



# Town of Biltmore Forest Zoning Ordinance

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INDEX  
ZONING ORDINANCE  
TOWN OF BILTMORE FOREST, NORTH CAROLINA

|              |   |    |
|--------------|---|----|
| ARTICLE I    | TITLE   | 1  |
| ARTICLE II   | AUTHORITY AND ENACTMENT   | 1  |
| ARTICLE III  | JURISDICTION  | 1  |
| Section 300  | Zoning Jurisdiction   | 1  |
| ARTICLE IV   | INTERPRETATION AND DEFINITIONS  | 1  |
| Section 400  | Word Interpretation   | 1  |
| Section 401  | Definitions   | 2  |
| ARTICLE V    | ESTABLISHMENT OF ZONING DISTRICTS AND MAP   | 10 |
| Section 500  | Use Districts   | 10 |
| Section 501  | Establishment of District Boundaries  | 10 |
| Section 502  | Establishment of Zoning Map   | 10 |
| Section 503  | Rules Governing District Boundaries   | 10 |
| Section 504  | Statement of District Intents   | 11 |
| ARTICLE VI   | PERMITTED USE TABLE   | 13 |
| ARTICLE VII  | DIMENSIONAL REQUIREMENTS  | 14 |
| ARTICLE VIII | CONDITIONAL USES  | 15 |
| Section 800  | Purpose   | 15 |
| Section 801  | Development Plan/Site Plan Requirement  | 15 |
| Section 802  | Conditional Use Standards   | 16 |
| ARTICLE IX   | ENFORCEMENT, APPEALS  | 22 |
| Section 900  | The General Process and the Duties of the Zoning Administrator,<br>Board of Adjustment, Planning Commission, Board of<br>Commissioners, and Courts on Matters of Administration | 22 |
| Section 901  | Zoning Administrator  | 22 |
| Section 902  | Certificate of Zoning Compliance Required   | 22 |
| Section 903  | Requirements Prior to Issuance of a Building Permit   | 23 |
| Section 904  | Building Permit Required  | 23 |
| Section 905  | Certificate of Occupancy Required   | 23 |
| Section 906  | Construction Progress   | 24 |

|              |   |    |
|--------------|---|----|
| Section 907  | Construction Completion   | 24 |
| Section 908  | Compliance  | 24 |
| Section 909  | Appeal from the Zoning Administrator                                  | 24 |
| ARTICLE X    | BOARD OF ADJUSTMENT   | 25 |
| Section 1000 | Establishment of Board of Adjustment                                  | 25 |
| Section 1001 | Selection of Alternate Members  | 25 |
| Section 1002 | Rules of Conduct for Members  | 25 |
| Section 1003 | General Proceedings of the Board of Adjustment                        | 25 |
| Section 1004 | Meetings  | 26 |
| Section 1005 | Powers and Duties of the Board of Adjustment                          | 26 |
| Section 1006 | Appeals and Applications  | 29 |
| Section 1007 | Appeals from the Board of Adjustment                                  | 31 |
| ARTICLE XI   | GENERAL PROVISIONS  | 32 |
| Section 1100 | Zoning Affects Every Building and Use                                 | 32 |
| Section 1101 | Relationship of Building to Lot                                       | 32 |
| Section 1102 | Lot Frontage  | 32 |
| Section 1103 | Required Yards and Other Spaces                                       | 32 |
| Section 1104 | Accessory Structures and Buildings                                    | 32 |
| Section 1105 | Home Occupations  | 33 |
| Section 1106 | Visibility at Intersections   | 33 |
| Section 1107 | Vacant Structures and Lots  | 33 |
| Section 1108 | Signs in Residential Districts R-1, R-2, R-3, R-4 and R-5             | 34 |
| Section 1109 | Land Disturbance and Sedimentation Control                            | 34 |
| Section 1110 | Buffer Strip Required   | 34 |
| Section 1111 | Nonconforming Land, Uses or Structures                                | 34 |
| Section 1112 | Accessory Structures or Buildings Utilized as Dwellings               | 36 |
| Section 1113 | Off-Street Parking  | 36 |
| Section 1114 | Off-Street Loading and Unloading Space                                | 38 |
| Section 1115 | No Lot Subdivision of Platted and Recorded Lots                       | 38 |
| Section 1116 | Minimum Dwelling Unit Size  | 38 |
| Section 1117 | Subdivision of Tracts of Land   | 39 |
| Section 1118 | Maximum Roof Coverage   | 39 |
| Section 1119 | Material and Color Requirements for Residential Dwelling Units        | 40 |
| Section 1120 | Site Design and Building Form and Mass for Residential Dwelling Units | 41 |
| Section 1121 | Material and Color Requirements for Commercial Buildings              | 42 |
| Section 1122 | Site Design and Building Form and Mass Commercial Buildings           | 44 |
| Section 1123 | Impervious surface coverage   | 45 |
| ARTICLE XII  | DESIGN REVIEW BOARD   | 46 |
| Section 1200 | Purpose and Intent  | 46 |
| Section 1201 | Composition of Design Review Board and Meeting Procedure              | 46 |
| Section 1202 | Development Subject to Design Review                                  | 47 |

|              |   |    |
|--------------|---|----|
| Section 1203 | Application Required to be Filed  | 47 |
| Section 1204 | Duties and Powers of the Design Review Board  | 47 |
| Section 1205 | Submittal Requirements  | 48 |
| ARTICLE XIII | BUFFERS, SCREENING, AND LANDSCAPING   | 49 |
| Section 1300 | Purpose and Intent  | 45 |
| Section 1301 | General Information   | 45 |
| Section 1302 | Existing Vegetation   | 50 |
| Section 1303 | Buffer Strip and Screen Requirement   | 52 |
| Section 1304 | Parking Lot landscaping Requirements  | 54 |
| Section 1305 | Screening of Dumpsters, Loading Docks, Outdoor<br>Storage Areas, and Utility Structures | 55 |
| Section 1306 | Street Trees  | 55 |
| Section 1307 | Certificate of Completion   | 56 |
| Section 1308 | Maintenance   | 56 |
| Section 1309 | Residential Screening of Utility Structures   | 56 |
| Section 1310 | Plant Specifications  | 56 |
| Section 1311 | Recreational and Commercial Vehicle Storage   | 57 |
| ARTICLE XIV  | EXCEPTIONS AND MODIFICATIONS  | 58 |
| Section 1400 | Front Yard Setback for Dwellings  | 58 |
| Section 1401 | Completion of Buildings Under Construction  | 58 |
| Section 1402 | Temporary Uses  | 58 |
| ARTICLE XV   | AMENDMENTS  | 59 |
| Section 1500 | Amendments  | 59 |
| Section 1501 | Initiation of Amendments  | 59 |
| Section 1502 | Application   | 59 |
| Section 1503 | Application Fee   | 59 |
| Section 1504 | Planning Commission Action  | 59 |
| Section 1505 | Public Hearing  | 59 |
| Section 1506 | Decision  | 60 |
| ARTICLE XVI  | VIOLATIONS, PENALTIES AND REMEDIES  | 61 |
| Section 1600 | Violations  | 61 |
| Section 1601 | Penalties   | 61 |
| Section 1602 | Remedies  | 61 |

|              |  |    |
|--------------|--|----|
| ARTICLE XVII | LEGAL STATUS PROVISIONS AND EFFECTIVE DATE | 62 |
| Section 1700 | Severability                               | 62 |
| Section 1701 | Conflict with Other Laws                   | 62 |
| Section 1702 | Effective Date                             | 62 |

ARTICLE I  
TITLE

This ordinance shall be known as the "Zoning Ordinance of the Town of Biltmore Forest, North Carolina."

ARTICLE II  
AUTHORITY AND ENACTMENT

The Board of Commissioners of the Town of Biltmore Forest, North Carolina, in pursuance of the authority granted by the General Statutes of North Carolina, Article 19, Chapters 160A-381 through 160A-392, hereby ordain and enact into law the following articles and sections for the purpose of promoting the health, safety, morals and general welfare of the community.

ARTICLE III  
JURISDICTION

Section 300. Zoning Jurisdiction.

The provisions of this ordinance shall be applicable to all land within the corporate limits of the Town of Biltmore Forest, North Carolina, as established on the map entitled "Official Zoning Map, Town of Biltmore Forest" with the exception of land owned by the Town of Biltmore Forest and land used by the Town of Biltmore Forest or entities contractually obligated to the Town of Biltmore Forest to provide fire protection and emergency medical services, but only during the period of time that such parties are contractually required to provide those services to the Town of Biltmore Forest.

ARTICLE IV  
INTERPRETATION AND DEFINITIONS

Section 400. Word Interpretation.

Except as this ordinance the purpose of are defined as specifically defined herein, all words used in have their customary dictionary definitions. For this ordinance, certain words or terms used herein follows:

Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

- 400.01        The words "Board of Commissioners" shall mean the Town of Biltmore Forest Board of Commissioners.
  
- 400.02        The words "Planning Commission" shall mean the Town of Biltmore Forest Planning Commission.

- 400.03 The words "Board of Adjustment" shall mean the Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.
- 400.04 The word "ordinance" shall mean the Zoning Ordinance of the Town of Biltmore Forest.
- 400.05 The word "may" is permissive.
- 400.06 The word "shall" is mandatory.
- 400.07 The word "lot" includes the words "plot" or "parcel."
- 400.08 The word "building" includes the word "structure."
- 400.09 The word "street" includes the words "road" and "highway."
- 400.10 The words "person" or "applicant" include a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.
- 400.11 The words "zoning map" or "Biltmore Forest Zoning Map" shall mean the Official Zoning Map of the Town of Biltmore Forest.

#### Section 401. Definitions.

- 401.01 Accessory Use. A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. Accessory uses include improvements to residential properties such as fences, walls, curbs, pools, residential street lamps, etc.
- 401.02 Alley. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.
- 401.03 Apartment. A part of a building consisting of a room or rooms intended, designed or used as a residence by an individual or a single family.
- 401.04 Apartment, Garage. A part of a garage consisting of a room or rooms intended, designed or used as a residence by an individual or a single family.
- 401.05 Bona Fide Farm. All land on which agricultural operations are conducted as the principal use, including the cultivation of crops, the husbandry of livestock and timber resources, and the management of open pasture land.
- 401.06 Buffer Strip. A buffer strip is a strip of land together with some form of screening such as existing vegetation, planted vegetation, a landscaped earth berm or grade change, or combination of the above. The purpose of the buffer strip is to minimize the potential conflicts between adjoining land uses.

- 401.07 Building. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.
- 401.08 Building, Accessory. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot. This does not include garage apartments or rental units utilized by other than a "family" member.
- 401.09 Building Height - the distance measured from the average ground level at the building foundation to the highest point of the roof, but in no event above 40 feet from the highest point in the foundation. A chimney that complies with the minimum NC State Building Code requirements for height of a chimney shall not be included in the calculations for height of the building, provided that the chimney shall not extend more than five feet (5') above the immediately adjoining ridge line of the roof.
- 401.10 Building, Principal. A building used for the same purpose as the principal use of the lot.
- 401.11 Building Setback Line. A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.
- 401.12 Caretaker. A person that maintains grounds or structures on a lot or cares for the well being of person(s) residing in the principal dwelling on a lot, and resides on the premises without being charged a rental fee.
- 401.13 Clothing and Jewelry Sale. The sale to the public of clothes and jewelry that have been brought to the home for that purpose.
- 401.14 Clustered Housing Development. Grouping or concentration of housing units on lots smaller than permitted by the existing zoning to preserve open space without increasing the allowable density of the development.
- 401.15 Commercial Service or Professional Service. Establishments or professions charging a fee for providing a service to the public.
- 401.16 Conditional Use. A use which is permitted in specified zoning districts only after review by the Board of Adjustment and found to meet specific conditions and procedures as set forth in this ordinance to maintain the safety and general welfare and orderly development of the community.
- 401.17 Consumer Services. Businesses providing services to the public for profit including dining and restaurant services (not to include fast food service

restaurants), lodging and motel services, financial, real estate and insurance services, and other personal services. In addition to the above, consumer services shall not include Filling and Gasoline Service Stations or Auto Repair Shops as defined by this ordinance.

