

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

To: Mayor and Board of Commissioners

From: Jonathan Kanipe, Town Manager

Re: Accessory Structure Ordinance (Draft Versions) Discussion

Date: August 6, 2018

Last month, the Board asked staff to include gates in a draft of the proposed accessory structure ordinance amendments. In light of that request, staff provided three versions of the accessory structure ordinance as follows:

- (1) The first version is an accessory structure ordinance that includes gates as a part of the fences and walls that are regulated. Please note, this draft does not specifically include a prohibition on driveway gates, though it does of course say that "fences, gates, or walls" are not allowed in the front yard. My suggestion is that if a driveway gate restriction is desired by the Board, this should be stated explicitly as such – similar to how we currently specifically prohibit structures in the front yard. Conversely, if there is a desire to permit driveway gates, perhaps we should include an explicit provision for that allowance and providing specific guidelines for their design and installation.
- (2) The second version is the accessory structure ordinance from last month with changes reflected from the discussion at that meeting.
- (3) The third document is additional zoning amendments discussed in April. I do not believe there were any issues with these changes, and these should likely be included with any public hearing/ordinance amendment discussion.

The public hearing/consideration of the final ordinance could then be held at our September meeting. Please let me know if I can provide any additional information or if you have questions with which I can assist.

An Ordinance Amending the Town of Biltmore Forest Zoning Ordinance

§ 153.029 - ACCESSORY STRUCTURES AND BUILDINGS

(C) (1) The Town is a unique community concerned with historic continuity. The Town, originally part of the Vanderbilt Estate, was established almost 100 years ago. Since its establishment, Biltmore Forest has been a forested residential community with substantial open space. Preservation of the forest environment requires substantial open space for trees, plants and wildlife.

(2) Given Biltmore Forest's proximity to the Biltmore Estate, and the Estate's large deer population, a number of residents have had problems 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 Town's Police Department, Skyland Fire Department and other first responders.

The effective date of this ordinance shall be [ENTER DATE OF ADOPTION]. As of the effective date of this Ordinance, construction of new fences, gates, or walls is allowed only as follows:

(3) (a) The fence, gate, or wall is constructed entirely within the backyard, is not located in any side or rear yard setbacks and is constructed of materials deemed acceptable in 153.029(C) (5). Mature vegetation or other buffering may be required. A fence, gate, or wall meeting the requirements of this section may be approved by the Town Manager and does not have to be approved by the Board of Adjustment.

Except as set forth in 153.029(C) (3)(a), construction of new fences, gates, or walls is allowed only as follows:

(b) The fence, gate, or wall is necessary for safety, the protection of the 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 the fence.

(c) Where a retaining wall is part of a landscape plan, and there is a structural requirement for the wall. Structural requirements for retaining walls must be in accordance with *The Retaining Wall Ordinance of the Buncombe County Code of Ordinances* as the same may be amended from time to time, and must be certified by a Professional Engineer licensed in the State of North Carolina. . The wall must otherwise comply with this ordinance.

ORDINANCE DRAFT VERSION 1
Accessory Structure Ordinance including Gates

(d) 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.

(e) Properties abutting the Blue Ridge Parkway and the Biltmore Estate shall be allowed to construct appropriate fencing to protect the property from deer. Fencing that does not meet the requirements of subsection (a) above or section (4) below shall be subject to review and approval by the Board of Adjustment.

(f) The Board of Adjustment may require a property owner to construct a wall, fence, or gate to provide buffering between incompatible land uses. See 153.063.

(g) Except as set forth in paragraph (a) and (e), 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.

(h) Electrified Fences, defined as an above ground fence carrying an electric voltage intended to deliver a shock if touched by a person or animal, are not allowed. Existing electrified fences should be removed within 180 days of the adoption of this ordinance whether or not the fences are currently carrying an electric voltage. Invisible fences, defined as underground cable systems carrying an electric voltage intended to trigger a shock through a compatible pet collar, are allowed.

4) Replacement of existing fences, gates, and walls. Replacement of an existing fence, gate, or wall is a conditional use, except as laid out in subsection (d) below, 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 or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

(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 half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this ordinance.

(d) Replacement of an existing fence or wall in the side or rear yard may be approved by the Town Manager so long as the replacement fence is constructed of materials deemed acceptable in 153.029 (C)(5). Otherwise, replacement of an existing fence or wall is a

ORDINANCE DRAFT VERSION 1
Accessory Structure Ordinance including Gates

conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance.

5) Acceptable Materials and Standards for Fences and Walls / Maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

- (a) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the 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.
- (d) Fences may not exceed six (6) feet in height without approval from the Board of Adjustments. Fences designed to prevent deer or other wildlife from entering the property may not exceed eight (8) feet in height.
- (e) Walls should be constructed of stone or similar material, and should be compatible with the construction materials of the house located on the same property.
- (f) 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.

