

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest
Planning Commission

To be held Tuesday, March 26, 2023 at 5:30 p.m.

- A. Roll Call
 - B. Approval of Minutes – June 27, 2023 Meeting
 - C. Reconvening Planning Commission
 - a. Future Meeting Dates/Times
 - b. Refresher on NCGS 160D – Planning Board Purpose
 - D. Potential Areas of Focus
 - E. Adjourn
-

<https://us02web.zoom.us/j/83015148121?pwd=aG12eDZFU2RFSWx2Q09NOFFLMFAwQT09>

Meeting ID: 830 1514 8121
Passcode: 226922

Planning Commission Meeting Minutes

June 27, 2023

5:30pm

Roll call was taken by Chairman Paul Zimmerman. Members in attendance are Chairman Paul Zimmerman, Mr. Ken Hornowski, Mr. Michael Flynn, and Mr. Tony Saponaro. Mr. Jonathan Kanipe, Town Manager, Mr. Billy Clarke, Town Attorney, Mr. Tony Willaims, Town Planner, and Mr. Harry Buckner, Public Works Director were present.

Chairman Zimmerman started the meeting at 5:30pm.

Chairman Zimmerman said Consideration of Landscaping, Buffering, and Tree Ordinance Protection Ordinance Changes will be discussed.

Mr. Kanipe was asked to review the changes for the proposed Tree Preservation Ordinance (153.050) from last month.

1. The Tree of Preference notations in the tables were changed from having three asterisks to having a superscript “T” – this was done to better indicate a difference between the buffering requirements and the Tree of Preference requirements.

2. Exemptions were included for non-residential outdoor recreation activities, and a new definition was included within the Tree Protection Ordinance specifically related to these categories. The exemption would only apply to the “outside setback area” which is the interior of each lot.

3. Trees of Preference were designated as those trees with a trunk DBH of 24 inches or greater native to North Carolina as designated by the US Department of Agriculture Natural Resource Conservation Plants Database. Any tree with a trunk DBH of 36 inches or more is also designated a tree of preference.

There were no changes in 150.034.

A requirement for replacement for new construction was added in 153.060.

Mr. Saponaro spoke regarding the changes within the proposed ordinance, and noted this is trying to create a simple plan. The main change is these ordinances are now within the Zoning Ordinance. There is also separation of residential versus non-residential properties. Mr. Saponaro believes this ordinance recognizes non-residential needs, including Biltmore Forest Country Club, MAHEC, and Carolina Day School. The Commission did a lot of research in many different places and determined what the best practices are for the Town. There are not very many places that have private property tree ordinances and we are looking at reasonable and practical ways to implement this. This will help us make and defend good situations. Mr. Zimmerman and Mr. Saponaro discussed the tree replacement charts and went over 153.050.

Mr. Clarke suggested the Outdoor Recreation Areas definition needs to be reworded a bit.

Ms. Joyce Young questioned the recommended planting list and residential uses and the fact that single family homes are not all owner occupied and some are renters. This will be amended.

Mr. Kanipe clarified page 7 of the blue line/red line document to get the caliper clarified specifically. Under table 3, there is section d which states "See the above charts for the minimum replacement size for size for all deciduous trees. Evergreen trees that are planted as replacement trees shall be a minimum of eight (8) feet in height at the time of planting." In between "minimum" and "replacement" should say "caliper."

There was discussion between deciduous and evergreen trees on the tables listed.

Deciduous trees should be added to the tables. Ms. Diane Zimmerman asked about tree replacement and where it gets planted. Mr. Clarke said Mike Dale would make this decision since he is the Town Arborist, and that Mr. Kanipe can also make this decision.

The Board decided the charts need to be cleaned up a bit and asked staff to do this work.

Ms. Diane Zimmerman asked about plantings of trees and shrubbery on property lines.

153.060 was discussed. Mr. Kanipe said "buffering and landscape" was changed to "buffering and landscape requirements." There were also a few other minor changes.

153.034 was discussed and there were some changes made regarding Landscaping and Grading Plans.

Mr. Zimmerman expressed his concern over paragraph A (1) on land disturbance activity. He wondered if 20 percent is too much area before a landscaping plan is triggered. Mr. Kanipe indicated it is rare to find anything lower than 20 percent.

Mr. Saponaro made a motion the Board of Commissioners look at these changes for their approval on these three Ordinances and further stated this is consistent with the Town's Comprehensive Plan. Mr. Flynn seconded the motion. The motion was unanimously approved. Mr. Zimmerman thanked Mr. Michael Flynn for his service to the Planning Commission. Mr. Zimmerman thanked all other Board members for their input and help.

Mr. Jim Hyler thanked the Commission and Town for their work.

Chairman Zimmerman adjourned the meeting at 6:41 pm. The next meeting is scheduled for October.

Ms. Laura Jacobs, Town Clerk
Town Clerk

Mr. Paul Zimmerman,
Chair

Categories

Land Use & Code Enforcement, Legislative Decisions, Planning,
Quasi-Judicial Decisions, Zoning



Coates' Canons NC Local Government Law

Planning Board Basics

Published: 01/07/22

Author Name: Adam Lovelady

So, you're a new member of the planning board. Or maybe you have been on the board for a while and need a refresher on your role. First off, thank you for your service to the community and congratulations on the honor. Now, what have you gotten yourself into? This blog outlines the basic state requirements and options for planning boards.

The local planning board may take many forms and perform many roles. The core responsibilities are clearly set forth by state law. The General Statutes also grant fairly wide-ranging authority for additional responsibilities, giving local governments the ability to use the planning board in a variety of ways. Local ordinances, policies, and procedures may refine or adjust some of the provisions discussed here. Check with your local government planner and/or local government attorney to find out any special rules and provisions that may apply to the planning board in your community.

Balancing Interests

First up, consider the role of the planning board: to advise the governing board on the community's future. Such a broad and weighty role demands strong and thoughtful planning board members. You can and should bring your personal experience, professional knowledge, and passion for your community to your work as a planning board member. Even so, it is imperative that you approach the work with a community-focused perspective. You are making recommendations and decisions for the whole community; you are not making recommendations and decisions for your own interests or the interests of your friends and business partners.

This demands that you address many big issues and balance many competing interests: individual benefits and community impacts, neighborhood preferences and broader necessities, property value increases and housing affordability, short-term gain and long-term resilience, infrastructure capacity and desire for development. As is the case for the governing board when they make a final decision on a legislative development matter, for the planning board there are some Considerations for Legislative Development Decisions that *should* be considered and some Impermissible Considerations for Legislative Development Decisions that *must not* be considered when making recommendations and decisions on zoning amendments and other legislative development decisions. It is also true that land use planning and development regulations are just pieces of the much larger puzzle of a thriving community. There are many governmental factors that interrelate to planning, such as transportation, education, parks and recreation, social services, and more. Additionally, there are many factors beyond the scope of the planning board. Next, let's consider the duties and responsibilities of the planning board.