- 401.18 Day Nursery and Private Kindergarten. A use of land and buildings to provide group care for children.
- 401.19 District. A section of the Town of Biltmore Forest in which zoning regulations are uniform.
- 401.20 Dwelling, Multi-Family. A building or portion thereof used or designed as a residence for two (2) or more families living independently.
- 401.21 Dwelling, Single Family. A building arranged or designed to be occupied by one (1) family.
- 401.22 Dwelling Unit. A building, or portion thereof, providing complete and permanent living facilities for one family.
- 401.23 Easement. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation or persons.
- 401.24 Estate/Auction Sale. The one-time sale to the public of goods that is held at the home. The goods and items offered for sale at said auction must be personal property that has been owned by the resident(s) of said home. No goods or items to be sold shall be shipped or transported to the home from any other location. The sale shall be limited to no more than two (2) consecutive days and the hours for said sale shall be between 10:00 AM and 8:00 PM.
- 401.25 Family. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over three persons, but further provided that domestic servants, caretakers, and security personnel employed or living on the premises may be housed on the premises without being counted as a family or families.
- 401.26 Garage/Yard Sale. The sale to the public of typical household items that is held at the residence. The household items to be sold shall be items from the residence where the sale is to occur. Each residence is limited to one (1) such sale per year. The sale shall not begin before 8:00 AM and shall end by 5:00 PM.
- 401.27 Gasoline Service Station/Auto Repair Shop. Buildings and premises where gasoline, automotive fuel, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made and no other. Sales and servicing as follows: spark plugs, batteries and distributors and

distributor parts; tire servicing and repair, but not recapping or regrooving; replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; radiator cleaning and flushing; washing and polishing, the sale of automotive washing and polishing materials; greasing and lubrication; providing and repairing fuel pumps, oil pumps, and lines; minor servicing and repair of carburetors; emergency wiring repairs; adjusting and repairing brakes, wheel balancing and alignment, minor motor adjustments not involving removal of the head or crankcase or racing the motor; sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operation; automobile body repair services; provision of road maps and other informational materials to customers; provision of restroom facilities.

- 401.28 Grading. Any land disturbing activity where the ground cover on or above the soil surface is removed and reconfigured, including trees, grasses, or pavements or other surfaces either natural or manmade.
- 401.29 Home Business Activity. A business conducted from the home such as Internet enterprise, professional office, or the making of crafts or items where no one is employed that does not live in the home and no one comes to the home for a business transaction as part of the activity.
- 401.30 Home Occupation. An occupation providing a service carried on by the occupants of a dwelling provided that certain conditions are met as listed in Section 802.04
- 401.31 Impervious Surface. Any paved, hardened, or structural surface, including but not limited to buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, tennis courts, and other structures and surfaces, that substantially reduces or prevents the infiltration of stormwater into the ground.
- 401.32 Incompatible Land Use. A land use requiring a conditional use permit from the Board of Adjustment in property zoned R-4 or R-5 adjacent to land zoned R-1, R-2, R-3, Public Service; or land zoned R-4 or R-5 in residential use.
- 401.33 Individual Sewer System. Any septic tank, ground absorption system, privy or other facility serving a single source or connection and approved by the County Sanitarian.
- 401.34 Individual Water System. Any well, spring, stream or other source used to supply a single connection.
- 401.35 Living Area. Living area shall be construed to include the area inside the dwelling walls of each particular floor, but shall not include basements, utility rooms, laundry rooms, storage rooms (other than closets), pantries,

garages, and attics. Living area shall, however, include living rooms, dens, studies, kitchens, bedrooms, breakfast rooms, bathrooms, and closets in any of said rooms, foyers, entrance ways and hallways connecting any of these rooms.

- 401.36 Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.
- 401.37 Lot Depth. The mean horizontal distance between front and rear lot lines.
- 401.38 Lot of Record. Any lot for which a plat has been recorded in the Register of Deeds Office of Buncombe County, or described by metes and bounds, the description of which has been so recorded.
- 401.39 Lot Width. The distance between side lot lines measured at the front building line.
- 401.40 Mobile Home. "Mobile home" means a factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, to be used without permanent foundation and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.
- 401.41 Nonconforming Use. Any parcel of land, use of land, building or structure existing at the time of adoption of this ordinance, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.
- 401.42 Parking Space. An area for parking a vehicle plus the necessary access space. Parking space(s) shall always be located outside the dedicated street right-of-way and shall be provided with vehicular access to a street or alley.
- 401.43 Parks. The term "park" shall include those areas developed either for passive or active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, etc. The term "park" shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian or dog racing facilities.
- 401.44 Planned Unit Development. In this ordinance, a planned unit development means a development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six (6) or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a planned unit development (PUD). Multi-family structures shall have no less than three (3) dwelling units per structure. Residential units within a planned unit development may include single family detached or

attached units, townhouse developments, condominiums, and other multi-family type residential units excluding time sharing units, mobile homes, and mobile home parks.

- 401.45 Protective Barrier. A protective barrier is either 1) a temporary fence which is at least three feet high and constructed in a post and rail configuration, using 2 x 4 posts and 1 x 4 rails; or 2) a temporary fence with 2 x 4 posts placed no farther than ten (10) feet apart covered with a four (4) foot orange polyethylene laminar safety fencing; or 3) a temporary fence using an equivalent material.
- 401.46 Public Sewer System. Any sewer system owned and operated by a local government in Buncombe County, or other sewage treatment facility serving two or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Natural Resources and Community Development, or a ground absorption system serving two or more connections when approved by the County Sanitarian.
- 401.47 Public Water System. Water systems serving fifteen (15) or more residential connections or serving more than twenty-five (25) year round residents are classified as public water supplies, and plans and specifications must be approved by the N.C. Department of Human Resources, Division of Health Services. Also, water supply systems serving from two (2) to fourteen (14) connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.
- 401.48 Recreation User Nonprofit. An indoor or outdoor recreation facility operated on a non-profit basis, according to the laws of North Carolina.
- 401.49 Recreation User Profit. An indoor or outdoor recreation facility operated on a profit basis.
- 401.50 Residential Density. The number of dwelling units per acre devoted to residential buildings, accessory uses and open spaces within the site, but excluding land for streets and street right-of-ways. Residential density shall be calculated by first subtracting the land area required for streets and right-of-ways from the total or gross land area of the tract to derive a net land area, and then dividing the number of dwelling units proposed to be built by the net land area.
- 401.51 Retail Business. Establishments selling commodities directly to the consumer. Fast food service restaurants, gasoline service stations/auto repair, or the dispensation of gasoline as an ancillary service to a retail use shall be prohibited.
- 401.52 Roof Coverage - for the purposes of building construction and the calculation of “maximum roof coverage” pursuant to Sections 1104(b) and

1118 of this ordinance (and any other section of this ordinance dealing with roof coverage), roof coverage shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed space or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above grade impervious surface (such as a deck, etc.) extending from the primary building or accessory structure/building shall be included in the calculation of roof coverage.

- 401.53 Root Protective Zone. A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances: 1) a one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or 2) a measurement of the furthest or most outward branch or limb from the main trunk when that distance is then drawn as a circle around the remaining portion of the tree or shrub, commonly referred to as the 'drip line.' The minimum root protection zone in any case is a radius of eight feet measured from the tree trunk.
- 401.54 Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.
- 401.55 Street Line. The edge of the roadway pavement.
- 401.56 Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

This definition includes among other structures, fences.

In the case of wooden fencing, material shall be of a natural color or painted in a manner that is compatible with the color of the primary residence on the promises. In the case of non-wooden fencing, material shall be black, dark green or brown to blend with surrounding trees or vegetation.

New chain link fences are prohibited in the front and side yards. Existing chain link fences in the front and side yards may be replaced or repaired subject to approval of the Board of Adjustment.

Chain link fences are discouraged in the rear yard unless there is established year-round buffering that would immediately conceal the chain link fence from neighboring properties and the street.

Absent a showing of some unusual circumstance, hardship, or condition not of the property owner's making, fencing will not normally be permitted in front yards, or within minimum side or rear yard setback requirements, as

same detract from the desired appearance of a natural shrub and forested area.

Requests for rear or side yard fencing may be subject to restrictions as to type of fencing, buffering and incursion into setback areas.

- 401.57 Substantial Completion - for the purpose of building construction, the completion of all exterior work on the building, the completion of all plumbing, electrical, and HVAC work, the completion of all window installation, the completion of all interior and exterior door installation, the completion of all wall construction, painting, and/or covering, the completion of all floor installation and/or covering, and the completion of all other work necessary to receive a certificate of occupancy from the Buncombe County Inspections Department. Minor work typically noted on a punch list may be incomplete and the structure shall be deemed to be substantially completed.
- 401.58 Substantial Progress - for the purpose of building construction, it is expected that construction of the building is continuous and that progress is obvious and observable with inspections as required under the NC State Building Code occurring on a regular basis.
- 401.59 Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. Refer to Section 1005.04.
- 401.60 Wholesale Business. The sale of goods in large quantities usually for resale.
- 401.61 Yard. A space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.
- 401.62 Yard, Front. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard. In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the front yard.
- 401.63 Yard, Rear. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.
- 401.64 Yard, Side - An open, unoccupied space on the same lot with a principal building extending the full width of the lot and being situated between the

building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. Notwithstanding the above definition, for the purposes of determining compliance with “minimum yard setback” of Article VII of this ordinance, the side yard shall be the entire length of each side lot line extending from the front lot line to the rear lot line and shall equally apply to lots with a principal building, lots without a principal building and vacant lots. Driveways shall not be located in the side yard setback.

401.65 Zoning Administrator. An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

ARTICLE V  
ESTABLISHMENT OF ZONING DISTRICTS AND MAP

Section 500. Use Districts.

For the purpose of this ordinance, the Town of Biltmore Forest is hereby divided into the following use districts:

- R-1 Residential District
- R-2 Residential District
- R-3 Residential District
- R-4 Residential District
- R-5 Residential District
- P-S Public Service District

Section 501. Establishment of District Boundaries.

The boundaries of these districts are hereby established as shown on the Official Zoning Map of the Town of Biltmore Forest.

Section 502. Establishment of Zoning Map.

A zoning map entitled the "Official Zoning Map of the Town of Biltmore Forest" sets forth all approved use districts and their respective boundaries is hereby made a part of this ordinance and shall be maintained in the office of the Zoning Administrator of the Town of Biltmore Forest. This map shall be available for inspection by interested persons during normal business hours of the Zoning Administrator. It shall be the duty of the Zoning Administrator of the Town of Biltmore Forest to maintain the said map and post any changes thereto as they may be made.

Section 503. Rules Governing District Boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following shall apply:

- 503.01 Boundaries indicated as approximately following the center lines of streets, highways, alleys, streams, rivers or other bodies of water, shall be construed to follow such lines.
- 503.02 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- 503.03 Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines.
- 503.04 Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways or railroads, or right-of-ways of same, such district boundaries shall be construed as being parallel thereto and at such distance therefore as indicated on the Zoning Map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said Zoning Map.
- 503.05 Where physical features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections 503.01 through 503.04, the Board of Adjustment shall interpret the district boundaries.

Section 504. Statement of District Intent.

- 504.01 R-1 Residential District. The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to preserve and enhance the character of existing neighborhoods and generally to provide a pleasant living environment. These neighborhoods consist of single family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low density residential environment. Non-residential uses including home occupations have been limited in this district as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community. Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods. Therefore, structures should be compatible in materials, height, siting, color, texture, scale and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.
- 504.02 R-2 Residential District. The R-2 Residential District is established to protect and maintain existing neighborhoods, which are characterized by single family residences with smaller lots, and thus greater residential densities than found in the R-1 District. As in the R-1, non-residential uses

including home occupations have been limited in this district as a means of assuring a pleasant residential atmosphere.

- 504.03 R-3 Residential District. The R-3 Residential District is intended to provide locations that will accommodate future residential growth south of the Blue Ridge Parkway. This district is intended to provide locations for future subdivisions and for planned unit residential developments as conditional uses when design plans show that such developments will be compatible with the surrounding development and available public services. These areas are currently (1983) without public water and sewer services. Therefore, careful planning will be necessary in the extension of municipal services to these areas. This district is primarily a low density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a conditional use at a maximum density of eight (8) dwelling units per acre. Non-residential uses including home occupations will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts.
- 504.04 R-4 Residential District. The R-4 Residential District provides areas for residential uses, and as conditional uses professional offices and commercial services. Urban sprawl, strip commercial development, and congestion will be discouraged by promoting good design and clustered development. These areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid traffic congestion and safety hazards. Land uses in this district other than single family detached dwelling units will require a conditional use permit as a means of assuring and promoting safety and good design. The integrity of residential uses in this zone will be preserved by requiring a 20 foot wide buffer strip between residential and nonresidential uses.
- 504.05 R-5 Residential District. The medium density district is established as a district where both residential and business uses are accommodated. In addition, a wide range of community facilities and services are also available. It is intended that nonresidential uses, including business uses, shall be compatible with and exist in harmony with the community in which they are located and that adequate standards will be maintained pertaining to the public health, safety and welfare. In addition, these areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid congestion and safety hazards. Most land use in this district will require a conditional use permit as a means of assuring and promoting safety and good design.
- 504.06 P-S Public Service District. This district is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction. It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development. It is expressly intended that any structures and/or buildings shall be prohibited except as associated with a public park

or recreational area. Any land disturbing activity such as driveway connections or landscaping shall be approved by the Board of Adjustment.

NOTE: A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall detail all plantings or reforestation to take place as part of the land disturbing activity. (See Section 1109)

**ARTICLES VI & VII - ZONING DISTRICTS  
PERMITTED USES AND DIMENSIONAL REQUIREMENTS**

The following tables show the land uses permitted in each zoning district (page 14) and the dimensional requirements for each zoning district (page 15), including minimum lot sizes, minimum lot widths, and minimum setback requirements.

