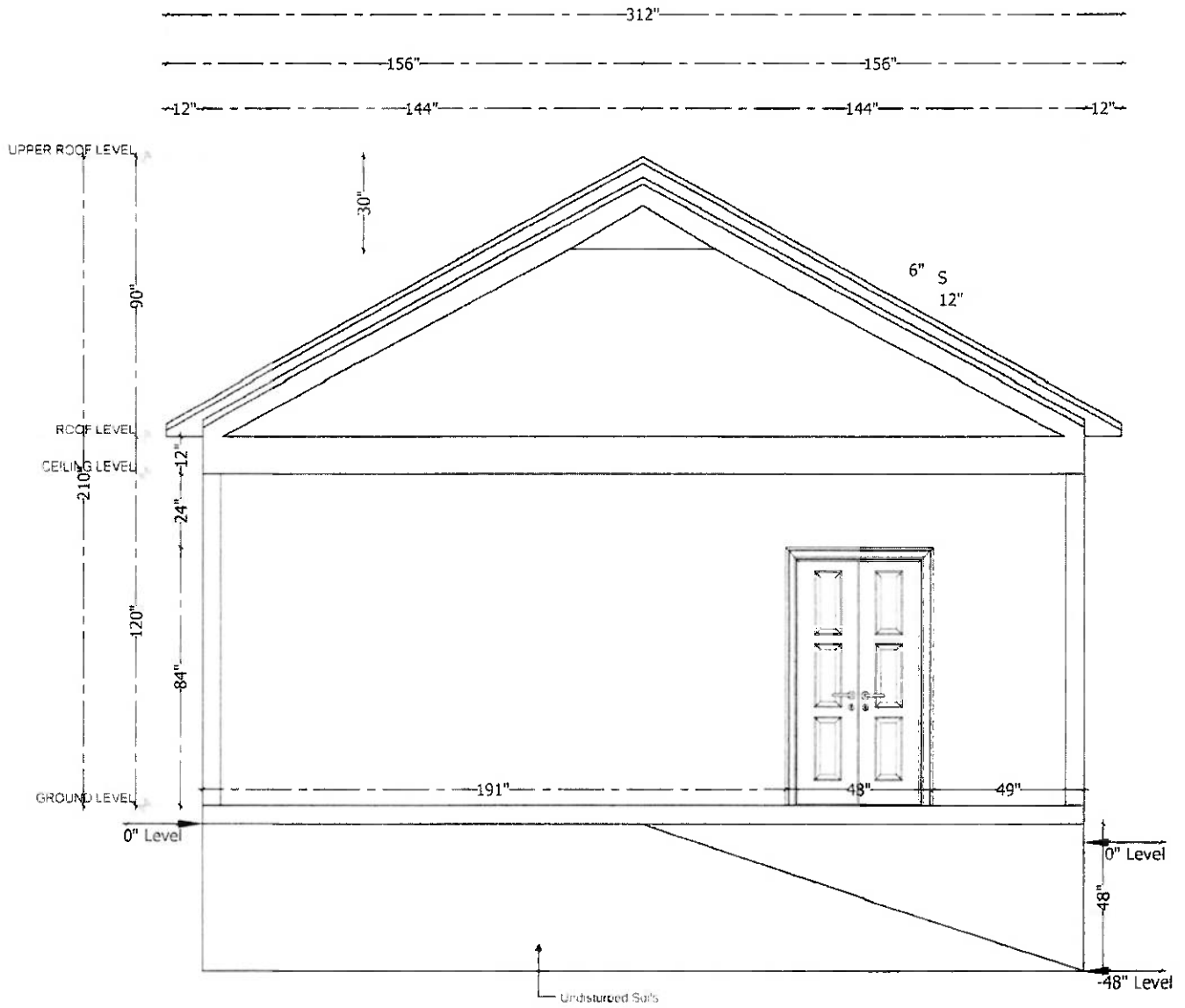
PROPOSED SITE LOCATION

NO TREES TO BE REMOVED

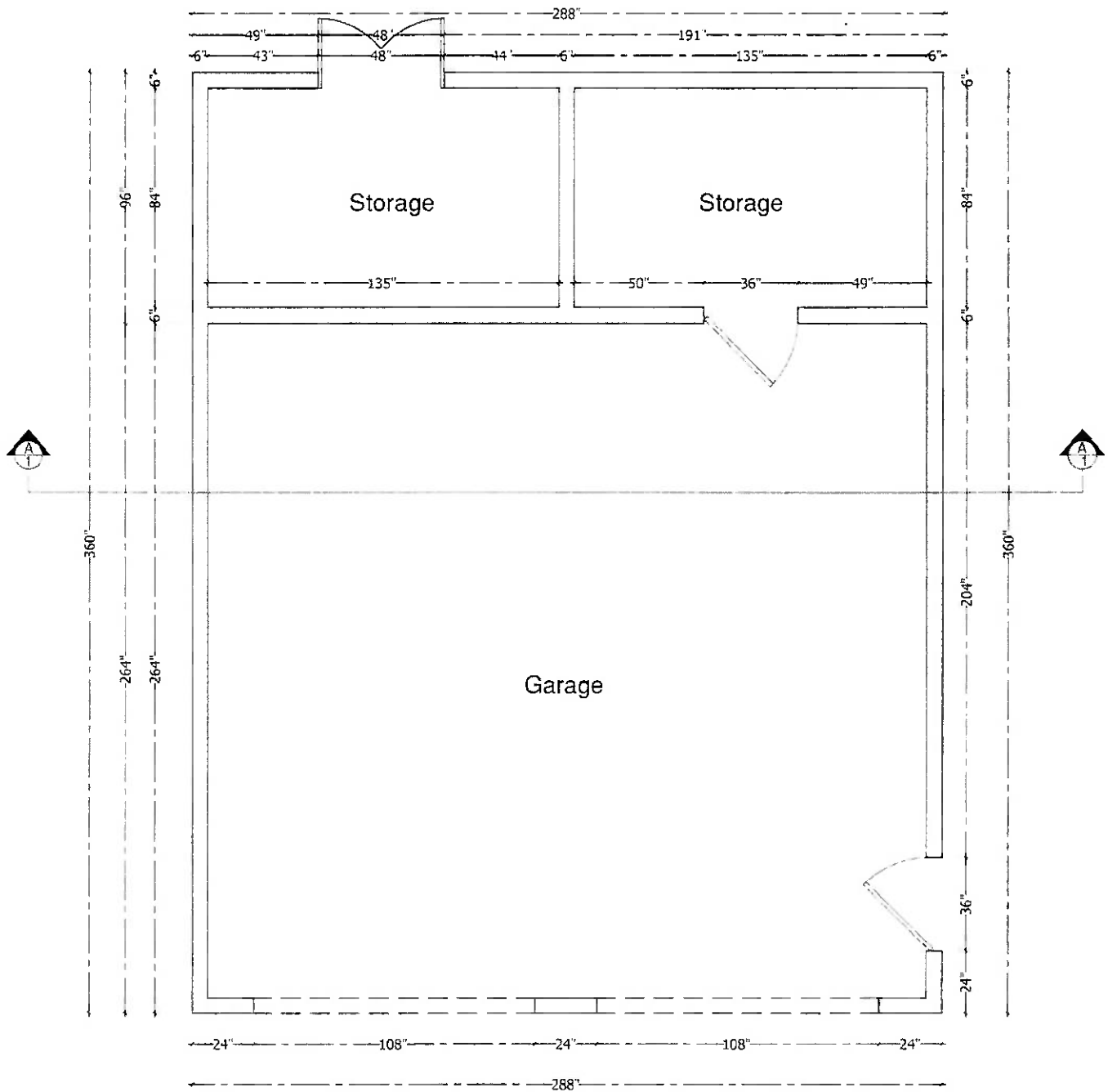


- Shrubs to be Added**
- 8# - 5' Nellie R Stevens Hollies
 - 4# - 5'-6' Green Giant Arborvitae

