

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest Planning Commission
To be held Wednesday, April 25, 2018 at 8:00 A.M.

- I. Call to Order
(Chairman Bailey)
- II. Approval of Minutes from May 1, 2017
(Chairman Bailey)
- III. Review and Consideration of Amendments to Town Zoning Ordinance
(Town Manager Kanipe and Town Attorney Clarke)
- IV. Adjourn
(Chairman Bailey)

TOWN OF BILTMORE FOREST
PLANNING COMMISSION MEETING, MAY 1, 2017

Those in attendance:

Mr. Doug Bailey, Chairman

Ms. Toya Hauf

Ms. Marjorie Waddell

Mr. Jonathan Kanipe, Town Administrator

Chairman Doug Bailey called the meeting to order at 4:00 p.m.

Ms. Waddell made a motion to approve the minutes from June 6, 2016; Ms. Toya Hauf seconded and the minutes and were unanimously approved.

Mr. Jonathan Kanipe revisited the background for the recodification project which led to the discussion of fences. The Board of Commissioners have discussed the Town as a forested, open space and would like to be open an unfenced as much and as practically as possible. What they tried to do was define those areas where a fence would still be allowed as a Conditional Use to where it was for safety and protection for public health(such as having one for a pool) or as a condition for homeowners insurance or a condition for a retaining wall for a landscape plan that is high up. As a part of this, they got more deeply involved in discussing deer fences. Three or four applications came in and those people said they don't want to contain the safety of their beds but they wanted to keep other animals out such as bears and coyotes. The Board did not see it as a valid reason to have a fence to keep a dog in. As part of this, we started looking at the deer fencing regulations. Mr. Billy Clarke has been researching in terms of looking from the Wildlife Commission standpoint and other regulatory agencies where deer fencing is the most effective.

Mr. Bailey asked if there was any discussion about feeding the deer. Mr. Bailey said it makes the problem worse and is a big problem. Mr. Kanipe said it is also stated in the Ordinance that people are not allowed to do that. Mr. Kanipe it should be more actively enforced. Mrs. Waddell suggested putting this in the newsletter.

The next discussion was regarding existing electric fences should be removed within 180 days. These people will receive a letter from Mr. Kanipe.

Regarding chain link fences, Mr. Bailey asked if the fence is older and needs replacing, can it not be replaced? Mr. Kanipe said he believed the Board of Commissioners did not want to see chain link fences. Mr. Bailey said many people may just repair the fence and will not inform the Board.

Mr. Bailey asked if there is an issue with a metal fence and needs repair, will that be an issue. Is there a situation or reason for someone to have a fence in the front yard other than cosmetic reasons? Mr. Kanipe said it would usually be for pools in the front yard to meet safety and health guidelines.

Mr. Bailey asked about a wooden fence and the staining of the fence. Mr. Bailey wanted to know if a resident still has to go before the Design Review Board regarding the color of the fence. Mr. Kanipe said yes.

Mrs. Hauf said clarification of electric fences needs to be discussed because there are invisible fences for animals and then there are electrical fences.

Regarding retaining walls and the language, Ms. Hauf said we need to call out what the structural requirement is. Ms. Hauf suggested looking at the Buncombe County retaining wall

Ordinance. The Town's Ordinance is very vague. This will also make it easier for the Board of Adjustment to have the language written out be to be more clear and concise.

Mr. Bailey asked what the reasoning behind all of this is. Mr. Kanipe said this all has been a long running discussion. Mr. Kanipe said it has just been an ongoing issue about the fences. There is also a Board member that does not want fences. Mr. Kanipe said we may want to consider allowing fences that abut the Biltmore Estate or the Parkway. This is certainly not an easy topic to discuss. Any changes made, email the Planning Commission the changes and they will look them over.

Ms. Hauf said it may be advantageous to have the Public Hearing before any of these changes are made.

The meeting was adjourned at 4:55 p.m.