Article VI  
Permitted Use Table

P = Permitted

C = Allowed as a Conditional Use

Blank Space = Not Permitted

Use Not Listed = Not Permitted Zoning Districts

**Zoning Districts**

| USE   | R-1 | R-2 | R-3 | R-4 | R-5 |
|---|-----|-----|-----|-----|-----|
| Single Family Residential Dwelling Unit   | P   | P   | P   | P   | P   |
| Clothing and Jewelry Sales (Note 1)   | P   | P   | P   | P   | P   |
| Estate/Auction Sales (Note 2)   | P   | P   | P   | P   | P   |
| Garage/Yard Sales (Note 3)  | P   | P   | P   | P   | P   |
| Fund Raising Events for non-profits or political campaigns (Note 4)                                       | P   | P   | P   | P   | P   |
| Home Business Activity (Note 5)   | P   | P   | P   | P   | P   |
| Planned Unit Development (Note 6)   |     |     | C   | C   | C   |
| Accessory Buildings...Structures and Uses (does not include rental units by other than a "family" member) | C   | C   | C   | C   | C   |
| Schools, public and private (of similar curriculum as public schools)                                     | C   | C   | C   | C   | C   |
| Libraries   |     |     |     | C   | C   |
| Country, Athletic and Social Clubs  | C   | C   | C   | C   | C   |
| Public Recreational Facilities - non-profit (parks, playgrounds, scenic parkways and open space)          | P   | P   | P   | P   | P   |
| Public Utility Station and Substations  | C   | C   | C   | C   | C   |
| Home Occupations  |     |     |     | C   | C   |
| Professional and Business Offices   |     |     |     | C   | C   |
| Commercial Services (excluding retail trade)  |     |     |     | C   | C   |
| Business or Special Schools (art, craft, dance, etc.)   |     |     |     | C   | C   |
| Medical and Dental Services   |     |     |     | C   | C   |
| Business or Special Schools (art, craft, dance, etc.)   |     |     |     | C   | C   |
| Day Nurseries/Day Care  |     |     |     | C   | C   |
| Banks   |     |     |     | C   | C   |
| Churches/Religious Assembly   |     |     |     | C   | C   |
| Bone Fide Farms   | C   |     | C   | C   | P   |
| Retail Business   |     |     |     |     | C   |
| Commercial Business   |     |     |     |     | C   |

**Note 1:** Only two (2) clothing or jewelry sales may be held per year at each dwelling, not to exceed five (5) consecutive days for each sale. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See Section 401.13.

**Note 2:** Only one estate auction sale may be held during a resident's ownership of the property. Property owners are required to contact the Zoning Administrator prior to holding the estate/auction sale so that the date of the sale may be noted. See Section 401.24 for additional limitations.

**Note 3:** Only one (1) garage/yard sale may be held per year at each dwelling. Property owners are required to contact the Zoning Administrator prior to holding the sale so that the date of the sale may be noted. See Section 401.26 for additional limitations.

**Note 4:** Only four (4) fund raising events may be held per year at each dwelling. No such event shall last longer than five (5) hours in a single day and any such event must end by 11:00 PM. There shall be no sales of goods or services at any such event. Parking for such an event must not impede the normal flow of traffic and must not be upon any other property without permission from the other property owners.

**Note 5:** No home business activity shall employ any person who does not live in the home. No person shall come to the home for a business transaction of any nature as part of the home business activity, including, but not limited to, retail or commercial sales or fee for service transactions. No shipping, via Fed Ex, UPS or any other provider, shall be permitted from the dwelling. See Section 401.29.

**Note 6:** Where there is proposed more than one (1) principal building per lot or where there is proposed any building with a gross floor area of fifty thousand (50,000) square feet or more a Planned Unit Development must be sought. See Section 401.44 for additional requirements.

**ARTICLE VII  
DIMENSIONAL REQUIREMENTS**

| Districts | Minimum Lot Area In Square (footnote #1) | PUD Residential Density Maximum Number of Dwellings Per Acre (applicable to residential units in PUDs which are conditional uses) (footnote #2) | Minimum Yard Setback Requirement in Feet(footnote #5) |                        |                              |                              |                              |
|-----------|--|---|---|------------------------|------------------------------|------------------------------|------------------------------|
|           |  |   | Min Lot Width At Bldg. Line In (footnote #3)          | Front Yard From Street | Side (footnotes #4, #8 & #9) | Rear (footnotes #4, #8 & #9) | Maximum Height (footnote #7) |
|           | Feet                                     |   | Feet  | Line                   | Yard                         | Yard                         | In Feet                      |
| R-1       | 43,560                                   | 0   | 150   | 60                     | 20                           | 25                           | 40                           |
| R-2       | 20,000                                   | 0   | 100   | 50                     | 15                           | 20                           | 40                           |
| R-3       | 20,000                                   | 8   | 100   | 50                     | 15                           | 20                           | 40                           |
| R-4       | 20,000                                   | 2   | 100   | 50                     | 15                           | 20                           | 40                           |
| R-5       | See #7                                   | 8   | 100   | 50                     | 15                           | 20                           | 40                           |
| PS        | No Min.                                  | 0   | No Min.   | No Min.                | No Min.                      | No Min.                      | Not App.                     |

(Footnote #1) - The minimum lot area for lots not served by public water and / or sewer shall be subject to approval by the Buncombe County Health Department to ensure the proper operation of septic tanks and wells. In no case, however, shall minimum lot area be less than those specified in this table.

(Footnote #2) - Applicable to residential Planned unit Developments (PUDs), all PUDs shall have access to public water and sewer services.

(Footnote #3) - The minimum lot width at the street line shall be 125 feet in the R-1 District, and 80 feet in the R-2, R-3, and R-4 districts.

(Footnote #4) - On all corner lots, a 30 foot side yard setback is required.

(Footnote #5) - Accessory structures, including driveways, shall meet all setback requirements. Notwithstanding the foregoing, setback requirements for driveway entrance columns or driveway entrance walls may be waived or modified by the Board of Adjustment with the granting of a conditional use permit in accordance with Section 1005.03, without the need for a variance pursuant to Section 1005.04.

(Footnote #6) - Height requirements may be varied upon approval of the Board of Adjustment

(Footnote #7) - Whichever is greater, 20,000 square feet, or twice the gross floor area of the building.

(Footnote #8) - An increase in the side and rear yard setbacks is required for homes (structures) that exceed 25' in height. Homes (structures) greater than 25' in height shall be setback from the side and rear property lines an additional one and one-half foot (1-1/2 ') for each one foot (1'), or portion thereof, that the home (structure) exceeds 25' in height.

(Footnote #9) - Structures exceeding a roof coverage area of 7,000 square feet shall be set back from side and rear property lines an additional 20% of the required setback for each 500 square feet, or increment thereof, that the roof coverage area exceeds 7,000 square feet.

Example: The rear setback for a single story 8,200 square foot house in the R-1 district would be calculated as follows:

$$8,200 - 7,000 = 1,200$$

$$1,200/500 = 2.4 \text{ (round to 3 to account for increment of change)}$$

$$3 \times 20\% = 60\%$$

$$60\% \times 20 = 12$$

$$25 + 12 = 37$$

Rear setback will be 37 feet

ARTICLE VIII  
CONDITIONAL USES

Section 800. Purpose

The following conditional uses might not be appropriate without specific standards and requirements to assure that such uses are compatible with the other uses permitted in the designated districts. Such uses may be permitted in a zoning district as conditional uses if the provisions of this and all other articles of this ordinance have been met.

Section 801. Development Plan/Site Plan Requirement.

All applications for conditional use permits shall include a development plan or site plan. The development plan shall contain a map or maps drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

- (1) Existing site conditions, including contours, water courses, identified flood hazard areas, any unique natural or manmade features.
- (2) Boundary lines of the proposed development, proposed lot lines and plot designs.
- (3) Proposed location and use of all existing and proposed structures.
- (4) Location and size of all areas to be conveyed dedicated or reserved as common open space, parks, recreational areas, school sites and similar public or semi-public uses.
- (5) The existing and proposed street system, including location and number of off-street parking spaces, service areas, loading areas, and major points of access to public right-of-way. Notations of proposed ownership of the street system (public or private).
- (6) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an approved Sedimentation and Erosion Control Plan shall also be submitted where required. Provisions for storm water drainage shall be shown.
- (7) Location and/or notation of existing and proposed easements and right-of-ways.
- (8) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences and walls.
- (9) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.
- (10) Where applicable, the following written documentation shall be submitted:

- (a) A legal description of the total site proposed for development, including a statement of present and proposed ownership.
  - (b) The zoning district or districts in which the project is located.
  - (c) A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.
  - (d) A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.
  - (e) Quantitative data for the following: proposed total number and type of residential dwelling units; parcel size; residential densities (dwelling units/acre); and total amount of open space.
  - (f) Plan for maintenance of common areas, recreation areas, open spaces, streets and utilities.
- (11) Any additional information required by the Board of Adjustment in order to evaluate the impact of the proposed development. The Board of Adjustment may waive a particular requirement if in its opinion the inclusion is not essential to a proper decision of the project.

#### Section 802. Conditional Use Standards.

The following standards are applied to specific conditional uses. Before issuing a conditional use permit, the Board of Adjustment shall find that all standards for specific uses listed in these sections as well as all standards or requirements listed in Section 801 and 1005.03 have been met.

##### 802.01 Planned Unit Developments.

- 802.01.1. Purpose. The purpose of this section is to encourage and provide for flexibility and innovation in the design and location of structures and land development, to provide for mixtures of housing types, to provide for the most efficient use of land resources, and to provide an opportunity to develop land areas in a manner different from the standard arrangement of one principal building on one lot. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in each proposed planned unit development project in order to create useful open spaces and preserve natural site features. It is further intended that a planned unit development will be in harmony with the character of the district in which it is located.
- 802.01.2. Planned Unit Development Defined. In this ordinance, a planned unit development means a development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six (6) or more units or any building with a gross floor area of 50,000 square feet or more,

shall be deemed a planned unit development (PUD). Multi-family structures shall have no less than three (3) dwelling units per structure. Residential units within a planned unit development may include single family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units excluding time sharing units, mobile homes, and mobile home parks.

802.01.3. Land Development Standards. The following land development standards shall apply for all planned unit developments. These planned unit developments may be located only in certain specified districts as conditional uses, subject to a finding by the Board of Adjustment that the following conditions be met:

- (1) **Ownership Control.** The land in a planned unit development shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.
- (2) **Land Uses Permitted and Location of PUDs.** The uses permitted within a planned unit development are limited to residential uses, including multi-family residential units, and those land uses normally allowed (as either permitted or conditional) in the zoning district within which the PUD is located. PUDs shall be permitted in the R-3, R-4 and R-5 districts. All PUDs must be compatible with and not violate the intent of the zoning districts.
- (3) **Density Requirements.** The proposed residential density of a planned unit development (dwelling units per acre as shown in Article VII) shall conform to that permitted in the district in which the development is located. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district and must be combined to determine the number of dwelling units allowable in the entire planned unit development.
- (4) **Frontage Requirements.** Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.
- (5) **Minimum Requirements.**
  - (a) The normal minimum lot size, setbacks and frontage requirements are hereby waived for the planned unit development, provided that the spirit and intent of this section are complied with in the total development plan, as determined by the Board of Adjustment. The Board of Adjustment shall exercise ultimate discretion as to whether

the total development plan does comply with the spirit and intent of this section.

- (b) Height limitations: No building or structure shall exceed the height limitations of the district in which it is located, except as approved by the Board of Adjustment.
  - (c) Required distance between buildings: The minimum distance between buildings shall be twenty (20) feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.
  - (d) Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.
- (6) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants and adjacent properties for screening of objectionable views or uses, and for reduction of noise. Multi-level buildings shall be located in such a way as to dissipate any adverse impact on adjoining low rise buildings and shall not invade the privacy of the occupants of such low rise buildings.
- (7) Perimeter Requirements.
- (a) Structures located on the perimeter of the development must be set back from property lines and right-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.
  - (b) Structures other than single-family detached units, located on the perimeter of the development may require buffer strip or screening in a manner which is approved by the Board of Adjustment.
- (8) Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies, and submitted as part of the application.

- (9) Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with Section 1113.
- (10) Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.
- (11) Layout of parking areas, service areas, entrances, exits, yards, courts and landscaping, and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the character of the district and desirable character in any adjoining district.
- (12) Where applicable, conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

#### 802.02 Country, Athletic and Social Clubs.

- (1) Off-street parking shall be sufficient to meet the requirements found in Section 1113.
- (2) The Board of Adjustment may require buffering along the side and rear lot lines that meet the requirements as outlined in Article XIII, Buffers, Screening and Landscaping, Section 1303, Buffer Strip and Screen Requirement. This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.
- (3) The proposed hours of operation shall not be detrimental to the surrounding property due to noise, lights, traffic, etc.
- (4) All developments shall be compatible with surrounding residential uses, therefore, no signs with flashing lights shall be allowed. The design of all proposed signs shall be submitted with the site plan, and all non-flashing illuminated signs shall be so placed so as not to cast light on nearby residential uses.