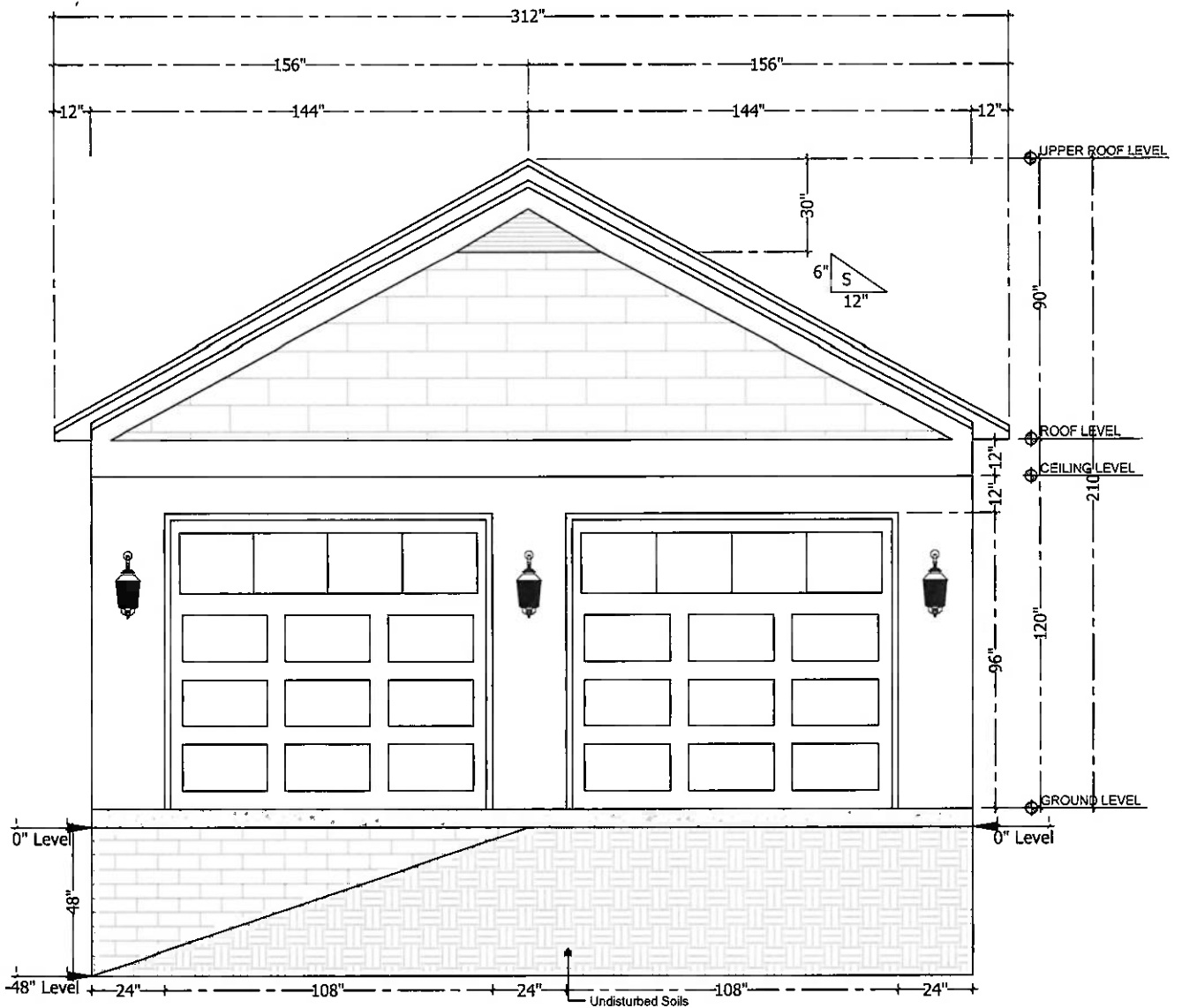




Rear Elevation Grade
 Scale: 1/8"=1'-0"

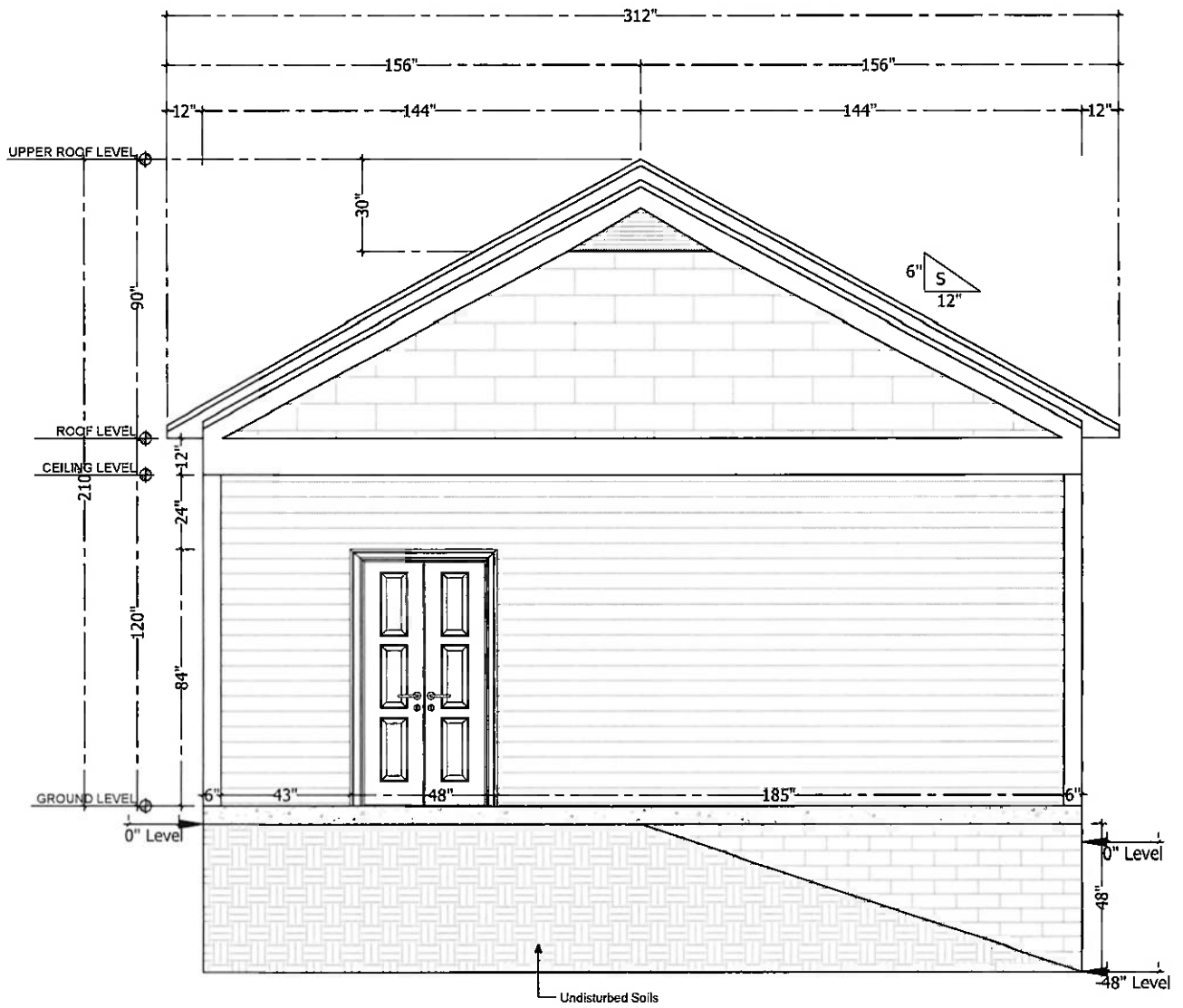


Floor Plan
 Scale: 1/8"=1'-0"