Duties and Responsibilities

Advise on Comprehensive and Land Use Planning. Under G.S. 160D-301, planning boards are authorized “[t]o prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.” This general authority is emphasized by the relatively recent requirement that in order to enforce zoning, a local

government must have a reasonably maintained comprehensive plan or land use plan. Such plans are adopted by the governing board “with the advice and consultation of the planning board,” following the standard legislative process outlined at G.S. 160D.601. For more on the planning requirements, check out this blog on [Comprehensive Plans and Land Use Plans Required for Zoning](#).

Advise on Initial Zoning. Before a local government exercises the powers of zoning, it must designate a planning board (G.S. 160D-604(a)). The planning board prepares and/or reviews and recommends the proposed zoning regulation. The governing board may not hold hearings or take action on the initial zoning ordinance until the planning board has provided written recommendation regarding adoption.

Advise on Zoning Amendments and Plan Consistency. Proposed amendments to the zoning ordinance—text amendments or rezonings—must be submitted to the planning board for review and comment. As described in G.S. 160D-604(b), the planning board gets at least 30 days to review and comment. In carrying out its task of reviewing proposed amendments, the planning board is not required by state law to hold formal public hearings, but many local governments do require hearings by ordinance. If after 30 days of referral the planning board has not provided a written report, then the governing board may take action without planning board recommendation.

When the planning board reviews proposed amendments to the zoning ordinance, “the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive or land-use plan that has been adopted and any other officially adopted plan that is applicable.” The planning board may also review and comment on “other matters as deemed appropriate by the planning board” (160D-604(d)).

A planning board recommendation is advisory, not binding. Even if the planning board determines that a proposed zoning amendment is inconsistent with the comprehensive plan, that does not preclude governing board action and adoption of the amendment. For more on the procedures, take a look at this blog on [Procedures for Legislative Development Decisions](#).

Advise on Other Ordinances. The planning board *must* have an opportunity to review and comment on zoning adoption and amendment; the planning board *may* have an opportunity to review and comment on adoption and amendment of other development ordinances under Chapter 160D. So, adoption of and amendments to the subdivision ordinance, minimum housing code, historic preservation ordinance, and other development regulations may be referred to the planning board for review and comment (G.S. 160D-604(c)). If the local ordinance calls for such referral to the planning board, then that procedural requirement is mandatory for local decision-making.

Additional Planning Duties. In addition to the above duties, the General Statutes grant planning boards broad authority for planning and plan implementation. As outlined at G.S. 160D-301(b), the local government may assign the planning board the following powers and duties:

- To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- To facilitate and coordinate citizen engagement and participation in the planning process.
- To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
- To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
- To perform any other related duties that the governing board may direct.

Some jurisdictions elect to grant all of the above powers to planning boards while others do not. Your local code of ordinances should identify which of the above powers have been granted to the planning board.

Additional Decision-Making

The planning board may be tasked with decision-making for certain development approvals and may be tasked with the duties (decision-making and all) of certain appointed boards. For planning boards tasked with handling different types of decisions, it is especially important to understand the substantive and procedural differences between those decisions, as outlined in the blog on [Types of Development Decisions](#).

A planning board may provide final decisions on preliminary and final subdivision plats (G.S. 160D-803).

Planning boards may handle certain quasi-judicial decisions such as applications for special use permits (G.S. 160D-705). The planning board may perform some or all of the duties of a board of adjustment, if designated as such by the local governing board (G.S. 160D-302). So, some planning boards handle variance decisions, appeals of administrative zoning decisions, and appeals from the historic preservation commission. For each of these—special use permits, variances, appeals—the planning board is serving as a quasi-judicial board and must follow the procedural formalities for such decisions. This is a notable contrast from the advisory decisions that the board typically makes.

Additionally, as noted in the list of duties above, the planning board may “provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.” This role of *preliminary forum* for quasi-judicial decisions is peculiar. It may serve as a sort-of dress rehearsal for the eventual evidentiary hearing. But, the ultimate decision-making board cannot base its decision on the forum or a recommendation from the forum.

The planning board also may perform the duties of a historic preservation commission, if designated by the governing board (G.S. 160D-303). When serving as a preservation commission, the planning board must have at least three members with special interest, experience, or education in history, architecture, or related fields. Preservation commission duties include, among other things, quasi-judicial determinations for certificates of appropriateness for construction and alterations in a historic district.

Finally, the North Carolina Urban Redevelopment Law outlines specific additional roles for planning boards, referenced in the law as “planning commissions” (G.S. 160-500 et seq.). First, the planning board must certify areas as “redevelopment areas.” The local redevelopment commission then may craft a redevelopment plan. The planning board reviews and certifies a recommendation on that redevelopment plan before it is finalized and sent to the governing board (G.S. 160A-513).

Organization and Composition

As outlined at G.S. 160D-301, the statutes are flexible with regard to composition of the planning board. A planning board must have at least three members, but otherwise the size, composition, and organization are open to the local governing board’s discretion. As an alternative to establishing a planning board, a local government may assign the duties of the planning board to another board and local governments may create a joint planning board under Article 20 of Chapter 160A. While the governing board may take on the duties of some appointed boards, the governing board may not handle the planning board’s review and comment duties outlined at G.S. 160D-604. That must be performed by a planning board or another board separate from the governing board (160D-604(e)).

There are no specific qualification requirements for planning board members, except in cases where the planning board acts as a historic preservation commission (described above). The governing board may set procedures for soliciting, reviewing, and making appointments to the planning board (G.S. 160D-310). For municipalities that have extraterritorial planning jurisdiction, the planning board must include proportional representation for the extraterritorial area (G.S. 160D-307). Unless prohibited by charter or ordinance, a governing board may appoint nonresidents to serve on the planning board (GS 160A-60 & 153A-25). Terms for planning board members may be set by local ordinance, or members may serve for indefinite periods at the pleasure of the governing board. As with any appointed board under Chapter 160D, members of the planning board must take an oath of office pursuant to G.S. 153A-26 and 160A-61 (G.S. 160D-309).

A local government may provide compensation to planning board members (G.S. 160D-301 & -502).

Rules of Procedure

Any board needs up-to-date and thorough rules of procedure to operate most effectively. G.S. 160D-308 provides that the local governing board may adopt rules for procedure for the planning board, and if the governing board does not adopt rules of procedure, then the planning board may do so. The adopted rules of procedure must be maintained by the local government clerk (or other designated official) and must be posted to the local government website, if one exists.

Conclusion

The planning board has an important role for land use planning and development regulations in North Carolina communities. This blog has outlined some of the duties and responsibilities, organization and composition, and other considerations for planning boards and planning board members.