#### 802.03 Public Utility Stations and Substations.

- (1) Structures shall be enclosed by a woven wire fence at least eight (8) feet high.
- (2) The lot shall be suitably landscaped along the side and rear property lines with vegetation that meets the requirements as outlined in Article XIII, Buffers, Screening and Landscaping, Section 1303,

Buffer Strip and Screen Requirement. This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

- (3) Entrances and exits shall be designated and designed accordingly so as to promote public safety.

802.04 Home Occupation. An occupation providing a service carried on by the occupants of a dwelling provided that:

- 1) The occupation is conducted entirely within the dwelling and not in an accessory building or out of doors.
- 2) The use of the dwelling unit for the home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes.
- 3) There shall be no display, no outside storage, no change in outside appearance of the building or premises, or other visible evidence of the conduct of such home occupations.
- 4) Any need for parking generated by the conduct of such home occupation shall be met off the street and not in the front yard.
- 5) No equipment or process shall be used in such home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses.
- 6) In the case of electrical interference, no equipment or process shall be used which creates a visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in the line voltage off the premises.
- 7) No retail sales shall be conducted as part of the home occupation.

802.05 All Commercial Services, Professional Office Uses, Consumer Services, and Retail Businesses.

- (1) Off-street parking shall be sufficient to meet the requirements found in Section 1113.
- (2) A driveway permit as required by the N.C. Department of Transportation shall be submitted along with the site plan, where applicable.
- (3) Front setbacks along Hendersonville Road shall be considered on a case by case basis by the Board of Adjustment with input from the Zoning Administrator. The Board of Adjustment shall determine the setback upon consideration of the most suitable location for

parking. Required parking shall be provided either at the side, rear or front of the proposed development, based upon on the location of adjacent and/or nearby residential dwellings, topography, existing or proposed screening, or other factors which may include noise or glare. When parking is designated to be at the rear of the proposed building, the front setback shall be determined on a case by case basis by the Board of Adjustment; when parking is designated to be at the front of the proposed building, then the front setback shall be 50 feet.

#### 802.06 Libraries, Schools and Churches.

- (1) Libraries, schools and churches shall provide a buffer that meets the requirements as outlined in Article XIII, Buffers, Screening and Landscaping, Section 1303, Buffer Strip and Screen Requirement.

#### 802.07 Accessory Buildings.

- (1) All accessory buildings shall meet the standards of the State Building Code where applicable.
- (2) All accessory buildings shall be of a design compatible with the principal building on the lot and with the structures in the neighborhood.
- (3) An additional parking space shall be required when an accessory building is permitted for use as a dwelling by a family member.
- (4) Accessory buildings shall comply with the district's setback requirements.

ARTICLE IX  
ADMINISTRATION, ENFORCEMENT, APPEALS

Section 900. The General Process and the Duties of the Zoning Administrator, Board of Adjustment, Planning Commission, Board of Commissioners, and Courts on Matters of Administration.

All questions arising in connection with this ordinance shall be presented first to the Zoning Administrator, who shall be responsible for the day to day administration of this ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this ordinance, consider appeals from decisions of the Zoning Administrator, issue conditional use permits, and grant variances. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. The duties of the Biltmore Forest Board of Commissioners in connection with the ordinance shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as prescribed in this ordinance. The duties of the Board of Commissioners in connection with this ordinance shall be the duty of considering and passing upon the initial ordinance and any proposed amendments or repeal of this ordinance as provided by law. The town Planning Commission shall serve in an advisory capacity to the Board of Commissioners and shall provide recommendations to the Board including recommendations pertaining to zoning amendments and other matters as designated in G.S. 160A-361.

Section 901. Zoning Administrator.

The Town of Biltmore Forest shall appoint a Zoning Administrator. It shall be the duty of the duly appointed Zoning Administrator to administer and enforce the provisions of this ordinance.

901.01 Duties. The Zoning Administrator shall issue certificates of zoning compliance and certificates of occupancy as prescribed herein. The Zoning Administrator shall serve as clerk to the Board of Adjustment, and all applications for variances and conditional use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustment.

If the Zoning Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Zoning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

Section 902. Certificate of Zoning Compliance Required.

No building or other structure shall be erected, moved, added to or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be

made until a certificate of zoning compliance shall have been issued by the Zoning Administrator. No certification of zoning compliance shall be issued except in conformity with the provisions of this ordinance. Upon approval of a conditional use permit or variance by the Board of Adjustment, the Zoning Administrator shall issue a certificate of zoning compliance.

902.01 Applications for Zoning Compliance Certificate. All applications for zoning compliance certificates shall be accompanied by plans in duplicate and drawn to scale showing the actual dimensions of the lot to be built upon, accurate dimensions and the use of the proposed building, the location on the lot of the building or structure proposed to be erected or altered, required screening of residential utility structures as outlined in Section 1309 and such other information as may be necessary to provide for the enforcement of the provisions of this ordinance, including the architectural or building plans of the structure proposed to be erected or altered, and the description of the materials to be used for the exterior siding and roofing materials, and the colors or stains that will be used on the residential or commercial structure. Refer to Article XII Design Review Board, Section 1205 for the complete submittal requirements. Prior to issuance of a certificate of zoning compliance, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

902.02 Zoning Compliance Certificate Fee. All applications for a certificate of zoning compliance shall be accompanied with an application fee based upon construction cost. The fee shall be twelve dollars (\$12.00) for the first two thousand dollars (\$2,000) estimated construction cost, plus two dollars (\$2.00) for each additional one thousand dollars (\$1,000) estimated construction cost.

### Section 903. Requirements Prior to Issuance of a Building Permit.

Upon approval of a certificate of zoning compliance and prior to the issuance of a building permit, where applicable, the applicant shall obtain the following approvals:

- (1) If connection is to be made to the Biltmore Forest water or sewer systems, the applicant shall obtain approval for a tap from the town.
- (2) If individual septic tanks and/or wells are to be used, the applicant shall obtain preliminary approvals from the Buncombe County Health Department.

### Section 904. Building Permit Required.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the Buncombe County Building Inspections Office for the construction or alteration of any building or structure pursuant to the procedures of the Buncombe County Building Inspections Office.

### Section 905. Certificate of Occupancy Required.

A certificate of occupancy issued by the Zoning Administrator is required in advance of:

- (1) occupancy or use of a building hereafter erected, altered or moved.
- (2) change of use of any building or land.

In conjunction with the final building inspection, the Zoning Administrator shall certify that all requirements of this ordinance have been met. The applicant shall call for such certification coincident with the final building inspection or within ten (10) days following completion. A certificate of occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a certificate of zoning compliance and shall be issued within ten (10) days after the erection or structural alterations or change in use of the building, or part, shall have been completed in conformity with the provisions of this ordinance. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this ordinance. If the certificate of occupancy is denied, the Zoning Administrator shall state in writing the reasons for refusal and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the Zoning Administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

#### Section 906. Construction Progress.

If no substantial construction progress has been made within six (6) months of the date of the issuance of the building permit, the building permit becomes invalid.

#### Section 907. Construction Completion.

Following approval of plans for construction of a structure or major remodeling of an existing structure and issuance of a building permit for the construction or remodeling, work on the structure shall be initiated within sixty (60) days of issuance of the building permit. The construction or remodeling shall be substantially complete within two (2) years of the date of issuance of the building permit for the construction. Unless extraordinary and reasonably unforeseeable delaying factors not resulting from the owner's action or inaction can be clearly demonstrated and proven, failure to have the construction or remodeling substantially complete at the end of the two (2) year time period shall subject the property owner to a fine of \$250.00 per day.

#### Section 908 Compliance.

In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this ordinance, the Zoning Administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

#### Section 909. Appeal from the Zoning Administrator.

All questions arising in connection with this ordinance shall be presented first to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only on appeal from a ruling of the Zoning Administrator. Any order, requirement, decision or determination made by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to the procedure found in Section 1006 of this ordinance.

ARTICLE X  
BOARD OF ADJUSTMENT

Section 1000. Establishment of Board of Adjustment.

A Board of Adjustment is hereby established. The Board shall consist of five (5) members appointed by the Biltmore Forest Town Board of Commissioners. The members of the Board of Adjustment who have served as members of the Board of Adjustment under a zoning ordinance which was in effect prior to the adoption of this ordinance shall serve the balance of the term to which said members were appointed. Upon completion of these terms of office, additional appointments shall be made on a staggered term basis with one (1) member appointed for a term of one (1) year; two (2) members appointed for a term of two (2) years; and two (2) members appointed for a term of three (3) years. All additional appointments to the Board shall be for three (3) year terms.

Section 1001. Selection of Alternate Member.

The Board of Commissioners shall also appoint one (1) alternate member to serve on the Board of Adjustment in the absence, for any cause, of any regular member. Such alternate member shall be appointed for a three (3) year term. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. The alternate member shall be subject to the provisions of Section 1002.

Section 1002. Rules of Conduct for Members.

- |         |   |
|---------|---|
| 1002.01 | Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below.   |
| 1002.02 | Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board. |
| 1002.03 | No Board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested.   |
| 1002.04 | No Board member shall vote on any specific matter unless he shall have attended a majority of the hearings on that matter.  |

Section 1003. General Proceedings of the Board of Adjustment.

The Board shall annually elect a chairman and a vice chairman from among its members. The chairman in turn will appoint a secretary, which may be an employee of the town, and such other subordinates as may be authorized by the town Board of Commissioners. The chairman, or in his absence the vice chairman, may administer oaths and request the attendance of witnesses in accordance with G.S. 160A-388. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.

Section 1004. Meetings.

- 1004.01      Board Meetings. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. All Board meetings are to be held in accordance with Article 33B of Chapter 143 of the General Statutes of North Carolina, commonly referred to as the Open Meeting Law.
- 1004.02      Quorum. A quorum shall consist of three (3) members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Zoning Administrator, or an application for a variance or conditional use permit when there are less than four (4) members present.
- 1004.03      Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 1002. The required vote to decide appeals and applications shall be as provided in Section 1006.04(4), and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.

Section 1005. Powers and Duties of the Board of Adjustment.

The powers and duties of the Board of Adjustment shall be as follows:

- 1005.01      Interpretation. To interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this ordinance.
- 1005.02      Administrative Review. To hear and decide appeals from any decision or determination made by the Zoning Administrator in the enforcement of this ordinance as provided in Section 1006 of this ordinance.
- 1005.03      Conditional Uses. Upon application, the Board of Adjustment may grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by this ordinance and set forth as conditional uses under the various use districts. A conditional use permit may be granted by the Board of Adjustment only after making the following findings:
- 1) An application for the conditional use has been submitted as prescribed by this ordinance.
  - 2) 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 the Town of Biltmore Forest Zoning Ordinance 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 of Biltmore Forest 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,
- 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.

In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this ordinance.

- (3) Before any conditional use permit is issued, the Board shall make written findings certifying compliance with the specific rules governing the individual conditional use (Article VIII), and that satisfactory provision and arrangement has been made for at least the following, where applicable:
  - (a) Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control.
  - (b) Provision of off-street parking and loading areas where required, with particular attention to the items in (a) above, and the economic, noise, and odor effects of the conditional use on adjoining properties in the area.
  - (c) Adequate and proper utilities, with reference to locations, availability and compatibility.
  - (d) Buffering, with reference to type, location and dimensions.
  - (e) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.
  - (f) Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size and suitability.
  - (g) Buildings and structures, with reference to location, size and use.
  - (h) Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.
  - (i) Site lighting/exterior lighting. With the exception of Americans with Disabilities Act lighting requirements and street lighting, the design standards as outlined in Section 1122, Site Design and

Building Form and Mass for Commercial Buildings shall apply when exterior lighting is proposed and/or required.

h) A site plan has been submitted as required in Article VIII, Page 16.

- (5) 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 ordinance have been met. The Zoning Administrator shall report his findings to the Board of Adjustment. If at any time after a conditional 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 conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after reapplying for a conditional use permit.

1005.04 Variances. Upon application, the Board of Adjustment may authorize in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- (3) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- (4) The requested variance will be in harmony with the purpose, and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- (5) The special circumstances are not the result of the actions of the applicant.
- (6) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
- (7) The variance is not a request to permit a use of land, building or structure which is not permitted by right or by conditional use in the district involved.

- (8) A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

In granting a variance, the Board of Adjustment shall make findings that the requirements of this section have been met. The Board of Adjustment shall make a finding, and a written notice of the decision shall be prepared as prescribed in Section 1006.04(2). In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article XIV of this ordinance.

### Section 1006. Appeals and Applications.

#### 1006.01 Types of Appeals and Applications.

- (1) Appeals. The Board shall hear and decide all appeals from any decision or determination made by the Zoning Administrator.
- (2) Applications. All applications for variances and conditional use permits shall first be presented to the Zoning Administrator, who in turn shall refer the applications to the Board of Adjustment.

1006.02 Procedure for Filing Appeals and Applications. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or determination by the Zoning Administrator. Both appeals and applications shall be filed with the Zoning Administrator, who shall act as clerk for the Board in receiving this notice. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the Zoning Administrator, the Zoning Administrator shall immediately notify the chairman of the Board that such appeals or applications have been received.