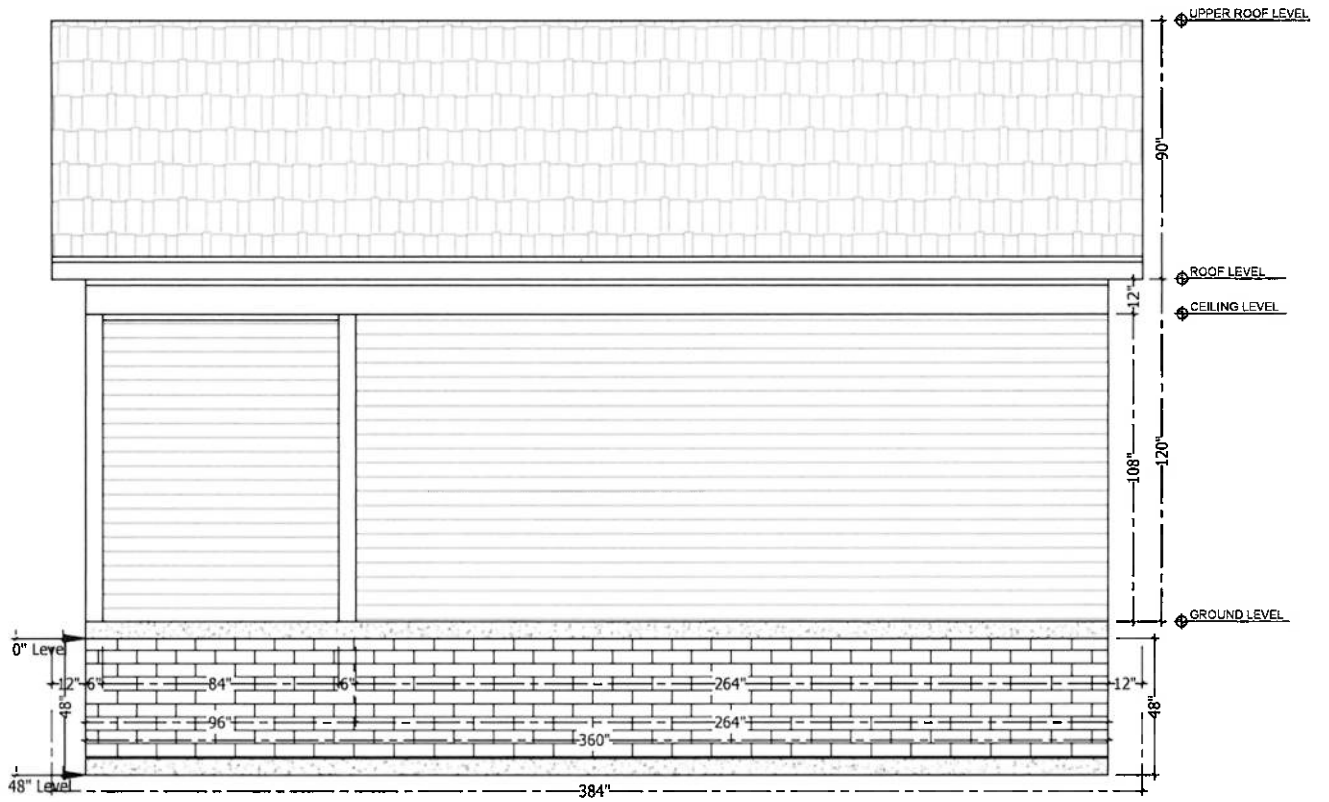


Front Elevation Grade

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



Rear Elevation Grade
 Scale: 1/8"=1'-0"



Left Elevation Grade
 Scale: 1/8"=1'-0"



Right Elevation Grade
 Scale: 1/8"=1'-0"

Total Land Disturbance: 5.2% of lot size

1 acre = 43,560 sf

My lot is 0.98 of an acre = 42,689 sf.

Proposed garage size is 24' x 30'.

Allowing for a 10' disturbance on all sides (a 44' x 50' area) would have 2,200 sf of disturbed space (5.2% of lot size).



circular drive to gravel



proposed garage site



proposed garage site



view of shed from front



view of shed from back

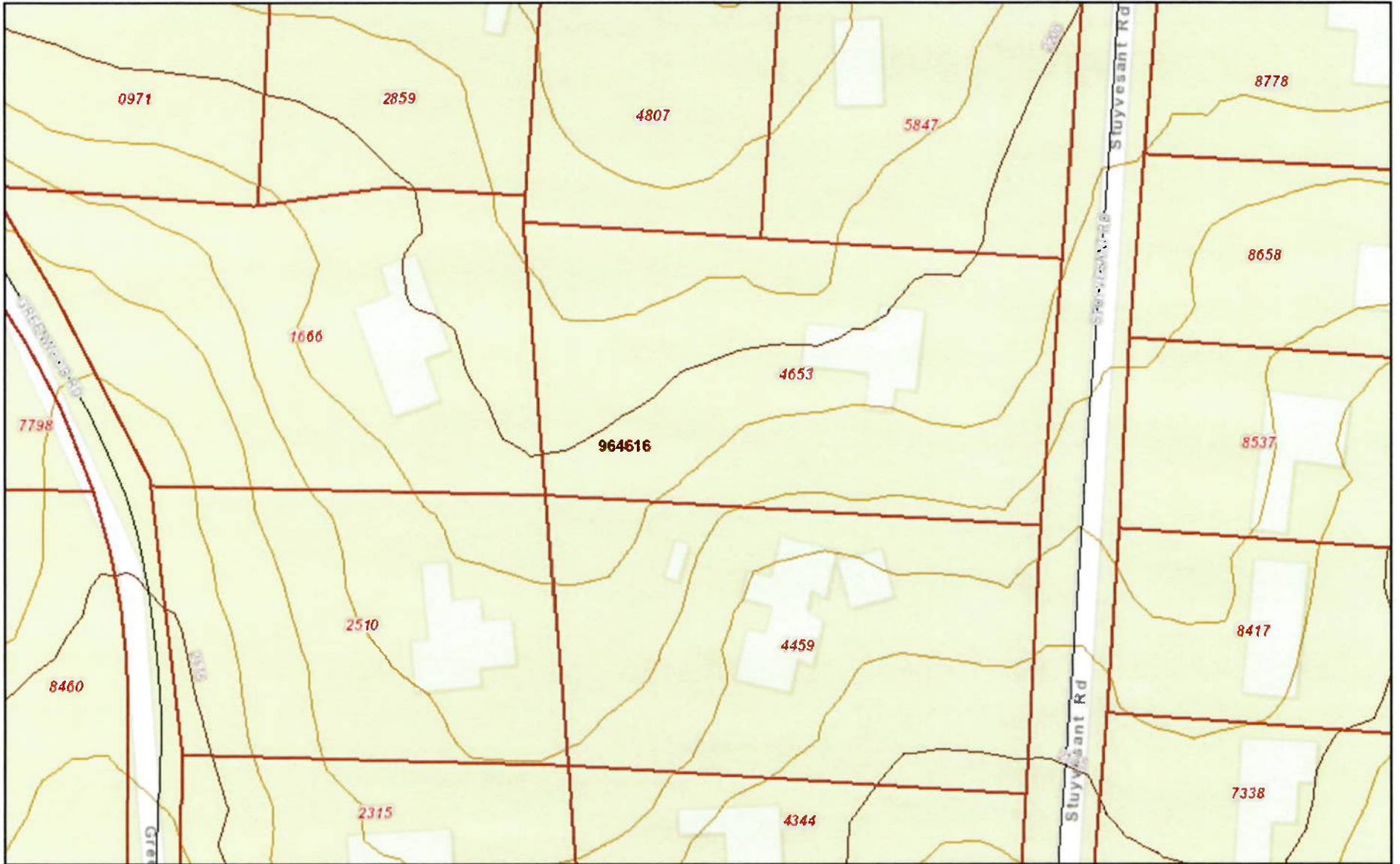


south side PL from front

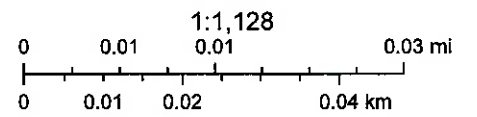


south side PL from back

105 topo map lot 964616 buncombe GIS



July 8, 2024

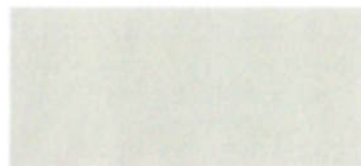


Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

Stuyvesant Exterior Paint Colors

Siding

Sherwin Williams
Exterior Super Paint- Flat
Icy Avalanch HGSW 1497



HGSW 1497

Icy Avalanche

Interior/Exterior

Concrete

Sherwin Williams
Super Paint- Masonry Satin
Icy Avalanch HGSW 1497



Trim

Sherwin Williams
Super Paint- Satin
White Ultra SW 7005

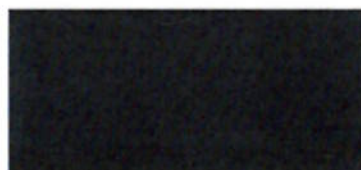
SW 7005

Pure White

Interior/Exterior

Shutters

Sherwin Williams
Super Paint- Satin
Black Magic (80% formula) SW6991



SW 6991

Black Magic

Interior/Exterior

Front Door

Sherwin Williams
Super Paint- Satin



§ 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

§ 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)

153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

(C) *Special uses.*

(1) Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by this chapter, and set forth as special uses under the various use districts.