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Town of Biltmore Forest Comprehensive Plan

May 10, 2022



Acknowledgments

This document would not be possible without the dedicated effort and community service of the Town's Planning Commission. The Planning Commission has served willingly and tirelessly to create a comprehensive plan that represents the history of the Town, its current state, and prepares for the future. The following members served on the Planning Commission during the Comprehensive Planning Process and during the Town's compliance with the new General Statute land use regulations.

Current Members

Mr. Paul Zimmerman, Chair

Ms. Dawn Grohs, Vice-Chair

Dr. Kenneth Hornowski

Mr. Michael Flynn

Mr. Tony Saponaro

Past Members

Ms. Karen Cragolin

Ms. Rhoda Groce, Interim Chair (*during Phase 1 Adoption*)

Ms. Toya Hauf, Former Chair (*beginning Phase 2 development*)

Mr. William Morrison

Ms. Marjorie Waddell

Special Acknowledgment

The Planning Commission wishes to make special acknowledgment to the life and service of Ms. Karen Cragolin. Ms. Cragolin passed away in January 2022 during this Comprehensive Plan development process. She was a steadfast, tireless, and vibrant defender of the environment, places, and people of Western North Carolina. Ms. Cragolin's leadership as Executive Director of RiverLink led directly to the restoration and beautification of waterways and landscapes throughout Buncombe County and Western North Carolina.

TOWN *of* 
Biltmore
Forest

Mayor George F. Goosmann, III

Mayor Pro-Tem Doris P. Loomis

Commissioner Fran G. Cogburn

Commissioner E. Glenn Kelly

Town Attorney William Clarke

Town Manager Jonathan Kanipe

Public Works Director Harry Buckner

Police Chief Chris Beddingfield

Background

The North Carolina Legislature made significant changes to the planning and land use regulations for local governments in 2019. The implementation deadline for these changes was moved back due to the Covid-19 pandemic, and as a result, the Town's implementation moved back accordingly. NCGS 160-D imposed many changes for local governments and broke these changes down into two distinct parts. Part 1 included revising the Town's land use ordinances to comply with state law changes. The Town's Planning Commission embarked upon meeting these requirements in March 2021. After reviewing the Town's existing Zoning Ordinance and adding (or removing) requirements laid out by NCGS 160-D, the Planning Commission recommended approval to the Board of Commissioners in June 2021. The Board of Commissioners subsequently adopted the changes on June 8, 2021 after holding a public hearing. A copy of this ordinance and subsequent Zoning Ordinance, effective July 1, 2022, is found in "Appendix A" of this Comprehensive Plan.

Part 2 changes required local governments to have a reasonably maintained comprehensive plan or land-use plan in order to retain zoning authority. The Town has maintained a land use plan and formal Zoning Ordinance for many years, but has not maintained a comprehensive plan. As a result, the Town is required to undergo this planning process and adopt a comprehensive plan by July 1, 2022.

UNC School of Government land use experts provided insight into specific elements often considered in the comprehensive planning process. These elements are not required to be addressed by North Carolina law, but provide a good basis for this process.¹

- (1) Issues and opportunities facing the local government, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
- (2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
- (3) Employment opportunities, economic development, and community development.
- (4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
- (5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
- (6) Recreation and open spaces.

¹ Lovelady, Adam. Comprehensive Plans and Land Use Plans Required for Zoning. Accessed at <https://canons.sog.unc.edu/comprehensive-plans-and-land-use-plans-required-for-zoning/> on August 26, 2021.

- (7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.
- (8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
- (9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
- (10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

Comprehensive Plan Development Process

An effective comprehensive planning process allows for significant public feedback. In larger or more diversely zoned local governments, this process may take over a year to complete with multiple public meetings, charrettes, and individualized surveys. Biltmore Forest is unique in its overwhelmingly residential nature with little developable property. Because of this residential nature, the Town's process was streamlined. The Planning Commission did not focus on several typical components of some comprehensive plans, such as industrial development, job growth, or increased tourism. These sectors do have significant indirect impacts on the Town, typically felt within the transportation sector, but are not the focus of Biltmore Forest's Comprehensive Plan. The Town's focus for the 2022 Comprehensive Plan was creating a vision for the Town rooted in citizen feedback and engagement.

The Comprehensive Plan process began on September 28, 2021 with the Planning Commission meeting to review statutory requirements related to NCGS 160-D. The Commission set a calendar at that meeting for completing the Comprehensive Plan by July 1, 2022.

Comprehensive Plan Schedule

Date	Process/Meeting Focus	Outcome
September 28, 2021	Comprehensive Plan Overview and Schedule Development	Approval of Schedule and Begin Prioritization
October 25, 2021	Discuss Town specific Comprehensive Plan Elements Staff review of specific Town mapping elements	Identify priorities for Comprehensive Planning Consideration and survey development
November 23, 2021	Provide draft survey for review by Commission	Approve survey for distribution to residents
December 21, 2021 (note diff. proposed date for meeting)	Review survey response rate and/or results (dependent upon survey distribution timeframe)	Define final dates for public meetings to receive input on comprehensive planning process, survey responses, and other resident land use feedback
January 25, 2022	Regular meeting – Consider holding one public meeting at this time	Likely will need to hold one public meeting during the evening (regular meeting) and one during the daytime. Receive and review public feedback and determine time for next public meeting.
February 22, 2022	Review public comments, survey responses, and Commissioner prioritization.	Define final focus for each section of the Comprehensive Plan
March 29, 2022	First draft Comprehensive Plan provided to the PC	Receive comments and make changes to comprehensive plan draft
April 26, 2022	Final draft Comprehensive Plan provided to Planning Commission	Review and provide feedback and/or consider recommendation of approval to Board of Commissioners
May 24, 2022	If final draft not approved in April, final draft review at this point	Recommendation to Board of Commissioners for adoption (last available time to do this)

Table 1.

The Commission held to this calendar and began by reviewing comprehensive plans from several other municipalities in North Carolina. Those provided context for the scope of work and an opportunity to review how other jurisdictions addressed the comprehensive plan process. This review led to discussing potential survey questions and how best to deliver a survey for Town residents. The Commission spent October discussing potential questions, and ultimately, issued a survey for all Town residents to complete beginning November 30, 2021. The survey ran through December 13, 2021.

Residents were notified of the survey opportunity through the Town’s newsletter, CodeRED alerts, and immediate notices placed on the Town’s website.