#### 1006.03 Hearings.

- (1) Time. After receipt of notice of an appeal or an application, the Board chairman shall schedule a time for a hearing which shall be within thirty-six (36) days from the filing of such notice of appeal or application. Any additional appeal or application shall be received not less than two weeks prior to a scheduled meeting.
- (2) In any application for projects involving planned unit developments, the Board shall give notice of the hearing in a newspaper having general circulation in Buncombe County five (5)

days prior to the date of the hearing. For all other applications and appeals, the Board shall send by first class mail notices of the hearing to the affected parties and to such other persons as the Zoning Administrator shall direct, at least ten (10) days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.

(3) **Conduct of Hearing**

Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows: (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the argument in support of his appeal or application; (c) persons opposed to granting the appeal or application shall present their argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the chairman or such person as he shall direct shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may place parties and witnesses under oath and the opposing party may cross examine them.

- (4) **Re-hearings.** An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions of the case. The application for rehearing shall be denied by the Board if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that there has been a change, it shall thereupon treat the request in the same manner as any other appeal or application.

1006.04

Decisions.

- (1) **Time.** A decision by the Board shall be made within thirty (30) days from the time of hearing.
- (2) **Form.** Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to other persons who have made written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the secretary and the chairman upon approval of the minutes by the Board. Such record

shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made by the Board. The decision on an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Zoning Administrator. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance. Where a conditional use permit is granted, the record shall indicate, by reference to the appropriate sections of the ordinance, that all requirements and standards for the particular conditional use have been met.

- (3) Expiration of Permits. Unless otherwise specified, any order or decision of the Board in granting a variance or a conditional use permit shall expire if a building permit for such use is not obtained by the applicant within six (6) months from the date of the decision.
- (4) Voting. The concurring vote of four fifths of the members of the Board shall be necessary to reverse any decision or determination of the Zoning Administrator, or to grant a variance or to approve a conditional use permit.
- (5) Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

Section 1007. Appeals from Board of Adjustment.

Appeals from the Board of Adjustment may be taken to the courts pursuant to 160A-388 of the General Statutes.

ARTICLE XI  
GENERAL PROVISIONS

Section 1100. Zoning Affects Every Building and Use.

No building or land shall hereafter be used, and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as provided in this ordinance.

Section 1101. Relationship of Building to Lot.

Every building hereafter erected, moved or structurally altered shall be located on a single lot and in no case shall there be more than one (1) principal building and its customary accessory building on the lot, except in the case of a designed planned unit development.

Section 1102. Lot Frontage.

All lots shall front on a public street. However, garages attached to a residence shall be designed so that the openings into the garage shall not be visible from the public street that the residence fronts, absent an unusual condition or hardship. On those lots that are too narrow to accommodate a garage with openings that do not face the street, or have topographical or other physical conditions that do not permit this, a garage with openings that face the street may be approved if the following standards are met:

- The garage must be set back from the principal facade of the house at least five (5) feet;
- No garage door shall be more than ten (10) feet wide. If multiple garage doors are used, there must be a separation of at least eighteen (18) inches between the garage doors.

The same restrictions shall apply to detached garages.

Section 1103. Required Yards and Other Spaces.

No part of a yard or open space, or off-street parking or loading space required in Sections 1113 and 1114, or required in connection with any building for the purpose of complying with this ordinance, shall be included as a part of a yard, open space, or off-street parking or loading space similarly required for any other building.

Section 1104. Accessory Structures and Accessory Buildings.

Accessory structures and/or accessory 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. Accessory structures are defined in this Ordinance and include, but are not limited to, statues, fountains, water features, play sets, playhouses, fences and decorative walls. 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 (1).

- b) The maximum roof coverage area for accessory buildings shall be 750 square feet.
- c) The maximum height for accessory buildings shall be twenty-five (25) feet.
- d) The accessory building must be screened by vegetation or other buffer as set forth in Article 8 of this ordinance.
- 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 Section 1118 and Section 1123 of this ordinance.

1104.01        Satellite Television Dishes. Satellite television dishes shall be considered as "accessory structures," as defined herein. Such dishes shall not have a diameter in excess of ten (10) feet nor shall they extend more than fifteen (15) feet above the ground from the base of the structure. All components thereof shall be located on the owner's property in such position that they will be as nearly as possible obscured from the view of neighboring residences, and those using public roads. Screening or disguising by the use of landscaping, evergreens or other suitable means shall be employed where necessary to obscure the satellite dishes.

1104.02        Satellite Dishes Less Than 24" in Diameter  
For all satellite dishes less than 24" 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.

#### Section 1105. Home Occupations.

Standards pertaining to home occupations are contained within the conditional use standards, specifically Section 802.04.

#### Section 1106. Visibility at Intersections.

Sight distances at intersections must meet the standards for secondary roads established by the North Carolina Department of Transportation. On corner lots, no planting, structure, sign, fence, wall or other obstruction shall be erected so as to interfere with said sight distance.

#### Section 1107. Vacant Structures and Lots.

Vacant structures, lots, and open spaces shall be maintained consistent with the surrounding neighborhood. All structures shall remain structurally sound. Vegetation shall be neatly trimmed, and the accumulation of unsightly debris shall be prohibited.

Section 1108. Signs in Residential Districts R-1, R-2, R-3, R-4 and R-5.

A small sign showing the name of the owner or occupant or the street number of a lot shall be permitted on any lot. One real estate sign per lot not exceeding six (6) square feet shall be permitted for advertising the sale of property. The design or layout of signs proposed for any conditional use shall be presented along with the development plan as specified in Section 801.

Section 1109. Land Disturbance and Sedimentation Control.

Any land disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of twenty percent (20%) or more of the land area of any lot shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval prior to commencing such activity in a public service district, any land disturbing activity such as grading projects or removal of natural vegetation other than routine maintenance shall be subject to approval by the Biltmore Forest Board of Adjustment regardless of the area to be disturbed. The intent of this requirement is to insure that these areas are to be maintained as natural open space areas, and that any disturbance such as the building of roads, public utilities, and other such activities be designed and constructed so as to maintain the natural scenic character of these districts. A landscape plan shall be submitted and approved by the Board of Adjustment prior to any land disturbing activity.

Where applicable, all proposed development projects or land disturbing activities shall comply with G.S. 113A-54, and Rules and Regulations for Erosion and Sediment Control as established by the North Carolina Sedimentation Control Commission, North Carolina Department of Natural Resources and Community Development.

Section 1110. Buffer Strip Required.

From the time of the adoption of this ordinance, all conditional use development projects in the R-4 district that abut a residential lot or the other residential districts, shall provide a buffer strip that meets the requirements as outlined in Article XIII, Buffers, Screening and Landscaping, Section 1303, Buffer Strip and Screen Requirement.

Section 1111. Nonconforming Land, Uses or Structures.

Any parcel of land, use of land, building or structure existing at the time of the adoption of this ordinance, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located, may be continued and maintained subject to the following provisions:

- 1111.01        Nonconforming Vacant Lots. This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the Register of Deeds office of Buncombe County, which at the time of adoption of this ordinance or any amendment thereto fail to comply with the minimum area and width requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located provided that:

- (1) Where the lot area is not more than twenty (20) percent below the minimum specified in this ordinance, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning compliance permit.
- (2) Where the lot area is more than twenty (20) percent below the minimum specified in this ordinance or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

1111.02 Nonconforming Occupied Lots. This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this ordinance or any amendment thereto, that fail to comply with the minimum requirements for area, width, yard and setbacks for the district in which they are located. These lots may continue to be used.

1111.03 Nonconforming Uses or Structures. This category of nonconformance consists of buildings or structures used at the time of enactment of this ordinance or any amendment thereto for purposes of use not permitted in the district in which they are located, or structures on conforming lots which do not comply with the dimensional requirements of this ordinance such as size and height restrictions. Such uses except as provided in Section 1111.05 may be continued as follows:

- (1) An existing nonconforming use may be changed to another nonconforming use of the same or higher use, provided that the other conditions in this section are complied with. For the purpose of this ordinance, the rank order of uses from higher to lower shall be: 1) residential, 2) public, and 3) commercial services.
- (2) When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
- (3) A nonconforming use may not be extended or enlarged, nor shall a nonconforming structure be altered except as follows:
  - (a) Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.
  - (b) Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible.
  - (c) At the time of adoption of this ordinance, if an expansion of a nonconforming use is in progress, that is, if at least a building permit for the expansion has been issued, then such expansion may be completed as specified in the building permit.
- (4) When any nonconforming use of a building or structure is discontinued for a period in excess of sixty (60) days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

1111.04 Reconstruction of Damaged Buildings or Structures. Any nonconforming use of a structure or nonconforming structure which has been damaged by

fire, wind, flood or other causes, may be repaired and used as before provided:

- (1) Repairs are initiated within twelve (12) months and completed within two (2) years of such damage.
- (2) The total amount of space devoted to a nonconforming use may not be increased.
- (3) Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

1111.05 Non-conforming Home Occupation. Any property owner whose home occupation was made non-conforming by the ordinance amendment adopted on July 9, 2002 shall have until July 8, 2005 to conform to the current terms of the ordinance.

Section 1112. Accessory Structures or Buildings Utilized as Dwellings.

Upon adoption of this ordinance, accessory buildings used as dwelling units and occupied by a "family" (see definition) member shall be a conforming use. Such units occupied by a non-family member shall be nonconforming uses. The definitions and provisions of this ordinance provide for this situation. Therefore, the following shall apply:

- (1) An existing accessory structure occupied at the time of adoption of this ordinance by a non-family member can continue to be used for such purpose. If the unit occupied by a non-family member becomes vacant for more than 60 days (Section 1111.03(4), page 40) then such unit could only be reoccupied by a "family" member.
- (2) New accessory structures intended for use as dwellings shall only be occupied by a "family" member.

Section 1113. Off-street Parking.

Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established in all districts. The number of parking spaces provided shall be at least as great as the number specified below for various uses. When application of said provision results in a fractional space requirement, the next larger requirement shall prevail. Each lot abutting a major thoroughfare shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street. A parking space shall consist of an area not less than ten (10) feet by twenty (20) feet, plus the necessary access space unless otherwise authorized by the Board of Adjustment.

1113.01 Minimum Parking Requirements. The required number of off-street parking spaces specified below for each use shall be provided.

| <u>Residential Uses</u>                             | <u>Required Parking</u>               |
|---|---------------------------------------|
| Residential dwellings, single-family                | Two (2) spaces for each dwelling unit |
| Residential dwellings in a residential planned unit | One and one-half (1-1/2) spaces for   |

Development each dwelling unit

Public and Semipublic Uses

Required Parking

Churches

One (1) space for each four (4) seats in the principal assembly room.

Recreational facilities

Two (2) spaces for every tennis, squash or racquetball court; health exercise facility--one (1) space per 50 square feet; golf or country clubs--two (2) spaces per tee. Places of recreation and assembly shall have one (1) space for each 200 square feet of gross floor space.

Schools, Public/Private

One (1) space for each classroom and administrative office, plus one (1) space for each twenty (20) seats or one (1) space for each 400 square feet of area used for public assembly.

Public buildings  
space.

One (1) space for each 200 square feet of gross floor

Business Uses

Required Parking

Doctors' and dentists' offices

Five (5) spaces per doctor or dentist

Professional and business offices  
gross floor

One (1) space for each 300 offices square feet of

Commercial services, retail  
space

One (1) space for each 200 square feet of gross floor

Business, And Consumer Services Of All Kinds

Day nursery and private  
space for each  
Kindergartens

One (1) space for each staff member plus one (1)  
five (5) students

Clubs and lodges

One (1) space for each three (3) members

Business and special schools

One (1) space for each three (3) students.

Section 1113.02 – “On-Site” Parking of Vehicles

All motorized vehicles (including, but not limited to, cars, trucks, motorcycles, mopeds/scooters, golf carts) must be parked entirely upon a prepared driveway/parking surface (asphalt/pavement, concrete, pavers, gravel, pebbles) located on the lot or tract, or located on any adjoining lots or tracts, of the principal residence or structure. Parking on grassed areas, dirt/soil areas, mulched areas, landscaped areas or any other natural areas of

a lot or tract is expressly prohibited. This provision is applicable to all zoning districts within the Town.

Excepted from the requirements of this section is the temporary parking (less than 5 hours in duration) of vehicles operated by persons who are visiting the owners or occupiers of the residence.

Nothing herein shall be deemed to modify or impact, in any way, the requirements found under Section 1311. Recreational and Commercial Vehicle Storage of the Town of Biltmore Forest Zoning Ordinance.

#### Section 1114. Off-street Loading and Unloading Space.

Every lot, on which a business is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street. For the purpose of this section, an off-street loading space shall have the minimum dimensions of twelve (12) feet by forty (40) feet, and an overhead clearance of fourteen (14) feet in height. All businesses shall have at least one such space.