Jonathan Kanipe
Zoning Administrator

Doug Bailey
Chairman

355 Vanderbilt Rd | Biltmore Forest, NC
Po Box 5352 | Biltmore Forest, NC 28803
P (828) 274-0824 | F (828) 274-8131

www.biltmoreforest.org



George F. Goosmann, III, Mayor
Fran G. Cogburn, Mayor-Pro Tem
E. Glenn Kelly, Commissioner
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,
Town Manager

MEMORANDUM

APRIL 25, 2018

To: Planning Commission Members
From: Jonathan Kanipe, Town Manager
Re: Review of Proposed Ordinance Changes
Date: April 18, 2018

Background

Last year, the Board of Commissioners amended the Town's Zoning Ordinance to more stringently regulate the installation of fences and walls. Subsequently, the question arose regarding gates and whether gates constituted a fence for the purposes of closing off a property. The Board of Commissioners desire is to further define the Zoning Ordinance and regulate the installation of gates, including but not limited to, driveway gates, ornamental gates, and other types of structures. A draft of the proposed changes is included for your consideration.

Additionally, the Board has received substantial input from the Design Review Board and many residents in Town regarding increasing land disturbing activity and its impact on the roads in the Town. The Design Review Board has recommended mandating that contractors submit a plan to the Town Manager or his designee, and that the Town be enabled to require mud mats or other soil capturing devices as necessary. This proposed revision is included in the amendment proposals attached to this memorandum.

Legal Requirements for the Planning Commission and Board of Commissioners

In regards to discussion and consideration of these amendments, the Planning Commission is charged with three specific tasks as follows.

- (1) The Planning Commission has 30 days to submit a report to the Board of Commissioners. As the public hearing is scheduled for less than 30 days, Mr. Clarke suggests the Planning Commission submit a written report to the Commissioners with comments as soon as possible after the meeting. I am happy to take this written report from the discussion and provide that to the Board before their meeting on Tuesday, May 15.
- (2) The Board has scheduled a public hearing for Tuesday, May 15th. This will be advertised twice in the Asheville *Citizen-Times* and the public is encouraged to attend. Per state law, if the Town receives any comments for the Board prior to the public hearing, I will provide

those comments to the Board. These include comments from the Planning Commission, if necessary.

- (3) When the Planning Commission makes a recommendation of approval or disapproval of the text amendment, you are charged by NCGS 160A-383 to include a statement regarding the consistency of the amendment with any comprehensive plan, and the Commissioners are charged with identifying why the action taken is reasonable and in the public's best interest.

Mr. Clarke will be in attendance at the meeting and able to better address legal questions related to the statutory requirements. If you have questions ahead of the meeting, please let me know and I will do my best to provide answers to all members ahead of time..

Proposed Amendments to Town of Biltmore Forest Zoning Ordinance

Add a new definition to 153.004 (B).

CONSTRUCTION SITE – The construction, on any lot or lots within the Town of Biltmore Forest of a new house or building, and the addition to, renovation of, or repair of an existing house or building.

Amend 153.034 (A) - By changing the title to “*Land Disturbing Activity Requiring Approval of the Board of Adjustment.*” No change to the text of this section.

Amend 153.034 by adding a new Section (E)

The Owner of any Construction Site, as defined in 153.004, shall be required to install and maintain, during the period of any construction on a lot or lots, appropriate measures to minimize soil erosion and to retain sediment on site. Such measures may include mud mats and sediment ponds. Prior to the start of construction, the Owner shall submit a plan for the minimization of soil erosion and the retention of sediment on sites to the Town Manager or his designee. The Town Manager or his designee may require the utilization of additional measures to minimize soil erosion, including mud mats, and to retain sediment on site. No construction shall begin until the plan has been approved by the Town Manager.

Amend the definition of “**ACCESSORY STRUCTURE**” in 153.00(B) by revising to read as follows:

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lots and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include but are not limited to, fences, gates, walls, curbs pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property and the like.

Amend **153.029 (C)(2)** so that it now reads as follows:

(2) Given Biltmore Forest’s proximity to the Biltmore Estate, and the Estate’s large deer population, a number of residents have had a problem with deer. In response to resident requests, the Board of Adjustment has approved a number of requests for temporary deer fencing. Over the last several years, the Town has attempted to reduce the number of deer through depredation. The Board of Commissioners is committed to preservation and protection of the forested residential community concept. Current and prospective residents can participate in this effort by landscaping with plants that will not attract deer, confining dogs and other household pets with invisible fencing, limiting the construction of new fences, gates and walls, and removing and not replacing existing fences, gates and walls. In addition, fences, gates and walls inhibit access to properties by the Police Department, Skyland Fire Department and other first responders.