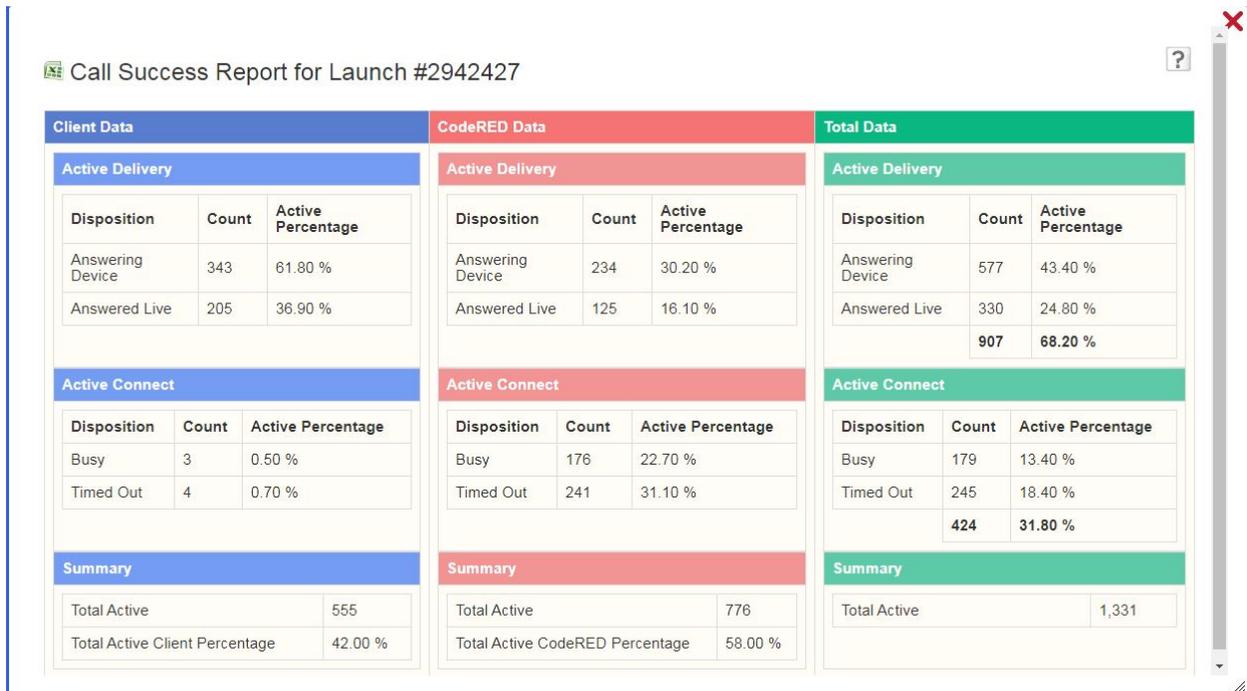


Figure 1. CodeRED Call Data

Mr. Paul Zimmerman, current chair of the Planning Commission, led the survey development and analysis process. Mr. Zimmerman’s career was leading market research for a Fortune 50 company. That experience proved invaluable during this portion of the Comprehensive Plan. Each Planning Commission member offered recommendations on survey topics and questions. The entire membership approved the final questionnaire. The Town received 238 responses. With a full-time population of 1,400, this is a response rate of seventeen (17) percent. Mr. Zimmerman’s analysis and breakdown of the survey is found on the following pages, with a copy of the full survey found in Appendix B.

Results of 2021 Planning Commission Survey

An online survey among Biltmore Forest residents was conducted between 30 Nov and 13 Dec 2021 to give the Planning Commission insight on issues important to Town residents in the development of a comprehensive plan. 238 total responses were received to the survey, which is a very good sample. The average time to complete the survey was 7 min and 23 seconds.

RESULTS

- Overall Rating of Biltmore Forest (Q1).** The Question was asked using a standard Excellent, Very Good, Good, Fair, and Poor scale, which were then assigned standard values of 100, 75, 50, 25 and 0. The weighted average for this question was 84, which is outstanding and in line with past responses to this question in previous surveys in Biltmore Forest. A previous town-wide survey, conducted in 2018, revealed similar overall ratings and highlighted many of the same issues laid out below.

	Excellent %	Very Good %	Good %	Weighted Average
Overall Rating	54	27	4	84

- Direct Rating Questions of Key Attributes (Q3).** The same scale was used for these Attributes as for the Overall Rating

Attribute (How would you rate Biltmore Forest for being a Town...)	Excellent %	Very Good %	Good %	Fair %	Poor %	Weighted Average
... that protects mature trees and the tree canopy	45	30	13	8	3	74
... where it is safe to walk	32	29	23	11	4	66
... that you are proud to live in	66	25	9	0	0	89
... that has a professional/competent Police Force	80	14	6	0	0	93
... that has a professional/competent Public Works Dept.	75	19	6	0	0	93
... that gives you confidence that Zoning Ordinances are consistently enforced	32	36	15	11	7	66
... where there are plans to guide future development	27	30	28	11	5	64
... where there are appropriate Parks to use and enjoy	45	30	17	6	2	76

... that is enjoyable for people of all ages	56	25	12	5	1	80
... that has effective speed management	37	32	16	8	6	69
... where there are Social activities	27	39	27	5	1	68
... where there are guidelines for buffering between neighbors and high traffic zones	25	32	28	13	3	63

- a. The ratings for Pride, Police, and Public Works were outstanding and rarely seen in surveys of this type.
- b. The average rating for all questions in this survey is 75, so that you can judge which attributes are relatively high or low. A difference between ratings of approximately 8 points is statistically significant.
- c. In addition to the average rating, you should also look at the percentage of people rating (Fair + Poor). When this number approaches 15%, that is taken as a strong indicator that the lower rating should be studied further using voluntary comments and not dismissed.. I have highlighted those ratings in **RED**.

3. **Importance Ratings of Key Attributes (Q4).** A 5-point ‘Very Important to Very Unimportant’ scale was used for these Attributes. Standard weighting of +2, +1, 0, -1, and -2 was used to calculate the weighted average.

Attribute (How IMPORTANT is it that Biltmore Forest is a Town...)	Very Important %	Important %	Neither Important or Unimportant %	Unimportant %	Very Unimportant %	Weighted Average
... that protects mature trees and the tree canopy	63	30	5	2	0	1.35
... where it is safe to walk	83	16	0	0	0	1.83
... that you are proud to live in	69	23	7	1	0	1.59
... that has a professional/competent Police Force	93	7	0	0	0	1.93
... that has a professional/competent Public Works Dept.	92	8	0	0	0	1.91
... that gives you confidence that Zoning Ordinances are consistently enforced	66	27	6	0	0	1.57

... where there are plans to guide future development	65	30	3	1	0	1.60
... where there are appropriate Parks to use and enjoy	60	34	3	1	0	1.55
... that is enjoyable for people of all ages	64	29	7	0	0	1.56
... that has effective speed management	59	37	3	1	0	1.55
... where there are Social activities	22	43	28	6	1	.80
... where there are guidelines for buffering between neighbors and high traffic zones	52	37	10	1	0	1.38

- a. The average for all ratings was 1.55, so you can judge whether individual ratings were relatively high or low.
- b. These ratings were skewed significantly toward all being positive. About 10% of all respondents skipped this question entirely. As a result, I would recommend that more emphasis be placed on the other survey question results.