#### Section 1115. No Subdivision of Platted and Recorded Lots.

It is the express intention and purpose of this ordinance to preserve the town as primarily a low density residential area. To this end, subject to Section 1117, the number of lots within the town shall be limited to those lots as shown on plats recorded in the Buncombe County Register of Deeds. Therefore, upon adoption of this ordinance, all lots in the Town of Biltmore Forest that have been previously platted and recorded with the Buncombe County Register of Deeds shall be deemed and established as individual lots, and shall remain individual lots, and shall not be subdivided. If an owner has acquired contiguous or adjoining lots, and the terminology of the deeds or other instruments of conveyance expresses intent that said lots shall be joined together as one residential lot, said lots shall thereafter be considered as one residential lot and shall not be subdivided into individual lots. If an owner of contiguous or adjoining lots develops said lots together, locating a residence on such lot or lots, and has landscaped the same or located other improvements, structures, or amenities on the lots so that from the standpoint of utility or appearance said lots seem to constitute one residential site, then said property shall not thereafter be subdivided, nor revert back to individual, separate lots. Nothing herein shall preclude property owners from subdividing unimproved previously platted and recorded lots, so as to enlarge existing residential lots or building sites. This subdivided lot shall not thereafter be reestablished as a separate residential lot.

#### Section 1116. Minimum Dwelling Unit Size.

Each dwelling unit hereafter erected on any lot shall contain the following specified minimum "living area" floor space. Basement areas shall not be counted as a story, and floor space contained in basement areas shall not be included in the minimum required living area floor space.

- (1) Dwelling units consisting of a single or one primary story with "living area" as defined in this ordinance shall contain a minimum of 2,250 square feet of "living area."

- (2) Dwelling units consisting of two or more primary stories with "living area" as defined in this ordinance shall contain a minimum of 1,500 square feet of "living area" on the first story, and a minimum of 750 square feet of "living area" on the second story.

Section 1117. Subdivision of Tracts of Land.

An owner of a tract of land which has not been subdivided and platted into residential lots, but desiring such subdivision and platting, shall prepare a plat and submit same for approval to the Planning Commission. Provision shall be made for all utilities and access necessary to properly service said subdivision, subject to the provisions of the Biltmore Forest Subdivision Regulations. All other requirements of this zoning ordinance shall likewise be applicable to said subdivision, before said owner shall be allowed to subdivide the tract of land.

Section 1118. Maximum Roof Coverage

The maximum roof coverage is defined as the total area(s) under roof of all structures (including detached garages and other accessory structures) on the lot. The maximum roof coverage standard assures that the size of structures is proportional to the lot size. The standards for the maximum roof coverage permitted are as follows:

| <b>Lot Size</b> | <b>Max Roof Coverage</b> |
|-----------------|--------------------------|
| Up to .5 acre   | 2874 square feet         |
| Up to .75 acre  | 3520 square feet         |
| Up to 1.0 acre  | 4682 square feet         |
| Up to 1.2 acre  | 5060 square feet         |
| Up to 1.5 acre  | 5500 square feet         |
| Up to 2.0 acres | 6100 square feet         |
| Up to 2.5 acres | 6700 square feet         |
| Up to 3.0 acres | 7500 square feet         |
| Up to 3.5 acres | 8200 square feet         |
| Up to 4.0 acres | 8700 square feet         |
| Up to 4.5 acres | 8900 square feet         |
| Up to 5.0 acres | 9100 square feet         |
| Up to 5.5 acres | 9300 square feet         |
| Up to 6.0 acres | 9647 square feet         |

Lots exceeding 6 acres in size: Multiply the lot size by 43,560; multiply this number by 3.25% (.0325). Provided that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet. If the result is greater than 9,647, structures on the lot may have maximum roof coverage equal to the result produced by the multiplication.

All structures exceeding the maximum roof coverage for the lot on which they are located shall require approval of a variance by the Board of Adjustment in accordance with the procedures and standards set forth in Section 1005.04 of this chapter.

Section 1119. Material and Color Requirements for Residential Dwelling Units.

The Town of Biltmore Forest is a unique community which is dependent on historic continuity with its past. It is within the public interest and general welfare of the Town of Biltmore Forest to regulate the exterior appearance of residential structures, including the exterior materials and color used in constructing and reconstructing and painting buildings. Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

1. Materials. The intent of these provisions is to promote the exterior building materials which will blend with the majority of the existing residential structures and natural features of the town. As required in Section 902.01, the application for the zoning compliance certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

(a) Siding:

- 1) Permitted exterior siding materials: painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum or heavy gauge vinyl to resemble clapboards, pre-cast concrete panels, fiber cement siding, cultured/cast stone, or as approved by the Design Review Board.
- 2) Prohibited exterior siding materials: exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted concrete, paper or wood composition board, permastone or faux stone masonry, plywood (unless board and batten), asphalt shingles, ceramic tile (glazed wall tile, ceramic mosaic tile, natural clay tile, etc.), sheet glass or glass block (not to include glass used for windows, sunrooms or conservatories), glazed brick.

(b) Roofing visible from adjacent property:

- 1) Permitted roofing materials: asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners, or as approved by the Design Review Board.
- 2) Prohibited roofing materials: tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction).

2. Color. The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.

- (1) Permitted exterior colors: natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains, or other colors which conform to the intent expressed in 2 above. Dwellings which are painted in colors that are considered to be nonconforming at the time of the adoption of this ordinance may not be repainted the same color.
- (2) Prohibited exterior colors: “day-glow” or “fluorescent.”

Section 1120. Site Design and Building Form and Mass for Residential Dwelling Units

The Town of Biltmore Forest is a unique community and it is within the public interest and general welfare of the Town to regulate the site design and building form and mass encompassing all residential structures. Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features including drives, walks, patios, freestanding walls, fencing and plantings. Of particular concern is preservation of the streetscape - signs, lighting, trees and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the residential structures.

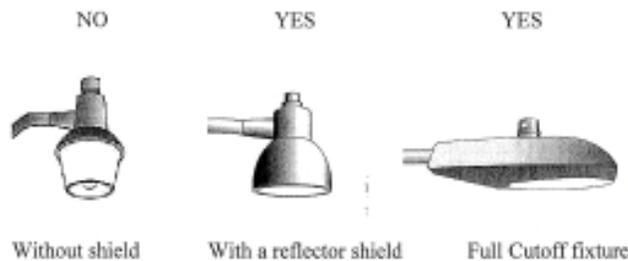
1. Site Materials and Features. The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, i.e. native flora and curvilinear roadways.

a) Built or planted landscape elements:

- 1) Permitted: all native flora and materials, i.e. trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units.
- 2) Prohibited: abrupt physical configurations i.e. site revisions causing excessive tree removal, land slope revisions greater than natural repose.

(b) Site lighting:

- 1. Permitted: low intensity security or decorative lighting, up to two (2) street lamps in front yards not to exceed eight-feet in height and located a minimum of ten (10) feet from the edge of the road.
- 2. Prohibited: high intensity flood or spot lighting either of the buildings or landscape features, neon. No flickering or flashing lights and all lighting shall be shielded such that light is not directed toward adjacent residential properties. Examples of shielding should be as follows:



2. Building Forms and Mass. The intent of these provisions is to encourage exterior building forms which blend with the majority of existing residential structures and natural features of the Town.

(a) Roof form:

- 1) Permitted: gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, and arch.
- 2) Prohibited: trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

Section 1121. Material and Color Requirements for Commercial Buildings.

The Town of Biltmore Forest is a unique community which is dependent on historic continuity with its past. It is within the public interest and general welfare of the Town of Biltmore Forest to regulate the exterior appearance of commercial structures, including the exterior materials and color used in constructing and reconstructing and painting buildings. Regulation of exterior materials and colors of these structures will provide protection of the aesthetic and historic character and preserve the economic stability of the town.

1. Materials. The intent of these provisions is to promote the use of exterior building materials which will blend with the existing commercial structures and natural features of the town. As required in Section 902.01, the application for the Zoning Compliance Certificate shall be accompanied by the description of the materials to be used for the exterior siding and roofing materials.

(a) Siding:

- 1) Permitted exterior materials: painted or stained wood shingles or clapboards, stone and/or brick masonry, stucco, exterior insulation and finish system (EIFS), pre-painted aluminum or heavy gauge vinyl to resemble clapboards, precast concrete panels or siding, cultured/cast stone, or as approved by the Design Review Board.
- 2) Prohibited exterior materials: exposed or painted concrete masonry units, light gauge vinyl siding, unpainted aluminum siding, exposed or painted cast-in-place concrete, paper or wood composition board, permastone or faux stone masonry, plywood, (unless board and batten), asphalt shingles, ceramic tile, (glazed wall tile, ceramic mosaic tile, natural clay tile, etc.), glazed brick, unpainted or pre-painted ferrous or aluminum metal siding.

(b) Roofing visible from on-site location or adjacent property:

- 1) Permitted roofing materials: asphalt/fiberglass shingles, cedar shakes or shingles, clay or concrete tile, slate, copper, factory painted metal shingles or standing seam with concealed fasteners or roofing as approved by the Design Review Board.

- 2) Prohibited roofing materials: tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel, solar panels (unless integrated into new construction). Note that for commercial buildings, flat roofs not visible from residential dwellings may use the above-mentioned roofing materials.
2. Color. The intent of these provisions is to promote colors which blend with the existing structures and preserve the existing visual environment. It is further the intent of these regulations to prevent exterior paints or stains which are distracting and present inappropriate color contrast to the surrounding natural and built environment.
- a) Permitted exterior colors: natural and weathered stone and wood, earth tones (subdued colors and stains), including bleached tones and stains or other colors which conform to the intent expressed in 2 above.
- b) Prohibited exterior colors: “day-glow” or “fluorescent.”
3. Mechanical/Electrical Equipment.
- a) All electric service equipment and sub-panels and all mechanical equipment, including but not limited to: air-conditioning, pool equipment, fans and vents, utility transformers (except those owned and maintained by public utility companies) and solar panels, shall be painted to match the surrounding wall or roof color or painted or screened to blend with the surrounding natural terrain. Roof-mounted equipment and vents shall be painted to match the roof and/or adjacent wall color and shall be screened or integrated into the design of the structure.
- b) Roof-mounted equipment, including ventilators and satellite dishes, shall be completely screened from view (100 percent opacity) or isolated so as not to be visible from any public right-of-way or residential zoning district. Roof screens when used shall be coordinated with the building to maintain a unified appearance.
- c) All electrical and mechanical equipment located at ground level shall be screened from view (100 percent opacity) or isolated so as not to be visible from the right-of-way of an arterial street or residential zoning district. Such screens and enclosures, when used, shall be coordinated with the buildings to maintain a unified appearance. Acoustical buffering is required for all emergency generators to reduce the noise level as audible from the nearest residential dwelling to that of the standard commercial air conditioning compressor.

### Section 1122. Site Design and Building Form and Mass for Commercial Buildings.

The Town of Biltmore Forest is a unique community and it is within the public interest and general welfare of the Town to regulate the site design and building form and mass encompassing all commercial structures. Site design shall include grading, surface water drainage, preservation and restoration of existing flora, all landscape features including drives,

walks, patios, freestanding walls, fencing and plantings. Of particular concern is preservation of the streetscape - signs, lighting, trees and bushes alongside the public thoroughfare. Form and mass shall refer to size and shape of the commercial structures.

1. Site Materials and Features. The intent of these provisions is to encourage site materials and features which blend with the existing visual environment, i.e. native flora and curvilinear roadways.

(a) Built or planted landscape elements:

- 1) Permitted: all native flora and materials, i.e. trees, bushes, flowers, stone, asphalt or concrete pavement, concrete or brick masonry paving units. Refer to the Tree Ordinance for tree removal regulations.
- 2) Prohibited: Final grades that result in slopes greater than 1:1; retaining walls that exceed 7 feet in height for property zoned (R-4) and exceed 12 feet in height for property zoned (R-5).

(b) Site Lighting/Exterior Lighting:

- 1) With the exception of Americans with Disabilities Act lighting requirements and street lighting, the following design standards shall apply when exterior lighting is proposed and/or required:
  - a) Shielding. Exterior lighting shall be shielded and directed downward so that the light source (the actual bulb) is not visible from beyond the property line on which the structure is located. Exterior lighting shall not project above the horizontal plane of the building.
  - b) Color. Warm lighting colors are required. The blue-white colors of florescent and mercury vapor lamps are prohibited. Lamps emitting a color temperature in excess of 5,000 degrees Kelvin are prohibited.
  - c) Parking Area Lighting. In parking lots, a foot candle as approved by the Town's lighting consultant at the perimeter, and between light sources, and a maximum of 5.0 foot candles under light fixtures as required.
  - d) The height of light fixtures shall be in proportion to the building mass and no more than 14 feet high. When all businesses are closed, only a minimum of security lighting shall be maintained. Shielded spotlights may be used when highlighting trees, artwork or other special landscape features. Lighting fixtures affixed to structures for the purposes of lighting parking areas shall be prohibited.
  - e) Advertising. The operation of searchlights or similar sources for advertising, display or any other commercial purpose is prohibited.