Amend **153.029(C)(3)** so that it now reads as follows:

(3) As of the effective date of this section, construction of new fences, **gates** or walls is allowed only as follows:

Amend **153.029(C)(3)(a)** so that it now reads as follows:

- (a) The fence, gate or wall is necessary for safety, the protection of public health, or is required as a condition of obtaining homeowner's insurance. Examples include the installation of a fence, **gate** or wall around a swimming pool or along a steep grade or bank to prevent injury resulting from a fall. The property owner should provide written information from an insurance company documenting the need for a fence, **gate** or wall.

Amend **153.029 (C)(3)(c)** so that it now reads as follows:

- (c) On those properties abutting Hendersonville Road where, in the discretion of the Board of Adjustment, a fence, **gate** or wall is necessary to provide protection from pedestrians and motorists on Hendersonville Road.

Amend **153.029 (C)(3)(d)** so that it now reads as follows:

- (d) Properties abutting the Blue Ridge Parkway and the Biltmore Estate shall be allowed to construct appropriate fencing and **gates** to protect the property from deer. Such fencing and **gates** shall be subject to review and approval by the Board of Adjustment.

Amend **153.029 (C)(3)(e)** so that it now reads as follows:

- (e) The Board of Adjustment may require a property owner to construct a wall, fence or **gate** to provide buffering between incompatible land uses.

Amend **153.029 (C)(3)(f)** so that it now reads as follows:

- (f) Except as set forth in (C)(3)(d), the Board of Adjustment shall not approve a fence or **gate** for the purpose of confining or protecting dogs, other household pets or children, or for the purpose of preventing wild animals from entering a property.

Amend **153.029 (C)(3)(h)** so that it now reads as follows:

(h) in granting permission to construct a new fence, **gate** or wall, or to repair or replace an existing fence, **gate** or wall, the Board of Adjustment may impose reasonable conditions, including a requirement that the fence, **gate** or wall be buffered with vegetation so that it is not

visible from adjacent properties and that the fence, **gate** or wall be removed if the purpose or condition for which it was originally constructed is no longer in effect.

Amend the title of **153.029 (C)(4)** so that it now reads as follows:

(4) *Replacement of existing fences, **gates** and walls.* Replacement of an existing fence, gate or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence, **gate** or wall must include a photograph of the existing fence, **gate** or wall, specify the type of fence, **gate** or wall proposed, include a map or drawing depicting the height and length of the fence, **gate** or wall, and state whether or not the fence, **gate** or wall is in any setbacks.

Amend **153.029 (C)(4)(a),(b) and (c)** so that they now reads as follows:

- (a) Existing chain link fences or **gates** may not be replaced with new chain link fences or **gates**.
- (b) Existing fences, **gates** or walls in the front yard may not be replaced. No new fences, **gates** or walls shall be allowed in the front yard.
- (c) Repair of more than one half of an existing fence, **gate** or wall shall be considered a replacement and shall be subject to this section.

Amend the title of **153.029 (C)(5)** so that it now reads as follows:

(5) *Acceptable materials for fences, gates and walls / maintenance.* The following materials shall be deemed acceptable for fence and gate construction.

Amend **153.029 (C)(5) (a) through (c)** so that they now read as follows:

- (a) Wooden fencing or **gates** shall be of natural color or painted in a manner compatible with the residence and lot.
- (b) Non-wooden fencing or **gates** shall be black, dark green, or brown to blend with surrounding trees or vegetation.
- (c) No new chain link fencing or **gates** shall be allowed.

Amend **153.029 (C)(5)(e)** so that it now reads as follows:

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

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Jonathan B. Kanipe,
Town Manager

NOTICE
PLANNING COMMISSION MEETING
TOWN OF BILTMORE FOREST

The Town Planning Commission will hold a meeting on Wednesday, April 25 at 8:00 a.m. regarding amendments to the Town Zoning Ordinance. The Planning Commission will consider these amendments and provide a recommendation to the Town Board of Commissioners ahead of a scheduled public hearing on Tuesday, May 15, 2018.

The public is invited to view or request a copy of the proposed changes to the Zoning Ordinance at the Biltmore Forest Town Hall, or alternatively can review the full draft amendment on the Town's website at the following link: <http://www.biltmoreforest.org/planning-board>

The proposed changes are related to Sections of the Town's Zoning Ordinance related to accessory structures and land disturbing activity.

The public is invited to attend.

Jonathan B. Kanipe
Town Clerk

POSTED AT TOWN HALL: APRIL 27, 2017