4. **HYPOTHETICAL Directions the Town Could take. (Q5)** This is a new question designed specifically to guide the Planning Commission.

Rating	I'd like MORE of this %	Current Level is Adequate %	I'd like LESS of this %
Walking Trails within existing Parks	56	41	3
Enforcement of Zoning Ordinances	34	59	6
Speed Humps	21	53	26
Upgrading Park Activity Structures for Children	40	56	4
Enforcement of Speeding	31	66	2
New Planting of Hardwood Trees (Oak, Maple, Walnut, etc) along Roads	64	34	2

Forbidding Clear Cutting for any reason	49	44	7
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- a. This question gave interesting responses for four questions: New Plantings and Walking Trails were two issues where a significant number of residents wanted more. Close behind was an Ordinance to prohibit Clear Cutting. Interestingly, about 2/3 of respondents were happy with the current level of speed enforcement, even though the rating for Speed Enforcement (Q3) was significantly lower than average.

5. **Breakout Questions (Q6):** The following Questions were asked to understand the involvement of respondents with factors that impact the daily running of the Town.

	Yes	No
Do you live in Biltmore Forest full-time, or not?	97	3
Have you ever attended a Board of Commissioners Meeting, or not?	48	52
Are you familiar with the tree protection ordinances, or not?	82	18
Have you ever attended a Board of Adjustment Meeting, or not?	55	45
Are you familiar with the current Fences, Walls and Gates Ordinances, or not?	71	29
Are you familiar with the Accessory Structure Ordinances, or not?	64	36

MORE DETAILED CLARIFICATION/ANALYSIS:

The ratings only tell us that people are happy or not happy with a particular area – but not WHY.

The open-ended question allows us to go in and read verbatim comments about areas of concern to give a clearer understanding of what the issue really is and what the emotion is around that issue.

Below are the actual comments people made about the key areas of concern:²

Comments about Trees:

-Much of the draw to the Forest is just that...a forest. Allowing (or ignoring) more clearing and bigger square footage along with the widespread light pollution makes us no different than many other communities.

-Change here moves so slowly. Why are we talking about the same issues for years – traffic, trees, and fences?

² All responses are verbatim with no editing.

- Don't let people cut down dozens of trees at once.
- We need to look closely at all the trees that are leaning into the roads. There are many dangerous trees that are leaning and will fall in the next ice storm. I think the town is too conservative in removing those trees.
- I really wish the Town would be more strict about the people taking care of the ivy growing up their trees. If these crawling vines choke the trees, we will lose many of them and the forested nature of the neighborhood which is prized by all of us.
- The wooded nature of the neighborhood is my favorite feature.
- ...the beauty of the forest makes me sigh 'ahh' every time I enter the town.
- Biltmore Forest makes me feel good as I enter the forest. It is most calming and lovely to live here.
- I am not crazy about new houses going up resulting in the loss of trees and undeveloped land.
- Some ordinances should be changed: e.g.—Fencing and tree removal.
- BF was crated 100 yrs ago from a managed forest—it is no longer so and many of the roadside and other trees are old, dying, dead and a danger to all. Town needs a new comprehensive forestry management plan—not only aa tree ordinance.
- Too many trees are disappearing.
- We should encourage new homeowners to invest in slow growing long lived trees and native plants
- One of my concerns is that we are losing all of our white pines. Perhaps we could replace them with some larger Hardwood trees.
- This Town is overly intrusive on homeowner's rights to make changes to their properties and homes, eg fences, tree removal, sheds, etc.
- Special treatment allowing things such as more trees being cut for new home sites and on the BFCC golf course should be stopped.
- The trees are a double edges blessing – I fear for many of the really large old ones on Vanderbilt, especially the North section.
- I am a big fan of trees and want the Town to continue to protect term and to plant more along with requiring residents to do the same.
- We used to be a 'forest' That is disappearing quickly.
- The forest is now being clear cut.
- Our beautiful hardwood trees are dying from ivy growing on them.

Comments about Walking/Trails:

- If you're not going to cut back foliage to make driving and walking safer, stop saying you will!
- A sidewalk along Vanderbilt is needed. The foot traffic along this road is quite significant.
- We should have a trail system like Biltmore Park. Either maintain or get rid of the shabby bus stops.
- Also need to look at adding sidewalks in certain areas to make it more favorable to walking.
- People walking and running in the morning before the sun is up are risking their lives. Often times they are in the road without reflectors or lights. Disaster waiting to happen
- It would be nice to have a walking path in town.
- I would be nice to make it more walker friendly
- Could be more family friendly in terms of walking and biking.
- There have been times I have been almost pushed off the road or almost hit by cars AND cyclists. The cyclists are equally dangerous—not only do they speed around corners and almost hit me, but they ride side by side and ignore cars on the road.
- With all of our walkers, it's becoming dangerous for them and harder for drivers to see and avoid them.
- Roads need to be safer for autos, bicyclists and pedestrians by clearing side easements of brush, branches placed by private owners or Town neglect. This is a very dangerous situation at present for which the Town is liable.
- Walking the neighborhood is dangerous in many areas. Encroachment of vegetation along the roadside makes certain shoulders impossible. Blind corners or crests are prevalent too There's no place to go when drivers recklessly approach the combination
- There should be land purchased for walking trails and greenways.
- I wish properties were required to prune (or allow the Town to prune) their street side trees, bushes and vines in order for walkers to be safe,
- Not having to step out into the road, esp Vanderbilt, and blind curves. This includes the hotel as well as the homes.
- I wish there were sidewalks.
- Reflective clothing. All walkers, bicyclists, etc. You know what I mean. Someone is going to Get hurt or killed.
- Walking at night – I notice some people walk at night with dark clothes and makes it difficult to be seen when driving I have also been a walker when people do not see me and almost hit me and my dogs.

-Disappointed that pedestrian traffic not more encouraged and supported. The expectation that Pedestrians can/should walk into a forested/landscaped/blind spot areas instead of cars slowing down is dated, unacceptable and a public health and liability concern.

Comments about Speed

-I feel there are people who drive too quickly on Eastwood Road and I have been almost hit by people who don't stay in their lane and come around the corner too quickly. Oddly, speed bumps exist on other roads in the neighborhood, but not there.

-I saw a ray of hope when BF posted a digital speed monitor at the corner of Chauncey Circle and Niagara. THIS WAS EFFECTIVE in reducing speeds...then it was taken down as if it was some kind of an experiment. WHY WAS IT TAKEN DOWN? With the taxes I pay each year, you can sure as hell afford to place it there permanently!