2. Building Forms and Mass: The intent of these provisions is to encourage exterior building forms which blend with the majority of existing commercial structures and natural features of the Town.

(a) Roof Form:

- 1) Permitted: gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, arch, and flat.
- 2) Prohibited: trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

Section 1123. Impervious Surface Coverage.

A maximum percentage of a residential lot that can be devoted to impervious surfaces, as defined in Section 401 of this ordinance, is established to assure that the character of the town is preserved and to control stormwater and runoff being directed to streets and adjacent properties. The percentage of residential lots that can be devoted to impervious surfaces shall be as set forth below:

| Lot Size                  | Impervious Surface                 | Sample calculations 43,560 sq ft =1-acre   |
|---------------------------|------------------------------------|--|
| Up to 1.0 acre            | 27.5% x lot area                   | Eg. 0.85 –acre x 43,560 x 27.5%= 10,182 sq. ft.  |
| Over 1-acre to 3.0-acres  | 11,979 sq. ft<br>or 25% x lot area | 11,979 sq. ft. (The maximum from the previous grade)<br>or the product of the lot size calculation.<br>Eg. 1.75-acre x 43,560 x 25% = 19,058 sq. ft. |
| Over 3-acres to 6.0 acres | 32,670 sq. ft<br>or 20% x lot area | 32,670 sq. ft. (The maximum from the previous grade) or<br>the product of the lot size calculation.<br>Eg. 4.5-acres x 43,560 x 20% = 39,204 sq.     |

Lots on which new construction and/or development activity would cause the amount of impervious surface on the lot to exceed the percentages set forth above shall proceed with the proposed construction and/or development activity only if a variance for the increased impervious surface coverage is granted by the Board of Adjustment in accordance with the procedures set forth in Section 1005.04 of this ordinance.

The Board of Adjustment reserves the right to limit impervious surface coverage to prevent the unreasonable diversion of stormwater or surface water onto another property or properties or to the Town streets.

## ARTICLE XII DESIGN REVIEW BOARD

### Section 1200. Purpose and Intent.

The Town Board of Commissioners finds that new development has a substantial impact on the character of the area in which it is located. Some harmful effects of one land use upon another can be prevented through zoning, subdivision controls, and building codes. Other aspects of development are more subtle. Among these are the general form of the land before and after development and the spatial relationships of the structures and open spaces as they contribute to an area as it is being developed. Such matters require the timely exercise of judgment in the public interest by people qualified to evaluate the design of new development.

The design review process is intended to encourage residential and commercial developments which exemplify the best professional design practices and to promote the historic character of Biltmore Forest. The procedure is established to encourage individual identity for specific uses and structures; to enhance property values in the Town and adjoining neighborhoods; to respect each individual site and its environmental qualities; and to minimize visual disharmony resulting from unrelated and poorly designed development.

The purpose of this Article is to establish minimum standards for the exterior design of commercial, office and residential structures and to ensure high quality of development, redevelopment and compatibility with evolving architecture or planning themes that contribute to a community image of quality, visual aesthetics, permanence and stability which are in the best interest of the citizens of the Town. These standards are intended to prevent use of materials that are unsightly, rapidly deteriorate, contribute to depreciation of area property values, or cause urban blight.

These standards are further intended to ensure coordinated design of building exteriors, additions and accessory structures' exteriors in order to prevent visual disharmony; minimize adverse impacts on adjacent properties from buildings which are or may become unsightly, and buildings that detract from the character and appearance of the area. It is not the intent of this Article to unduly restrict design freedom when reviewing and approving project architecture in relationship to the proposed land use, site characteristics and interior building layout.

### Section 1201. Composition of Design Review Board and Meeting Procedure.

The Town Board of Commissioners hereby establishes a Design Review Board.

The Town Board of Commissioners shall appoint five resident members. A minimum of two members shall come from the disciplines of architecture, landscape architecture, landscape contractor, licensed general contractor or like disciplines.

Members of the Design Review Board shall serve for terms of three years, and may be reappointed. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

The Board shall meet when it has business to discuss, and otherwise has no set meeting schedule.

The Board of Commissioners shall also appoint one (1) alternate member to serve on the Design Review Board in the absence, for any cause, of any regular member. Such alternate member, while attending any regular and or special meeting of the Board and serving in the absence of any regular member shall have and exercise all powers and duties of such regular member so absent.

#### Section 1202. Development Subject to Design Review

The following types of development shall be subject to review by the Design Review Board:

- (1) all new commercial buildings and new accessory and/or appurtenant buildings;
- (2) all exterior expansions, additions, alterations and modifications of existing commercial buildings and their accessory and/or appurtenant buildings;
- (3) all new single- and multi-family dwellings and new accessory and/or appurtenant buildings;
- (4) all exterior additions, alterations and modifications to existing single- or multi-family dwellings and accessory and/or appurtenant buildings;
- (5) all new accessory and appurtenant buildings on the premises of existing dwellings;
- (6) driveway redesign or realignment for new and existing residential and commercial buildings;
- (7) any mechanical equipment when it is installed as part of a new commercial building.

#### Section 1203. Application Required to be Filed.

The property owner or authorized agent shall supply all required information and fill out an application form available in the Town Hall. Completed applications shall be considered by the Design Review Board within 30 days and sooner if possible. Applications shall be submitted at least two weeks prior to the meeting in order to give the Board members adequate time for study.

#### Section 1204. Duties and Powers of the Design Review Board.

The Design Review Board shall review all applications for the following elements: harmony of proposed building with adjacent buildings and overall Town historic character, site design, building form and mass, building materials, and color as set forth in Sections 1119 through 1122.

The Design Review Board has the authority to review plans and recommend redesign of a building or driveway. The Board's comments on an application are intended to assist property owners and developers in building structures that are in harmony with the Town's aesthetic and

historic character, which will lead to increased property values and aesthetically pleasing structures and environments.

Review shall take into account compliance with other Town ordinances that effect design, such as the Zoning Ordinance and Tree Ordinance.

Section 1205. Submittal Requirements.

The applicant shall submit the following information for all residential structures:

- (1) site plan, floor plans, and exterior elevations, including type and color of all exterior building materials, awnings, exterior lighting, and fencing.

In addition to number (1) above, applicants for commercial structures shall submit the following information:

1. Elevations and dimensions of all sides of existing and proposed buildings, including roof mechanical equipment, vents, chimneys, or other projecting items above the roof line.
2. Elevations and dimensions of all existing or proposed solid waste and recycling containment areas.
3. Type and color of all mechanical screening material, metal flashing and the like.
4. In order to aid in evaluating the exterior design, the applicant shall submit schematic floor plans showing, if applicable, window locations, doors, loading docks, projected interior layouts, seating, bar areas, waiting areas, vestibules, storage areas, food preparation areas, interior trash or recycling space and the like.
5. The height, location and screening materials for heating, air conditioning and ventilating and electrical equipment.
6. Colored exterior building elevations, exterior building and finish material samples and color pallets.
7. Other information as required.

ARTICLE XIII  
BUFFERS, SCREENING, AND LANDSCAPING

Section 1300. Purpose and Intent.

The Town of Biltmore Forest has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits. The landscape and buffering standards set forth below require buffers and landscaping between dissimilar land uses, along public rights-of-way, and within parking lots, in order to:

- (1) encourage the preservation of existing trees and vegetation and replenish removed vegetation;
- (2) protect and improve the visual quality of the Town of Biltmore Forest and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities and mechanical systems and buildings;
- (3) provide environmental benefits such as climate modification, decreased energy consumption, reduced storm water runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;
- (4) provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy;
- (5) improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of Biltmore Forest while allowing flexibility to promote well-designed and creative landscape plantings.

Section 1301. General Information.

- (1) Applicability:

Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments within the Town limits. The following developments shall bring the entire site into full compliance with this Section:

1. new non-residential development, including conditional uses;
2. renovations with a total cost exceeding fifty (50) percent of the assessed value of the building, excluding single-family dwellings, according to Buncombe County tax records;

The following development is not required to bring the entire site into full compliance with this Section; only the new construction is required to comply:

1. new parking spaces and lots.

- (1) Landscape and Grading Plan Required. Applicants are advised to meet with Town staff in order to review all ordinance requirements and procedures and receive a copy of the plan checklists. As required in Section 1109 of the Zoning Ordinance, a landscape and grading plan shall be reviewed and approved by the Board of Adjustment prior to any grading.
- (2) Alternative Compliance. The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Board of Adjustment, in consultation with the Design Review Board, may alter the requirements of this section as long as the existing or added landscape features of the development site comply with the intent of this ordinance. Requests for alternative compliance shall be accepted if one or more of the following conditions are met:
  - (a) topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements; or
  - (b) space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood; or
  - (c) an alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of the ordinance, and exhibits superior design quality.

The property owner must submit a plan of the area for which alternative compliance is requested to the Town Administrator fourteen days prior to the meeting of the Design Review Board at which the request will be considered. The site plan shall show existing site features and any additional material the property owner will plant or construct to meet the intent of the buffer, street tree, and parking lot tree requirements. In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. The Design Review Board shall make a recommendation of approval, approval with conditions, or denial within ten working days of reviewing the request for alternative compliance. The Design Review Board's recommendation shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

#### Section 1302. Existing Vegetation.

Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, and mitigate the impacts of development on the community. It is recommended that groups of trees be preserved, as well as individual trees. Existing trees and shrubs designated for preservation may be credited towards required buffer trees, street trees, and parking lot trees.

As required in Chapter 19, Section 3 of the Code of Ordinances of Biltmore Forest, no person shall remove or in any way damage any protected trees without first filing an application for said removal and receiving a permit from the Town Administrator. Special attention shall be given to protected trees located within 20 feet of the rear or side property line of property meeting the definition of an incompatible land use.

(1) Credits and Other Incentives to Preserve Vegetation:

a. Vegetation located in the buffer strip.

Trees designated for preservation that are located in the buffer strip may be considered for credits toward the buffer requirement on a case by case basis by the Board of Adjustment based on the location, species and caliper. One existing evergreen shrub over four feet high located in the buffer strip may be credited for two new shrubs, also on a case by case basis by the Board of Adjustment.

b. Vegetation located elsewhere on the property.

Trees designated for preservation may be credited at the rate of:

|                                  |                                  |
|----------------------------------|----------------------------------|
| 2" - 6" caliper tree = 1 tree    | 19" - 24" caliper tree = 4 trees |
| 7" - 12" caliper tree = 2 trees  | 25" and greater = 5 trees        |
| 13" - 18" caliper tree = 3 trees |                                  |

One existing shrub over four feet high may be credited for two new shrubs.

In order to receive credit, vegetation designated for preservation shall be in good health and condition. Trees and shrubs designated to be preserved shall be indicated on the landscape and grading plan, as well as all protective barriers. If a tree or shrub designated for preservation dies within five years of the project's completion, it must be replaced with the total number of trees or shrubs which were credited to the existing tree or shrub.

(2) Protection of Existing Trees and Shrubs During Construction.

- a) No grading or other land-disturbing activity shall occur on a site with existing trees or shrubs which are designated to be preserved in order to meet the landscaping requirements until the landscape and grading plan has been approved by the Board of Adjustment and protective barriers are installed by the developer and approved by the Zoning Administrator. Trees designated for preservation which are counted toward the landscape and buffering requirements shall be protected by barriers, while trees designated for preservation which do not count toward the landscape and buffering requirements are encouraged to be protected by barriers. The diameter of the trees designated for preservation and the location of protective barriers shall be shown on the landscape and grading and site plans with the dimensions between the tree trunk and barrier indicated.

Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within fifty (50) feet of any grading or construction activity. Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub. All protective barriers shall be maintained throughout the building construction process.

- (b) All contractors shall be made aware of the areas designated for protection. No disturbance shall occur within the protective barriers including:
1. grading;
  2. filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or North Carolina Cooperative Extension Specialist is installed to protect the tree from suffocation;
  3. temporary or permanent parking;
  4. storage of debris or materials, including topsoil;
  5. disposal of hazardous wastes or concrete washout; and
  6. attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or North Carolina Cooperative Extension Specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

The developer shall coordinate with the utility companies early in the design process to resolve potential conflicts about the placement of utilities and buffer and screening requirements in section 1303.05. The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two (2) feet directly below the tree roots to minimize root damage.

If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the drip line area.