(2) A special use permit may be granted by the Board of Adjustment only after making the following findings:

(a) An application for the special use has been submitted as prescribed by this chapter;

(b) 1. If the Board of Adjustment finds, in the particular case in question, that the use, including any proposed structures:

a. Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

b. Meets all required conditions and specifications of this chapter and other applicable rules, regulations, and standards;

c. Will not substantially injure the value of adjoining or abutting property;

d. Will be in general conformity with the plan of development of the town and its environs;

e. Will be reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and structure design;

f. Will be in harmony with scale, bulk, height, coverage, density, and character of the area or neighborhood in which it is located; or

g. Is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and will not cause undue traffic congestion or create a traffic hazard.

2. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith that will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter. However, the Board of Adjustment shall not impose conditions on special use permits that the town is not statutorily allowed to impose.

(c) Before any special use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual special use (see § [153.008](#)), and that satisfactory provision and arrangement has been made for at least the following, where applicable:

1. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control;

2. Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(2)(c)1. above, and the economic, noise, and odor effects of the special use on adjoining properties in the area;

3. Adequate and proper utilities, with reference to locations, availability, and compatibility;

4. Buffering, with reference to type, location, and dimensions;

5. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

6. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability;

7. Buildings and structures, with reference to location, size, and use;

8. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood;

9. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the design standards as outlined in § [153.047](#), "Site Design and Form and Mass Commercial Buildings," shall apply when exterior lighting is proposed and/or required;

10. A site plan has been submitted as required in § [153.008](#); and

11. The applicant/landowner must provide written consent to conditions placed on a special use permit by the Board of Adjustment.

(d) 1. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The Zoning Administrator shall report his or her findings to the Board of Adjustment.

2. If at any time after a special use permit has been issued, the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued.

3. If a special use permit is terminated for any reason, it may be reinstated only after reapplying for a special use permit.

(D) **Variations.** Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the public may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

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

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

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014



BOARD OF ADJUSTMENT MEETING

STAFF MEMORANDUM

August 26, 2024

CASE 2

Property Address: 2 Arboretum Rd

Property Owner: Sabine Randon

Request: A Special Use Request for a Green House and Deer Fencing and a
Variance Request for the Greenhouse

Background

The property owners are presenting plans for a greenhouse and deer fencing. The greenhouse is 12' x 20' and located near the old greenhouse location in the rear yard and meets setback requirements. The proposed deer fencing will be 6 feet in height and located in the rear yard. There is more than one accessory building on the property. The application does not meet the requirements set forth in the ordinance for only one accessory structure, therefore would require a variance.

Special Use

Section 153.049 (attached) of the Town's Zoning Ordinance regulates fences which require a special use permit from the Board of Adjustment. Section 153.029 (attached) of the Town's Zoning Ordinance regulates accessory structures and buildings which require a special use permit from the Board of Adjustment. Special use findings are covered in section 153.110 (C) (attached) of the Town's Zoning Ordinance.

Variance

The proposed greenhouse does not comply with the ordinance requirement for max number of accessory buildings which would require a variance for approval. Section 153.110 (D) (attached) addresses the approval requirements for a variance.

Zoning Compliance Application

Town of Biltmore Forest

Name

Sabine Randon

Property Address

2 Arboretum Road, Biltmore Forest, NC 28803

Phone

Email

sabine_randon@yahoo.com

Parcel ID/PIN Number

964634967100000

ZONING INFORMATION

Current Zoning

R-1

Lot Size

2.74 acres

Proposed Roof Coverage Total

7161 (same as existing)

Proposed Impervious Surface Coverage

13780 (same as existing)

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

29.5'

Description of the Proposed Project

Residential interior remodel, driveway resurfacing, greenhouse, deer fence in rear yard, and brick wall refresh

Estimated Start Date

8/5/2024

Estimated Completion Date

12/31/2025

Estimated Cost of Project

\$2,500,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

2024-06-27_L-1.0_Site_Plan_Randon.pdf

Randon Residence_DRB_062824.pdf

Randon_Exterior Renderings_062824.pdf

Applicant Signature

Date
6/28/2024

A handwritten signature in black ink, appearing to read "Justin A.", followed by a long horizontal line extending to the right.

Special Use Permit Application

Town of Biltmore Forest

Name

Justin Nicholas

Address

2 Arboretum Road, Biltmore Forest, NC 28803

Phone

(855) 720-2435

Email

justin@livingstoneconstruction.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:

Renovation of existing residence at 2 Arboretum way for Sabine Randon (owner). Project includes mostly interior remodeling with some exterior cladding changes as noted per plans. To include a fence in the rear yard and a greenhouse.

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

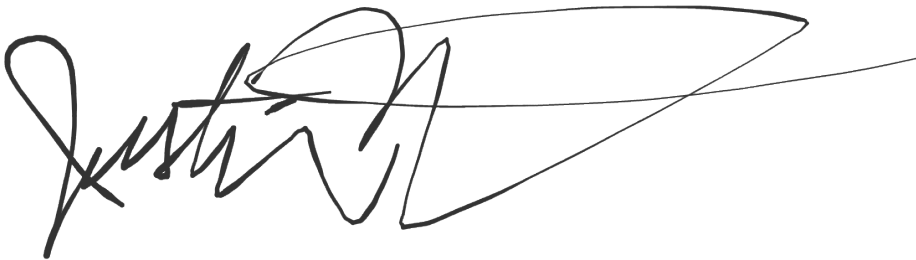
The house will keep it's original architecture and character. This particular residence is also at the end of a dead end street and is not visible from most of the community.

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

Signature

Date

8/2/2024

A handwritten signature in black ink, appearing to read "Justin Nicholas", with a long horizontal line extending to the right.

Have you paid the \$100 special use permit application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

Yes

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Justin Nicholas

Address

2 Arboretum Road

Phone

(855) 720-2435

Email

justin@livingstoneconstruction.com

Current Zoning/Use

Requested Use

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

What would you like to do with your property?

Add an additional accessory structure (greenhouse).

What does the ordinance require?

The ordinance requires a variance request for any additional accessory structures.

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.

This property had a greenhouse that was demolished before the current owner (Sabine) bought the property. Sabine wishes to rebuild a greenhouse that was already a part of the complex. She bought the property after falling in love with the gardens and wishes to keep them as they enhance the house and surrounding area.

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

The property is more secluded than the average parcel in Biltmore Forest as it is at the end of Arboretum Road. There are established gardens and a greenhouse would allow Sabine to reestablish plants that were in the footprint of the former greenhouse.

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

The concrete slab and stem walls of the former greenhouse are still in the garden, which was taken down prior to Sabine purchasing the property. We are proposing adding no additional structures beyond what was there before it was taken down.

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.

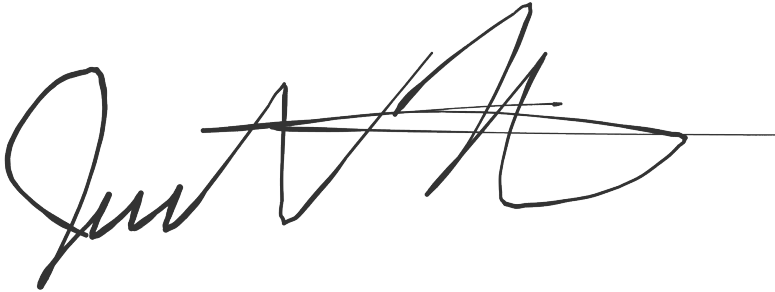
This variance is consistent with the spirit, purpose, and intent of the ordinance. The property is not visible from the road, and the greenhouse sits behind the house and beyond the driveway. There is plenty of acreage for the addition of the greenhouse to not clutter the property. There are no public safety concerns associated with this project.

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

Signature

Date

8/8/2024

A handwritten signature in black ink, appearing to be "Justin A.", written over a horizontal line.

Have you paid the \$300 variance application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

Yes

§ 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:

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§ 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)

153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

(C) *Special uses.*

(1) Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by this chapter, and set forth as special uses under the various use districts.

(2) A special use permit may be granted by the Board of Adjustment only after making the following findings:

(a) An application for the special use has been submitted as prescribed by this chapter;

(b) 1. If the Board of Adjustment finds, in the particular case in question, that the use, including any proposed structures:

a. Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

b. Meets all required conditions and specifications of this chapter and other applicable rules, regulations, and standards;

c. Will not substantially injure the value of adjoining or abutting property;

d. Will be in general conformity with the plan of development of the town and its environs;

e. Will be reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and structure design;

f. Will be in harmony with scale, bulk, height, coverage, density, and character of the area or neighborhood in which it is located; or

g. Is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and will not cause undue traffic congestion or create a traffic hazard.

2. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith that will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter. However, the Board of Adjustment shall not impose conditions on special use permits that the town is not statutorily allowed to impose.

(c) Before any special use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual special use (see § [153.008](#)), and that satisfactory provision and arrangement has been made for at least the following, where applicable:

1. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control;

2. Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(2)(c)1. above, and the economic, noise, and odor effects of the special use on adjoining properties in the area;

3. Adequate and proper utilities, with reference to locations, availability, and compatibility;

4. Buffering, with reference to type, location, and dimensions;

5. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

6. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability;

7. Buildings and structures, with reference to location, size, and use;

8. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood;

9. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the design standards as outlined in § [153.047](#), "Site Design and Form and Mass Commercial Buildings," shall apply when exterior lighting is proposed and/or required;

10. A site plan has been submitted as required in § [153.008](#); and

11. The applicant/landowner must provide written consent to conditions placed on a special use permit by the Board of Adjustment.

(d) 1. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The Zoning Administrator shall report his or her findings to the Board of Adjustment.

2. If at any time after a special use permit has been issued, the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued.

3. If a special use permit is terminated for any reason, it may be reinstated only after reapplying for a special use permit.

(D) **Variations.** Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the public may not be the basis for granting a variance;

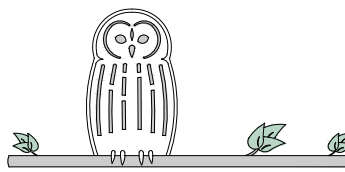
(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

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

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

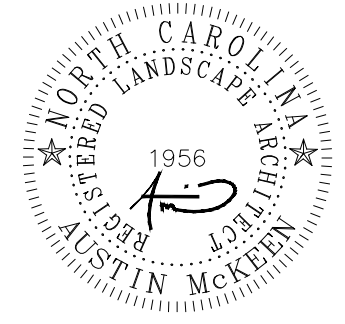
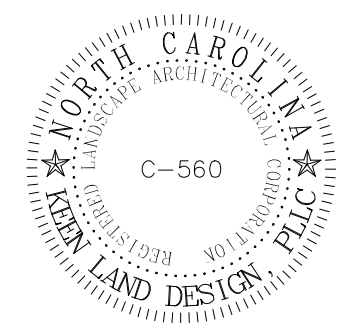
Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014



KEEN
LAND DESIGN

8 2 8 . 4 2 3 . 3 8 1 2
www.keenlanddesign.com



Date	Name/Notes
06/27/2024	Site Plan
07/05/2024	Added Setbacks per the Blittmore Forest DRB
08/07/2024	Minor Revision per the Blittmore Forest DRB

Randon Remodel
2 Arboretum Road
Asheville, NC 28803

Prepared For:
Living Stone Design + Build

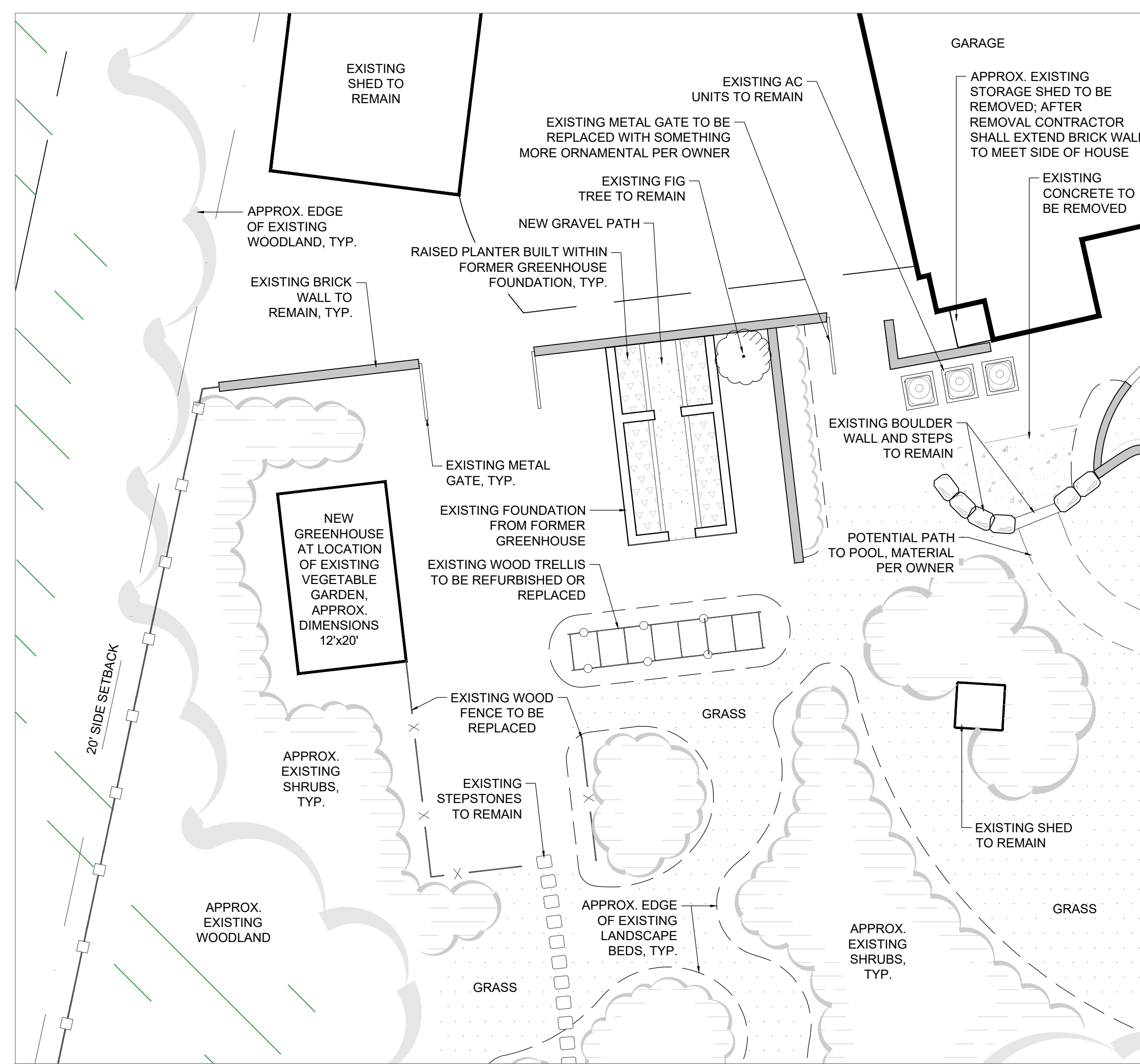
Sheet Title:

SITE PLAN

Sheet Number:

L-1.0

©2024 Keen Land Design, PLLC

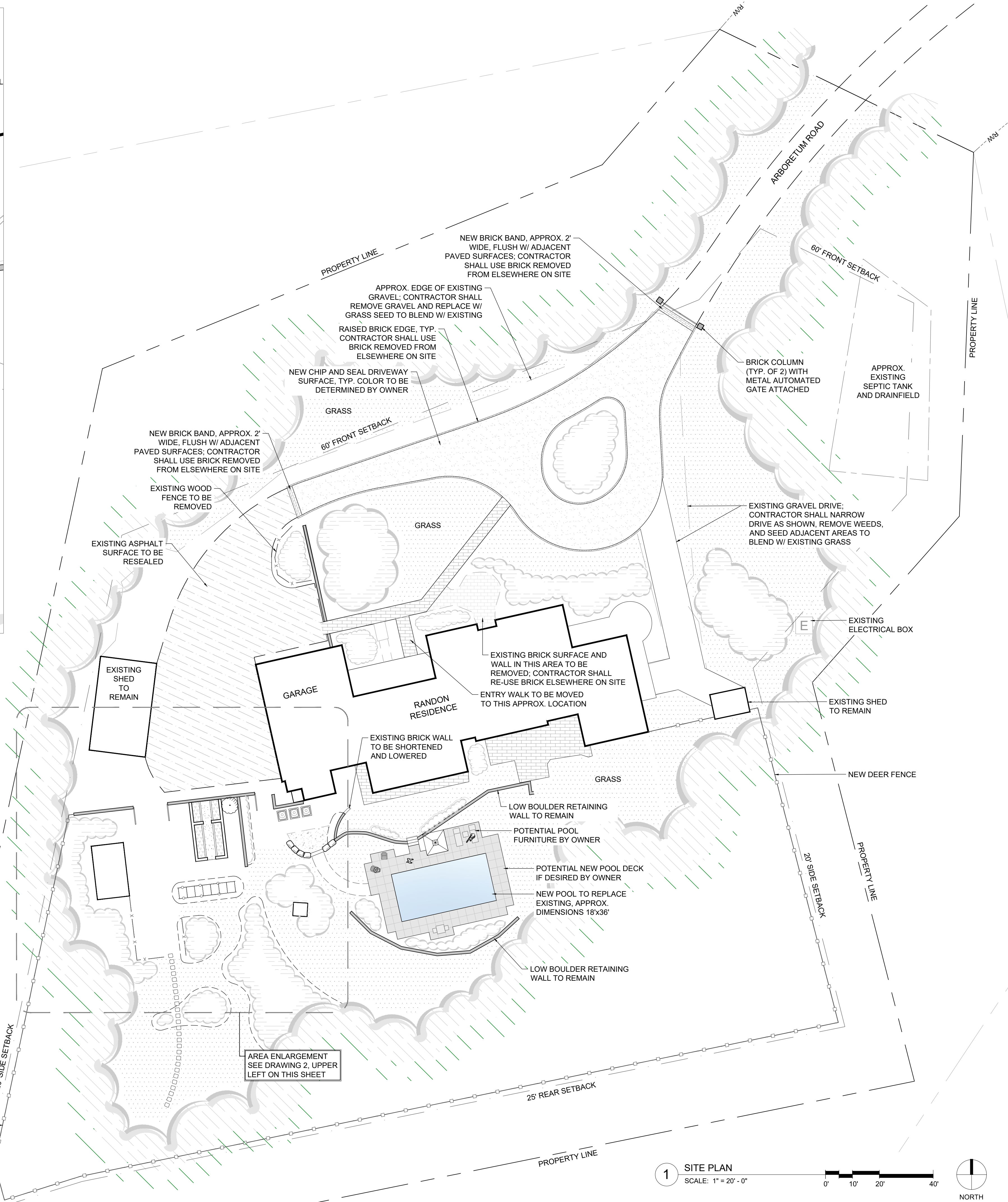


2 AREA ENLARGEMENT
SCALE: 1" = 10' - 0"

NORTH

- SITE NOTES**
1. THE SURVEY FOR THIS WORK HAS BEEN PROVIDED BY OTHERS FOR USE IN THE DESIGN OF THIS PROJECT. THE LANDSCAPE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF THE SURVEY, OR ADDITIONAL PLANS, PROVIDED BY OUTSIDE PARTIES.
 2. CONTRACTOR SHALL CONTACT THE NORTH CAROLINA 811 UTILITIES NOTIFICATION CALL CENTER TO DETERMINE THE LOCATIONS OF ALL UTILITIES. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE EXACT LOCATIONS AND DEPTH OF ALL EXISTING UTILITIES PRIOR TO BEGINNING WORK.
 3. CONTRACTOR SHALL BECOME FAMILIAR WITH THE EXISTING SITE CONDITIONS PRIOR TO BEGINNING WORK.
 4. ANY MISCELLANEOUS ITEMS AND MATERIALS NOT SPECIFICALLY NOTED, BUT REQUIRED FOR THE PROPER EXECUTION, INSTALLATION, AND PERFORMANCE OF THIS WORK SHALL BE PROVIDED BY THE CONTRACTOR.
 5. CONTRACTOR SHALL MINIMIZE DISTURBANCE OUTSIDE THE SCOPE OF WORK. ANY DISTURBANCE OUTSIDE THE SCOPE OF WORK SHALL BE REPAIRED BY THE CONTRACTOR TO, AT A MINIMUM, ITS CONDITION PRIOR TO BEGINNING WORK.
 6. ALL CONNECTIONS TO EXISTING WORK SHALL BE SMOOTH AND CONTINUOUS.
 7. CONTRACTOR SHALL PROVIDE PROTECTION FOR ALL NEWLY INSTALLED WORK AND FINISHES.
 8. CONSTRUCTION DEBRIS SHALL BE REMOVED AT THE END OF EACH WORK DAY AND THE SITE SHALL BE MAINTAINED IN A NEAT, CLEAN CONDITION. CONTRACTOR IS RESPONSIBLE FOR ALL PHASES OF HANDLING, TRANSPORTING, AND DISPOSING OF TRASH AND DEBRIS.
 9. CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES, IF APPLICABLE, IN ACCORDANCE WITH CURRENTLY ACCEPTED STANDARDS AND SPECIFICATIONS.

- LEGEND**
- EXISTING GRASS TO REMAIN
 - EXISTING ASPHALT SURFACE TO BE RESEALED
 - NEW CHIP AND SEAL DRIVEWAY SURFACE
 - BRICK SURFACE
 - APPROXIMATE EXISTING WOODLAND
 - APPROXIMATE EXISTING SHRUBS
 - APPROXIMATE EXISTING LANDSCAPE BEDS
 - EXISTING DRIVE EDGE TO REMAIN
 - EXISTING BRICK AND STONE WALLS
 - NEW RAISED BRICK EDGE



1 SITE PLAN
SCALE: 1" = 20' - 0"

NORTH



















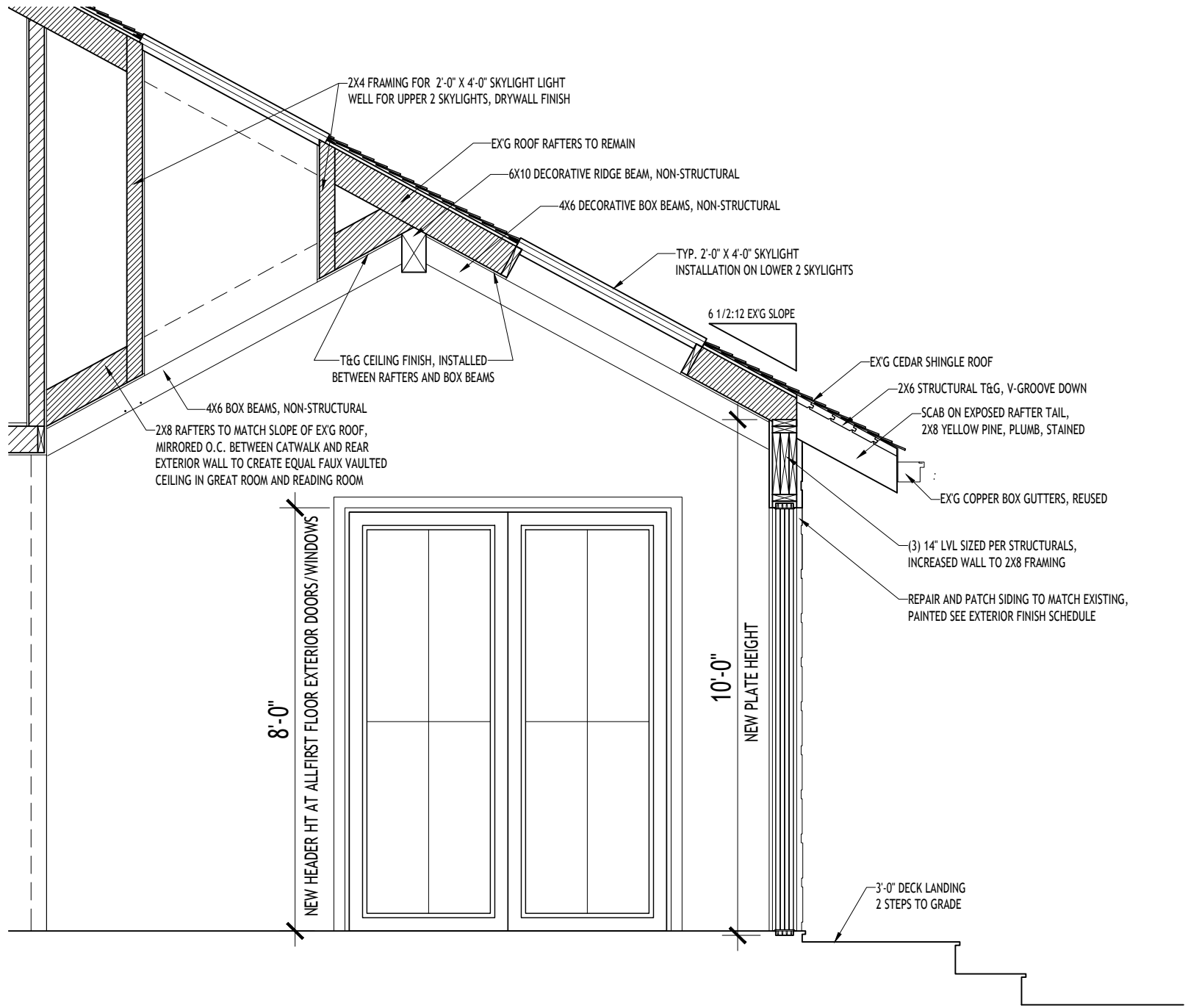
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SECTION DETAIL
RANDON RESIDENCE
 2 ARBORETUM RD
 BILTMORE FOREST, NC 28803