ATTEST:

Clerk

Mayor

Approved as to Form:

Attorney

An Ordinance Amending the Town of Biltmore Forest Zoning Ordinance

§ 153.029 - ACCESSORY STRUCTURES AND BUILDINGS

(C) (1) The Town is a unique community concerned with historic continuity. The Town, originally part of the Vanderbilt Estate, was established almost 100 years ago. Since its establishment, Biltmore Forest has been a forested residential community with substantial open space. Preservation of the forest environment requires substantial open space for trees, plants and wildlife.

(2) Given Biltmore Forest's proximity to the Biltmore Estate, and the Estate's large deer population, a number of residents have had problems 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 and walls, and removing and not replacing existing fences and walls. In addition, fences and walls inhibit access to properties by the Town's Police Department, Skyland Fire Department and other first responders.

The effective date of this ordinance shall be [ENTER DATE OF ADOPTION]. As of the effective date of this Ordinance, construction of new fences or walls is allowed only as follows:

(3) (a) The fence is constructed entirely within the backyard, is not located in any side or rear yard setbacks and is constructed of materials deemed acceptable in 153.029(C) (5). Mature vegetation or other buffering may be required. A fence meeting the requirements of this section may be approved by the Town Manager and does not have to be approved by the Board of Adjustment.

Except as set forth in 153.029(C) (3)(a), construction of new fences or walls is allowed only as follows:

(b) The fence or wall is necessary for safety, the protection of the public health, or is required as a condition of obtaining homeowner's insurance. Examples include the installation of a fence 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 the fence.

(c) Where a retaining wall is part of a landscape plan, and there is a structural requirement for the wall. Structural requirements for retaining walls must be in accordance with *The Retaining Wall Ordinance of the Buncombe County Code of Ordinances* as the same may be amended from time to time, and must be certified by a Professional Engineer licensed in the State of North Carolina. . The wall must otherwise comply with this ordinance.

ORDINANCE DRAFT VERSION 2
Accessory Structure Ordinance with Amendments from Last Meeting
(Does not include gate language)

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

(e) Properties abutting the Blue Ridge Parkway and the Biltmore Estate shall be allowed to construct appropriate fencing to protect the property from deer. Fencing that does not meet the requirements of subsection (a) above or section (4) below shall be subject to review and approval by the Board of Adjustment.

(f) The Board of Adjustment may require a property owner to construct a wall or fence to provide buffering between incompatible land uses. See 153.063.

(g) Except as set forth in paragraph (a) and (e), the Board of Adjustment shall not approve a fence 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.

(h) Electrified Fences, defined as an above ground fence carrying an electric voltage intended to deliver a shock if touched by a person or animal, are not allowed. Existing electrified fences should be removed within 180 days of the adoption of this ordinance whether or not the fences are currently carrying an electric voltage. Invisible fences, defined as underground cable systems carrying an electric voltage intended to trigger a shock through a compatible pet collar, are allowed.

4) Replacement of existing fences and walls. Replacement of an existing fence or wall is a conditional use, except as laid out in subsection (d) below, subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence or wall must include a photograph of the existing fence or wall, specify the type of fence or wall, include a map or sketch depicting the height and length of the fence, and state whether or not the fence is located within any setbacks.

(a) Existing chain link fences may not be replaced with new chain link fences.

(b) Existing fences or walls in the front yard may not be replaced. No new fences or walls shall be allowed in the front yard.

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

(d) Replacement of an existing fence or wall in the side or rear yard may be approved by the Town Manager so long as the replacement fence is constructed of materials deemed acceptable in 153.029 (C)(5). Otherwise, replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance.

5) Acceptable Materials and Standards for Fences and Walls / Maintenance. The following materials and standards for fences and walls shall be deemed acceptable.

*ORDINANCE DRAFT VERSION 2
Accessory Structure Ordinance with Amendments from Last Meeting
(Does not include gate language)*

- (a) Wooden fencing shall be of natural color or painted in a manner compatible with the residence and the lot.
- (b) Non wooden fencing shall be black, dark green or brown to blend with surrounding trees or vegetation.
- (c) No new chain link fencing shall be allowed.
- (d) Fences may not exceed six (6) feet in height without approval from the Board of Adjustments. Fences designed to prevent deer or other wildlife from entering the property may not exceed eight (8) feet in height.
- (e) Walls should be constructed of stone or similar material, and should be compatible with the construction materials of the house located on the same property.
- (f) When a fence or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence or, remove the fence at the property owner's expense. If the property owner fails to repair or remove the fence, the Town may remove the fence and recover the cost from the property owner.

Mayor

ATTEST:

Clerk

Approved as to Form:

Attorney

ORDINANCE DRAFT VERSION 3
Additional Zoning Ordinance Amendments Previously Discussed
(Does not include fence, gate, or wall language)

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 Administrator.

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.