- c) Tree Protection Zone Signs: Tree Protection Zone signs shall be installed on the tree protection barriers visible on all sides of the protection area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language:

“TREE PROTECTION ZONE, KEEP OUT” or “TREE SAVE AREA, KEEP OUT”

#### Section 1303. Buffer Strip and Screen Requirement.

Certain land uses are defined in this ordinance as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use

between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

- 1303.01      Use of Buffer Strips. Required buffers shall not be disturbed for any reason except for approved driveway openings and other passive or accessory uses compatible with the general separation of land uses and provided that the total number of required plantings are still met. Approval from the Town Administrator is required prior to initiating any disturbance of the buffer.
- 1303.02      Placement of Buffer Plantings. The exact placement of the required plants shall be the decision of the developer or designer, but shall be reviewed by the Town Administrator and approved by the Board of Adjustment. Plants shall be placed in a manner to serve as an effective screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five (5) feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.
- 1303.03      Composition of Buffer Plantings. A buffer consisting of two staggered rows of evergreen shrubs or sheared evergreen trees, planted 48 inches apart (as measured from the central stem) in a 20 feet wide strip shall be installed to screen the non-residential use from neighboring residential properties. The trees or shrubs shall be between four and five feet high at time of planting. During times of extended dry weather, the applicant may petition the Board of Adjustment to reduce the required size of vegetation to be planted in order to better ensure its survival. It is suggested that a mixture of two to three shrubs selected from the recommended species list be planted to encourage healthier plants.
- 1303.04      Coordination With Storm water Drainage Provisions. If the buffer strip is to be used as part of the area for required storm water runoff absorption as outlined in the Town Code of Ordinances, then the shrubs and trees within the buffer shall be water tolerant.
- 1303.05      Coordination with Utility Easements. In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of Section 1303.03 above may be altered to be only 10 feet wide at the discretion of the Board of Adjustment, based on the factors of space, feasibility and other considerations which may make it difficult to provide a 20 foot buffer.
- 1303.06      Additional Buffering. The Board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material

compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case by case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this Section. Shrubs shall be planted on the applicant's side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.

#### Section 1304. Parking Lot Landscaping Requirements.

Trees and shrubs are required in and around parking lots with more than five spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

- 1) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation, measured from the back of the curb and extending 10 feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians and cyclists entering and leaving commercial properties.
- 2) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip 10 feet wide shall be established and continuously maintained between the growing strip and parking area(s). Street trees shall be planted within the landscaped planting strip in accordance with Section 1306 and parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:
  - a) Evergreen shrubs shall be planted 36 inches apart as measured from the center, and attain a height of at least 48 inches within four years of installation; or
  - b) there shall be a fence or wall three feet high constructed of the same material as the principal building; or
  - c) there is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 36 inches apart.

No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

- 3) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three (3) parking spaces, with some appropriate clustering of trees permitted, and 6-foot by 18-foot projecting landscaped islands generally between 10 and 12 parking spaces. Whenever possible, interior parking spaces should have a continuous planter strip six (6) feet wide between rows of parking. Where appropriate, provisions

shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one large maturing deciduous tree shall be provided for a parking lot regardless of the number of spaces provided. No parking space shall be located more than 50 feet from the trunk of a large-maturing deciduous tree. When calculating the number of trees required, the applicant shall round up to the nearest whole number.

- 4) All landscaped areas shall be bordered by a concrete curb that is at least six inches above the pavement and six inches wide or a granite curb that is at least six inches above the pavement and four inches wide.
- 5) To increase the parking lot landscaped area, a maximum of two feet of the parking stall depth may be landscaped with low-growth, hearty materials in lieu of asphalt, allowing a bumper overhang while maintaining the required parking dimensions.
- 6) When more than the required number of parking spaces is provided, the applicant shall provide two times the required number of trees for the spaces provided above the ordinance requirement.

#### Section 1305. Screening of Dumpsters, Loading Docks, Outdoor Storage Areas, and Utility Structures.

All dumpsters, loading docks, outdoor storage areas or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or buffer strip. Landscaping shall not interfere with the access and operation of any such structure or facility. Trash and storage areas shall be well-maintained including prompt repair and replacement of damaged gates, fences and plants. Openings of trash enclosures shall be oriented away from public view or screened with sturdy gates wide enough to allow easy access for trash collection, where practical. The consolidation of trash areas between businesses and the use of modern disposal techniques is encouraged. All dumpsters shall be located a minimum of 50 feet from a residential dwelling. All unenclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets. Screen types include:

- 1) A continuous hedge of evergreen shrubs planted in a five (5) foot strip spaced a maximum of 36 inches apart.
- 2) A wall or fence six feet high, with the finished side of the fence or wall facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees and/or shrubs planted in a minimum five (5) foot planting area, except around access areas, spaced no farther than eight (8) feet apart in order to screen at least 50 percent of the fence or wall.

#### Section 1306. Street Trees.

Street trees are required for all developments meeting the applicability requirements of Section 1301(1). Street trees shall be required at the rate of one large-maturing tree (over 35 feet in height) for every 40 linear feet of property abutting a street. In the event that overhead utility lines are present, then one small-maturing tree (less than 35 feet in height) may be planted for every 30 feet of property abutting a street. This does not imply that trees must be spaced exactly

30 or 40 feet apart. The exact placement of the required tree or trees may be established with input from the reviewing boards in order to fit in with sign placement and other building issues.

Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in Section 1304.1 and also according to regulations from the North Carolina Department of Transportation.

#### Section 1307. Certificate of Completion.

Landscaping shall be installed and inspected prior to receiving a Certificate of Completion. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials. If the season or weather conditions prohibit planting the materials, the developer may provide an irrevocable letter of credit, or other financial surety in an amount equal to 110 percent of the cost of installing the required landscaping to guarantee the completion of the required planting. Upon approval of the financial surety, the Certificate of Completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

#### Section 1308. Maintenance.

The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Failure to maintain or replace dead, damaged or diseased material or to repair a broken fence or wall shall constitute a zoning violation and shall be subject to the penalty provisions in Article XVI if not replaced within 30 days of notification.

If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material shall be in compliance with the minimum size, spacing, and quantity standards of the Ordinance requirements in effect at the time of project approval.

#### Section 1309. Residential Screening of Utility Structures.

It is required that all new utility structures, whether they are part of a new dwelling or are being added to an existing dwelling, located out of doors, including but not limited to heat pumps, air conditioning units (with the exception of window units), and generators shall be screened on all sides except the side closest to the dwelling. The screening shall consist of evergreen shrubs planted a maximum of 36 inches apart, with a height of 18 to 24 inches at time of planting. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

#### Section 1310. Plant Specifications.

- 1310.1        Recommended Plant Species. Plants may be chosen from the Recommended Plant Species list available from the Town Administrator. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which

are not on the list may be used following approval from the Board of Adjustment.

1310.02 Minimum Plant Size Requirements.

Large-maturing deciduous tree: Greater than 35 feet at maturity. Minimum size at planting shall be 12 to 14 foot in height and two (2) inches caliper (diameter).

Small-maturing deciduous tree: Smaller than 35 feet at maturity. The tree shall be at least 1-1/2 inch caliper and eight (8) to 10 feet high at time of planting.

Evergreen tree: Minimum height of four to five feet at time of planting.

Evergreen shrub: Minimum three (3) gallon container or 10 inch root ball with a height of 18 to 24 inches at time of planting.

1310.03 Plant Standards.

All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1. Plants shall be healthy, well-branched, and free of disease and insect infestation.

Section 1311. Recreational Vehicle and Commercial Vehicle Storage.

Commercial vehicles and recreational vehicles, including but not limited to motor powered recreational vehicles, recreational trailers, campers, boats and other water craft and the trailers used to tow or transport any such boat or vehicle, shall NOT be parked or stored outside on any lot or tract of land. Further, nor shall any such vehicle be parked or stored in or under an open garage/carport or in or under any other type of open accessory structure/building. However, such vehicles may be parked or stored in an enclosed accessory structure/building (said accessory structure/building is to comply with all size and height requirements of this ordinance) or in an enclosed garage such that the vehicle is not visible.

Exceptions to this rule would be those residents who have already received a Certificate of Zoning Compliance from the Board of Adjustment.

ARTICLE XIV  
EXCEPTIONS AND MODIFICATIONS

Compliance with the requirements of this ordinance is mandatory; however, under the specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

Section 1400. Front Yard Setback for Dwellings.

The front yard setback requirements of this ordinance for dwellings shall not apply on any lot where the average front yard setback of existing buildings located within one hundred (100) feet on each side of such lot is less than the minimum required front yard setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

Section 1401. Completion of Buildings Under Construction.

Nothing in this ordinance shall require any change in the plans, construction, or designated use of a building under construction at the date of the passage of this ordinance, provided that construction of such building is diligently pursued and the entire building is completed within eighteen (18) months from the date of passage of this ordinance. A building shall be deemed to be under construction upon the effective date of this ordinance if a building permit has been issued.

Section 1402. Temporary Uses.

Temporary uses such as real estate sales field offices or shelter for materials and equipment being used in the construction of a permanent structure may be permitted by the Zoning Administrator, provided they do not create health, safety or nuisance hazards.

ARTICLE XV  
AMENDMENTS

Section 1500. Amendments.

This zoning ordinance, including the zoning map, may be amended by the Biltmore Forest Board of Commissioners in accordance with the provisions of this article.

Section 1501. Initiation of Amendments.

Proposed changes or amendments may be initiated by the Biltmore Forest Board of Commissioners, the Planning Commission, the Board of Adjustment, or one or more owners of property within the area proposed to be changed or affected. All proposed amendments shall be referred to the Planning Commission for their review and recommendation to the Town Board of Commissioners.

Section 1502. Application.

Before any action on a proposed change or amendment, an application shall be submitted to the office of the Zoning Administrator at least ten (10) days prior to the Planning Commission's meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the owner(s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question. The Planning Commission and the Board of Commissioners will not consider an application for property denied within the preceding twelve (12) months by the Board of Commissioners.

Section 1503. Application Fee.

A fee of five hundred and seventy-five dollars (\$575.00) shall be paid to the Town of Biltmore Forest for each application for an amendment to cover costs of advertising and other administrative expenses.

Section 1504. Planning Commission Action.

Before taking any action on a proposed amendment to the ordinance, the Board of Commissioners shall consider the Planning Commission's recommendations on each proposed amendment. The Planning Commission shall have thirty-two (32) days after the first consideration of the application within which to submit its recommendations to the Board of Commissioners. Failure of the Planning Commission to submit recommendations within the thirty-two (32) day period shall constitute a favorable recommendation.

Section 1505. Public Hearing.

Before enacting any amendment to this ordinance, the Board of Commissioners shall hold a public hearing. A notice of such public hearing shall be published in a newspaper of general circulation in Buncombe County once a week for two (2) successive weeks, the first publication

shall not appear less than ten (10) days or more than twenty-five (25) days prior to the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to the ordinance and/or map.

Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice by the Zoning Administrator of the proposed classification by first class mail at the last address listed for such owners on the county tax abstracts. The person mailing such notices shall certify to the town Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud. This provision shall apply only when tax maps are available for the area to be zoned.

Section 1506. Decision.

The town Board of Commissioners shall make a decision on the proposed amendment to this ordinance initiated by owners of private property within Biltmore Forest within sixty (60) days after the public hearing. There shall be no time limit after a public hearing for Board action concerning all proposed amendments initiated by the Biltmore Forest Board of Commissioners, the Planning Commission, or the Board of Adjustment.

ARTICLE XVI  
VIOLATIONS, PENALTIES, AND REMEDIES

Section 1600. Violations.

Whenever, by the provisions of this ordinance, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of any land, or on the erection or alterations, or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this ordinance shall constitute a separate violation and a separate offense. Each day of violation and non-compliance shall be considered a separate offense.

Section 1601. Penalties.

Any person, firm, or corporation who violates the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50.00) and/or imprisoned for a period of time not exceeding thirty (30) days. Each day of violation shall be considered a separate offense.

Section 1602. Remedies.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct of business or use in or about the premises.

ARTICLE XVII  
LEGAL STATUS PROVISIONS AND EFFECTIVE DATE

Section 1700. Severability.

It is the legislative intent of the Board of Commissioners in adopting this ordinance that all provisions and sections thereof shall be liberally construed to protect and preserve the health, safety and general welfare of the inhabitants of the Town of Biltmore Forest, and, further, that should any provision, portion, section or subsection of this ordinance be held to be invalid by a court of competent jurisdiction, such ruling shall not be construed as affecting the validity of any of the remaining provisions, portions, sections or subsections, it being the intent of the Board of Commissioners that this ordinance shall stand, notwithstanding the invalidity of any provision, or section or part thereof.

Section 1701. Conflict with Other Laws.

When provisions of this ordinance require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this ordinance shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, or require a lower height of a building, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this ordinance, the provisions of that statute or local ordinance or regulation shall govern.

Section 1702. Effective Date.

This ordinance shall take effect and be in force on October 18, 1983.

Adopted this the 18th day of October 1983.

BOARD OF COMMISSIONERS OF THE  
TOWN OF BILTMORE FOREST

Canie B. Smith, Mayor

ATTEST:

Robert R. Musselwhite, II  
Town Clerk

The text of the above ordinance includes the amendments effective February 25, 1986, November 29, 1994, December 14, 1999, January 9, 2001, October 9, 2001, July 9, 2002, MARCH 7, 2003, NOVEMBER 9, 2004, DECEMBER 14, 2004, JULY 12, 2005, SEPTEMBER 12, 2006, JANUARY 9, 2007, DECEMBER 11, 2007, JUNE 10, 2008, SEPTEMBER 16, 2008, FEBRUARY 8, 2011, SEPTEMBER 13, 2011 AND DECEMBER 13, 2011.