-As a resident living n Chauncey Circle, I continue to see idiots towing their horse trailers at speeds approaching 40+ mph on their way to the equestrian center. They continue to drag their trailers over the grass—no regard for BF property.

-Some of the roads are dark and I wish more people would follow the speed limits.

-Speeding needs attention

-Construction traffic and tradespeople can get a little aggressive with speed and respect for pedestrians, particularly at the beginning of the day, mid-day, and end of the day. Maybe traffic calmers on Vanderbilt Road south of Park?

-Some residents and golf course users drive too fast/aggressive as well.

-I wish speed were monitored more uniformly

-We could use more speed bumps particularly on streets off 25, like Eastwood.

Comments about Parks/Public Spaces

-Much of the public areas of BF look tired. Overgrown parks and public spaces, vines climbing trees, streetscapes that are in disrepair. Our neighborhood looks unkept and this is problematic when comparing our property values to BPark, Ramble or Cliffs. We are not what we once were and a concerted effort needs to be made to get us back to the preeminent neighborhood of Asheville

-Need to invest in Parks and in saving the Hemlocks

-We need a DOG PARK! We have a perfect place for a big park – the triangular area between E Forest and Vanderbilt. People get to know each other thru their pets.

-There are NOT ENOUGH amenities for residents. We should have updated playgrounds, nicer parks and landscaping, benches, and a town sign!

-The bus stop at the corner of Stuyvesant and Southwood was knocked down by a tree and should be replaced. We can't lose the charm of the Town.

-I would like to see more Park improvements at some point

-I wish the parks were cleaned up regularly

-We need a dog park. Provide a wonderful opportunity to meet and greet neighbors that one would not otherwise have! Hope the Town will consider.....

-The parks are shabby and many of the residents don't keep their yards groomed – giving the Town an unkept look

-More attention should be paid to keeping the wooded 'parks' cleaner looking. Get rid of excess debris and fallen trees. No one should have to replant a fallen tree or a dead tree after removal. The old pine trees are a hazard to home owners and should be allowed to remove them no matter how many you have without a permit and without having to replace them.

-When we had bus service there were occasional shelters, which were useful for resting while on a walk. Most were simply removed. Something similar would be useful now; they don't need to be elaborate.

SURVEY CONCLUSIONS:

1. Biltmore Forest has maintained an extremely high satisfaction rating and many comments of the residents state that they are proud to live here.
2. Police and Public Works both received an exemplary rating, with strong positive comments from residents for the Police, Public Works, and Administration for their friendliness and efforts.
3. The areas of Walking Safety, Speed Management, buffering guideline, Consistent Enforcement of Zoning Ordinances, and Plans to Guide Future Development were all rated significantly lower than the average.
4. Voluntary Comments on *Walking* tended to focus on desire for walking trails and clearing hazardous right of way plantings.
5. Voluntary Comments on *Speed* were not specific other than the need to control it better
6. Whereas the rating for *Protecting the Tree Canopy* was average, there were a significant number of comments about the need to replace trees, prevent clear cutting, and manage ivy invasion. This appears to be a case where people LIKE the forest (hence the higher rating) but don't want to lose it (negative voluntary comments)
7. Similarly, whereas the rating of the *Parks* was average, there were again significant comments about them looking shabby and needing updating. I believe the rationale is similar to the Trees rating.

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Draft Comprehensive Plan

Vision, Goals, and Strategies

The Planning Commission members reviewed survey responses and Mr. Zimmerman’s analysis through January 2022, and in February, began integrating this information with specific goals and strategies for the Town’s forthcoming comprehensive plan. The resulting document, included below, was presented to the public at the Public Meeting held on March 22, 2022.

Draft Comprehensive Plan for Biltmore Forest: Vision/Goals/Strategies Revised March 9, 2022

Overall Vision	GOAL	Possible Policy/Strategy
Biltmore Forest will be the most livable residential community in Western North Carolina. It will embrace its historical founding and character while giving all residents the opportunity to live, work and play in an open and supporting environment.	Maintain our open and transparent Board of Commissioners, Town Administration and Administrative Committees (Board of Adjustment, Design Review Board, and Planning Commission)	<ol style="list-style-type: none"> 1. Maintain and improve the Town websites to make it easier to find and access meeting dates and meeting results 2. Maintain Easy Access to the Town Manager. 3. Continue to have time at each meeting for resident input. 4. Continue regular and special written newsletters to all residents.
	Maintain the Effective Community Policing capabilities of the Biltmore Forest Police Force	<ol style="list-style-type: none"> 1. Maintain a visible presence at key intersections during high traffic periods. 2. Evaluate alternative methods to reduce average speed on roads 3. Continue to support residents for special issues and needs 4. Continue to Support Asheville Police as requested on issues that affect Biltmore Forest.
	Maintain the Effective and Responsive Public Works Department	<ol style="list-style-type: none"> 1. Maintain the current level of Brush, Leaf and Trash services while ensuring employee safety and health. 2. Maintain current plans to clear public spaces, improve stormwater runoff and improve road safety conditions (berms, line-of-sight, right of ways) 3. Evaluate methods to evaluate tree coverage using available satellite data

	<p>Protect and improve the existing Tree Canopy of Biltmore Forest</p>	<ol style="list-style-type: none"> 1. Significantly more Hardwood Trees should be planted each year, with the Town planting trees on public land and making about 50 hardwood trees available for homeowners to plant each year. 2. Require that trees removed must be replaced with hardwoods to maintain or improve the percentage of tree canopy coverage. 3. Develop a budgeted ivy eradication program. 4. Prohibit clear cutting outside a 40ft distance from a home.
	<p>Improve Walking and biking Safety on Streets in Biltmore Forest</p>	<ol style="list-style-type: none"> 1. Identify streets with the highest level of pedestrian usage and increase Police presence and speed enforcement on those streets. 2. Work with Board of Commissioners to evaluate the possibility of dedicated bike or pedestrian paths, per the 2022 Transportation Study. 3. Working with homeowners whenever possible, remove landscaping town rights of way and/or reducing line-of-site visibility for drivers and walkers 4. Evaluate and improve the condition of the road berms and setbacks to eliminate drop-offs and ruts. Plant grass as necessary to eliminate mud. 5. Utilize 2022 Transportation Study opportunities and challenges map as basis for improvements
	<p>Develop New Off-street Walking Paths in Biltmore Forest</p>	<ol style="list-style-type: none"> 1. Develop a plan for walking paths that join existing Parks or allow walking within one park. 2. Ensure the paths are easily accessible to people with special needs and have adequate places to rest (benches or use of existing historical bus stops