ISSUE DATE
 06 / 28 / 24
 REVISION DATE
 00 / 00 / 00
 REVISED / DRAWN BY
 RAM

ID.220

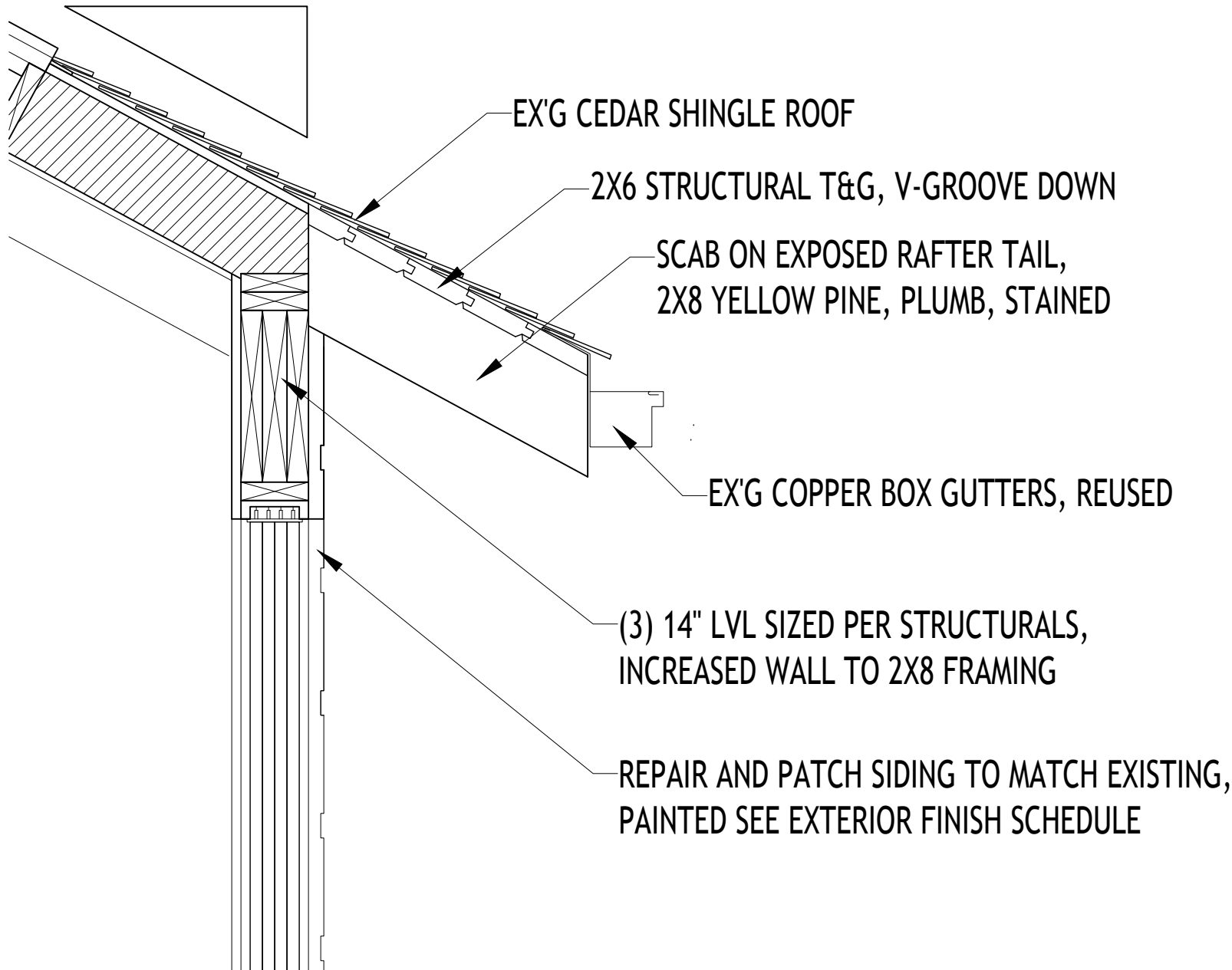
8.5 X 11



RECEIVED BY: _____
 COMPANY _____ COMPANY _____ COMPANY _____
 NAME _____ DATE _____ NAME _____ DATE _____ NAME _____ DATE _____

1 GREAT ROOM / READING ROOM FRAMING SECTION DETAIL
 SCALE: 3/8" = 1'-0"

6 1/2:12 EX'G SLOPE



EX'G CEDAR SHINGLE ROOF

2X6 STRUCTURAL T&G, V-GROOVE DOWN

SCAB ON EXPOSED RAFTER TAIL,
2X8 YELLOW PINE, PLUMB, STAINED

EX'G COPPER BOX GUTTERS, REUSED

(3) 14" LVL SIZED PER STRUCTURALS,
INCREASED WALL TO 2X8 FRAMING

REPAIR AND PATCH SIDING TO MATCH EXISTING,
PAINTED SEE EXTERIOR FINISH SCHEDULE

ID.OLOGY
 INTERIORS & DESIGN
 121 Sweeten Creek Rd, Asheville, NC 28603
 828 252 4403 | www.IDologyDesign.com

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SECTION DETAIL
RANDON RESIDENCE
 2 ARBORETUM RD
 BILTMORE FOREST, NC 28803

ISSUE DATE
 06 / 28 / 24

REVISION DATE
 00 / 00 / 00

REVISED / DRAWN BY
 RAM

ID.221

8.5 X 11

RECEIVED BY:

COMPANY _____	COMPANY _____	COMPANY _____
NAME _____	NAME _____	NAME _____
DATE _____	DATE _____	DATE _____

① TYP. RAFTER TAIL DETAIL
 SCALE: 1" = 1'-0"

**Randon Residence
Biltmore Forest**



Existing Roof

Cedar Shake



New Roofs

Standing Seam Copper
Patina to match
existing gutters



Trim

Patina Green 051
(to match windows)



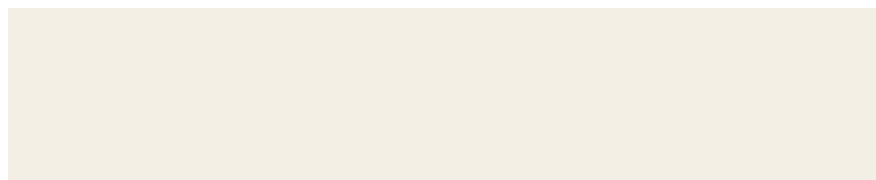
Alum-Clad Windows

Sierra Pacific
Patina Green 051



Board & Batten Siding

Painted
to match windows



Existing Cedar Dutch Lap

to be painted
SW 7103 Whitetail
LRV: 86



Brick

Existing Brick
to be whitewashed

Structural Tongue and Groove

Species TBD by engineer
Stain to Match Decorative T&G

Decorative Tongue and Groove

Species TBD
Stain TBD

Barge Rafters

Species TBD by engineer
Stained to match Rafter Tails

Rafter Tails

Yellow Pine
Stain TBD

Brackets

Species TBD
Stain TBD

Exterior Posts

Species TBD
Stain TBD





BOARD OF ADJUSTMENT MEETING

STAFF MEMORANDUM

August 26, 2024

CASE 3

Property Address: 56 Forest Rd

Property Owner: Julie Tatar

Request: Special Use and Variance Request for Accessory Structures

Background

The property owners are presenting plans for multiple accessory structures within the front of their home. Structures are to include an existing 4' tall statue setback from the edge of the road approximately 9' with a solar light to illuminate. Closer to the home would be 2 or 3 Japanese lanterns, a water feature, and some decorative rock hardscaping as seen on the plan. Some of the structures will be located within the front setback of 60 feet. The application does not meet the requirements set forth in the ordinance, therefore would require a variance.