	Ensure existing Zoning Ordinances are equitably enforced	<ol style="list-style-type: none"> 1. Hire a person who has enforcement as their primary responsibility. 2. Ensure the Town management and government will support and encourage enforcement. 3. Develop a clear table of Consequences (Fines, etc.) for Non-compliance.
	Control speeding by reducing the average speed on Town Streets	<ol style="list-style-type: none"> 1. Add Stop signs at Intersections where they are needed and have been approved, e.g., Busbee and Vanderbilt 2. Increased enforcement of existing Speed limits 3. Increased presence of speed monitors where speeding is a problem.
	Support optimal enjoyment of Public Parks and public spaces	<ol style="list-style-type: none"> 1. Continue plans for Greenwood Park upgrades and other park invasive plant removal 2. Establish a team of residents to evaluate all parks and public spaces for upgrades to play structures, electrical (to better support Food Trucks), trashcans and water access. 3. Develop a prioritized list of needed maintenance and upgrades identified in step 2 4. Regularly add new mulch, sand or turf in Parks, as necessary. Repair traffic island curbing as needed. 5. Renovate roofs and structural components of all bus stops as needed.
	Communicate Better with New Residents	<ol style="list-style-type: none"> 1. Prepare a brochure outlining key facts, procedures, and ordinances for new residents.

Public Meeting

The public meeting, attended by over forty (40) residents, included substantial public comment and feedback on the draft goals and strategies. Each Planning Commission member presented a section of the draft, and asked for feedback from those in attendance. Residents focused questions and comments on the preservation of the tree canopy and methods to protect existing trees, replant trees, and requirements related to the Town's overall forested environment. Discussion around increased walking opportunities in the Town, both on and off street, were incorporated into various sections of the discussion, including parks and open spaces and controlling speeding on Town roads. Current Town services, notably Public Works, the Police Department, and Administration, were lauded for responsiveness and openness. Current residents advocated for improved communication to new residents and working to provide information regarding the Town's history and zoning ordinance philosophy. Attendees discussed parks, open space development, and the potential creation of off-street walking paths and enhanced amenities in existing parks. The Town's inherent residential nature was praised by all in attendance.



Figure 2. Town Public Meeting – March 22, 2022

The Planning Commission members received this feedback and considered the discussion along with the survey responses. This public feedback serves as the backbone for this overall Comprehensive Plan, and specifically, the following vision, goals, and strategies.

Vision

To maintain and enhance the status as the preeminent residential town within Western North Carolina.

The vision for the Town of Biltmore Forest echoes the incorporation of the Town and its development nearly one hundred years ago. Embedded within this vision is the underlying, and inherent expectation that the Town will provide the highest level of service to its citizens and create public environments reflecting this vision. There are important non-residential components to the Town – the Biltmore Forest Country Club, Carolina Day School, the Blue Ridge Parkway, portions of the Biltmore Estate, the Mountain Area Health Education Campus, and many professional offices – but the heart and soul of the Town is its people. The Town was envisioned as a refuge from hustle and bustle, and as noted within the open-ended comments, residents often feel that refuge simply from turning onto a Town street.

In 1990, the United States Department of the Interior issued a “Determination of Eligibility Notification” that stated the Town of Biltmore Forest was eligible for consideration for the National Register of Historic Places. The Keeper of the National Register noted:

This property is a significant early 20th century planned suburb important within the history of Asheville as it was transformed from a resort community into a residential community. Its design and landscaping elevated residential development with a planned, well-conceived and executed framework, carried out by local professionals, which gives a specific identity to the area. Arts and Crafts movement design principles were used in the architecture of many buildings, including those of Dodge who lived and worked in Biltmore Forest. The Boundaries reflect historic direction patterns of suburban growth, and include both the larger lots and homes, as well as smaller lots of the design, both key elements of the original plan.

E.O. 11593
DETERMINATION OF ELIGIBILITY NOTIFICATION
 National Register of Historic Places
 National Park Service

Name of property: Biltmore Forest Historic District State: NC
 Location: Buncombe County
 Request submitted by: FHWA/Nicholas L. Graf
 Date received: 3/7/90 Additional information received:

Opinion of the State Historic Preservation Officer:
 Eligible Not Eligible No Response
 Comments:

The Secretary of the Interior has determined that this property is:
 Eligible Applicable criteria: A, B, C Not Eligible 36 CFR Part 63
 Determination

Comments: *This property is a significant early 20th century planned suburb important within the history of Asheville as it was transformed from a resort community into a residential community. Its design and landscaping elevated residential development with a planned, well-conceived and executed framework, carried out by local professionals, which gives a specific identity to the area. Arts and Crafts movement design principles were used in the architecture of many buildings, including those of Dodge who lived and worked in Biltmore Forest. The boundaries reflect historic direction patterns of suburban growth, and include both the larger lots and homes, as well as smaller lots of the design, both key elements of the original plan.*

Nicholas L. Graf
 Keeper of the National Register
 Date: 3/21/90

WASO-28

Figure 3. Determination of Eligibility Notification, March 21, 1990

Goals and Strategies

In order to maintain and enhance this vision, the Town's future land use planning and this Comprehensive Plan must acknowledge the original ethos and strive to meet these demands in today's modern world. To accomplish this task, the Town's Planning Commission and Board of Commissioners have developed the following framework for addressing land use and enhancing life within Biltmore Forest.

Goal 1 – Open and Transparent Government, Development Regulations, and Review Process

The Town of Biltmore Forest prioritizes transparency in all facets. Transparency, openness, and availability must also be hallmarks of the Town's zoning and land use regulations. The public survey revealed strong support for the Town's administration, public works, and police departments; this support flows directly from the trust imbued in Town staff from the citizens and elected officials. In identifying this goal, the Planning Commission has established four (4) key strategies.

1. Modernization of Town Zoning Regulations and Enforcement through effective and consistent treatment.
 - Increase code enforcement, for both Town Code and Zoning Ordinance violations, through dedicated code enforcement specialist
2. Maintain open and transparent Board of Commissioners, Town Administration, and Quasi-Judicial Boards and Advisory Commissions
 - Continue publication of regular newsletters and enhance mailings with special newsletters devoted to specific issues (e.g. tree protection; living with wildlife)
 - Maintain and improve Town websites and publications to increase access for meeting dates, times, locations, and meeting results
 - Maintain accessibility to Town administrative staff
 - Promote public comment portion of Town Board of Commissioners meetings
 - Inform and educate new residents regarding Town services, rules, and regulations
3. Maintain effective community policing capabilities of Biltmore Forest Police Department
 - Leverage Police Department's current level of citizen engagement and openness to create further transparency within Town government
 - Maintain a visible presence at key intersections during high traffic periods
 - Increase enforcement of existing speed limits
 - Evaluate alternative methods to reduce average speeds on Town roads
 - Continue to support residents with special needs and requests
 - Continue to support Asheville Police Department and work collaboratively on issues that affect Biltmore Forest