Special Use

Accessory structures require a special use approval from the Board of Adjustment and are addressed in section 153.029(attached). Special use findings are covered in section 153.110(C) (attached) of the Towns Zoning Ordinance.

Variance

The proposed statue and light along with some of the boulders do not comply with the front setback of 60 feet therefore would require a variance. The remaining structures are located within the front yard but out of the front setback, all which would require a variance due to being in the front yard. Section 153.110 (D) (attached) addresses the approval requirements for a variance.

Zoning Compliance Application

Town of Biltmore Forest

Name

Julie Tatar

Property Address

56 Forest Road

Phone

(608) 712-3432

Email

firehorseforte@gmail.com

Parcel ID/PIN Number

Lot 22 Section N

ZONING INFORMATION

Current Zoning

R-1

Lot Size

1.2 acres

Proposed Roof Coverage Total

No roof

Proposed Impervious Surface Coverage

1 1/2 square ft

Front Yard Setback

60 feet (R-1 District)

Side Yard Setback

20 feet (R-1 District)

Rear Yard Setback

25 feet (R-1 District)

Building Height

4 ft

Description of the Proposed Project

Siting of Asian Art Statue at driveway entrance to home. 3 japanese lanterns, 1 water feature, and several large rocks or small boulders

Estimated Start Date

8/23/2024

Estimated Completion Date

8/23/2024

Estimated Cost of Project

\$17,000.00

Supporting Documentation (Site Plan, Drawings, Other Information)

IMG_7428.jpg

IMG_7429.jpg

Landscaped.pdf

Applicant Signature

Date
8/4/2024

Julie A Tatar

Special Use Permit Application

Town of Biltmore Forest

Name

Julie Tatar

Address

56 Forest Road

Phone

(608) 712-3432

Email

firehorseforte@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 make the following improvements to our recently acquired home:

1) A decorative Asian art statue at the side of the driveway toward the road. It is set back 9 ft from the road and is approximately 4 ft tall. The intention is to provide a welcoming and peaceful image to other residents of Biltmore Forest as well as our guests.

We tried to paste a photo of the statue in this text box---but were not able to do so. We are very happy to provide a photo in another format or bring one to the meeting.

2) We would like to have a low intensity (soft) solar light on the statue in the evenings for a couple of hours at dusk to illuminate the statue.

3) Rock hardscaping. We would like to get some Tennessee Finger Boulders to put in our front yard where it is landscaped. The main intention is to stop soil erosion given the steep slope of the yard.

We may put one or two small flat rocks as the base of the statue. One or two in the area that is landscaped between the road and the lawn (front yard). One larger one on the steep hill in front of the house. And maybe a group of two small ones in that steep area as well.

Additionally one or two smaller rocks the other side (in front of house to balance it). It is hard to know exactly until we go select a pallet of rock...and we know the shape and size. Until we see the actual rock it is hard to determine how we can place it harmoniously. But that is the general plan we would like to implement.

4) We would like request to have 2 or 3 Japanese lanterns in the landscaped area in the front of the house to illuminate the walkway to our front door at night--low/soft lighting

5) One pair of matched pots placed on either side of front door

6) A water feature in landscaped area near the front door. Currently we have a very plain low black bowl which is very discrete. However, if we can find someone to drill out a low flat boulder and put a pump in it and create a very small pooling area or catch basin at the base of the rock (approximately 2 ft X 2 ft). we would eventually like to get that done instead. This is for the peaceful sound of the trickling water, and the birds also like to drink from it.

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

This is our overall landscape plan. It will take some time to implement this plan--pending approval. Lots to do with a new house :-). But our intention is to create a peaceful and welcoming environment that is not cluttered. We want to be good members of the community and have our home be an asset to Biltmore Forest. I hope that people will walk by or drive by and look at the house and find it to be beautiful and peaceful, and maybe smile.

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

Signature

Date

7/31/2024

A handwritten signature in black ink that reads "Julie Tator". The signature is written in a cursive style with a large, looped initial "J" and a stylized "T" for the first letter of the last name.

Have you paid the \$100 special use permit application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

I plan to pay in person or mail a check

VARIANCE APPLICATION

Town of Biltmore Forest

Name

Julie Tatar

Address

56 Forest Road

Phone

(608) 712-3432

Email

firehorseforte@gmail.com

Current Zoning/Use

residential

Requested Use

residential

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?

Please refer to special use application and drawing which has already been submitted. The variance is related to a statue and accompanying low voltage solar light to light create ambient light on the statue for a couple hours in the evening that we would like to place at 9 ft from road edge instead of the required 10 ft. We would like to request permission to add several large rock or small boulders to the landscaped area of our yard that is within the 60ft setback area to stop soil erosion and contribute to visual appeal of our landscaping.

What does the ordinance require?

There is an ordinance that requires decorative lighting be set back 10 feet from road, ordinance 153.045. Additionally there is an ordinance related to accessory structures within the 60 ft front setback, ordinance 153.029.

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 grade of our lot precludes us from siting the lighting and the statue further back to comply with the respective required setbacks. It would fall down the hill. Continued soil erosion during heavy rains. Secondary to slope of lot erosion needs to be managed proactively to maintain landscape plantings.

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

Steep slope/topography precludes strict conformance with site lighting design ordinances and placement of the asian art statue within required setbacks.

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

The natural topography of our lot is outside our control. Continued soil erosion during heavy rains.

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.

This request is intended to enhance and preserve the character of the neighborhood and to augment the pleasant living environment of Biltmore Forest. The statue does not impact the open spaces between neighboring structures or the low density character of the environment. It is also compatible with the materials, height, scale, and proportion of other structures in the neighborhood. This hardscaping request is consistent with the parameters of set forth in Ordinance 153.045

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

Signature

Date

8/4/2024

Julie A Tatar

Have you paid the \$300 varience application fee? Your permit application will not be reviewed until payment has been received. You can visit the link below to pay. Copy & paste the link in your browser.

I plan to pay in person or mail a check

§ 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

§ 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)

153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

(C) *Special uses.*

(1) Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for special uses as authorized by this chapter, and set forth as special uses under the various use districts.

(2) A special use permit may be granted by the Board of Adjustment only after making the following findings:

(a) An application for the special use has been submitted as prescribed by this chapter;

(b) 1. If the Board of Adjustment finds, in the particular case in question, that the use, including any proposed structures:

a. Will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

b. Meets all required conditions and specifications of this chapter and other applicable rules, regulations, and standards;

c. Will not substantially injure the value of adjoining or abutting property;

d. Will be in general conformity with the plan of development of the town and its environs;

e. Will be reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and structure design;

f. Will be in harmony with scale, bulk, height, coverage, density, and character of the area or neighborhood in which it is located; or

g. Is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities, and will not cause undue traffic congestion or create a traffic hazard.

2. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith that will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this chapter. However, the Board of Adjustment shall not impose conditions on special use permits that the town is not statutorily allowed to impose.

(c) Before any special use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual special use (see § [153.008](#)), and that satisfactory provision and arrangement has been made for at least the following, where applicable:

1. Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow, and control;

2. Provision of off-street parking and loading areas where required, with particular attention to the items in division (C)(2)(c)1. above, and the economic, noise, and odor effects of the special use on adjoining properties in the area;

3. Adequate and proper utilities, with reference to locations, availability, and compatibility;

4. Buffering, with reference to type, location, and dimensions;

5. Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;

6. Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size, and suitability;

7. Buildings and structures, with reference to location, size, and use;

8. Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood;

9. With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the design standards as outlined in § [153.047](#), "Site Design and Form and Mass Commercial Buildings," shall apply when exterior lighting is proposed and/or required;

10. A site plan has been submitted as required in § [153.008](#); and

11. The applicant/landowner must provide written consent to conditions placed on a special use permit by the Board of Adjustment.

(d) 1. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this chapter have been met. The Zoning Administrator shall report his or her findings to the Board of Adjustment.

2. If at any time after a special use permit has been issued, the Board of Adjustment determines that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the permit shall be terminated and the operation of such use discontinued.

3. If a special use permit is terminated for any reason, it may be reinstated only after reapplying for a special use permit.

(D) **Variations.** Upon application, when unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the public may not be the basis for granting a variance;

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

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

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

Editor's note:

This amendatory language was passed during a Board meeting, May 14, 2014