- Enhance radar speed limit sign usage to determine what roads experience highest level of speeding and utilize this data for enhanced speed enforcement efforts
 - Install new radar speed limit signs on an annual basis to reinforce speed limits for visitors and residents
4. Maintain effective and responsive Public Works Department
- Maintain current level of brush, leaf, and solid waste services while ensuring employee safety and health
 - Continue and enhance plans for clearing public spaces, improving stormwater drainage throughout the Town, and improving road safety conditions (e.g. berms, lines of sight, right of way maintenance)
 - Develop necessary infrastructure improvement projects within the context of the Town's original development and historical character

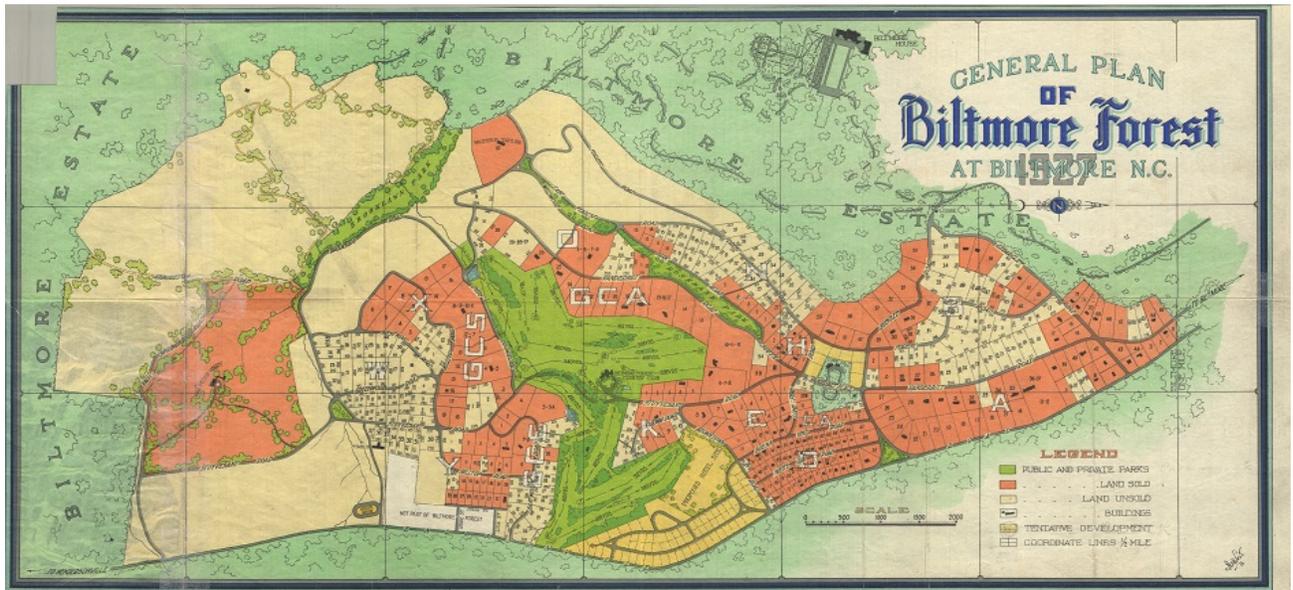


Figure 4. General Plan of Biltmore Forest, 1927.

Goal 2 – Protect and Enhance the Existing Tree Canopy within Biltmore Forest

The Town's trees and forest environment are a hallmark for residents. Survey responses and public comment revealed exceptional devotion to the tree canopy and advocacy for vigorous protection and replanting. The Town's Tree Protection Ordinance, originally adopted in 1989, is formally housed within the Town's Code of Ordinances. However, for practical reasons, the tree protection provisions often get included as part of new home plans and additions to existing homes and properties. The Planning Commission's stated goal is to protect and enhance the existing tree canopy within the Town, with specific strategies as follows.

1. Utilize the United States Forest Service's tree canopy data sets, or other geospatial information services (GIS) data, to establish a baseline for the Town's tree canopy
 - Utilize prior year data, within 5- and 10-year increments, to determine tree canopy loss since 2000
 - With baseline data in hand, set standard for preservation of 2022 level tree canopy percentage and goals to increase tree canopy over the course of fifteen (15) years, in five (5) year increments, with 5-year report to Town citizens providing data and results
2. Enhance Zoning Ordinance regulations regarding new home development, additions to existing homes, and improvements on undeveloped lots in conjunction with tree preservation goals and requirements
 - Require final landscaping plan as part of all new home development applications and for any addition greater than twenty-five (25) percent of existing home square footage
 - Require final landscaping plan for any special use permit application
 - All final landscaping plans should include, at minimum, all planned tree removal and required tree replacement as required by the Town's Tree Protection Ordinance and utilizing Town's recommended native tree and shrub list
 - Consider replanting credits for new construction or renovation when a hardwood tree greater than twenty (20) inches is saved as part of a final landscaping plan
3. Recognizing the aesthetic and health benefits of the diversity of trees in Biltmore Forest, promote replacement of a variety of trees to ensure continuity of a diverse and healthy forest.
4. Develop a budgeted ivy and invasive species eradication program, with promotion and education for private property owners through demonstration sites on public property.



Figure 5. Photo Courtesy of Helen Stephens

Goal 3 – Improve Safety along Public Streets

Biltmore Forest remains true to the concepts of Frederick Law Olmstead and design of Chauncey Beadle. The curvilinear streets that shape the Town are intertwined with beautiful landscapes and majestic homes. These same streets, many reflecting their original layout and design from the early 1920s, host numbers of vehicles on a daily basis that was incomprehensible before the Great Depression. These vehicles compete daily with the Town’s residents and visitors who enjoy walking and bicycling these same roads. Roads are there to provide vehicular access and efficient movement from place to place, but there is, and must be, a synergistic relationship between vehicle and pedestrian wherein both use the road safely. The Planning Commission has developed four (4) strategies to improve safety for pedestrians and bicyclists within Biltmore Forest, as follows.

1. Identify streets with the highest level of pedestrian usage, through a visual survey, and increase police presence for speed enforcement on these streets
2. Utilize the Police Department’s community engagement strategies to encourage pedestrians and bicyclists to always wear reflective clothing and utilize the appropriate sides of the road where practical
3. Enhance the Public Works Department’s “Right of Way Renewal” program to work more broadly with homeowners and remove landscaping that extends within the Town’s right of way, thereby providing pedestrians a necessary and safe space to step to the side of the road and away from oncoming traffic
 - Utilize the “Right of Way Renewal” program to improve the conditions of roads and rights of way through appropriate street maintenance
4. Develop plans for new walking paths (in conjunction with parks and open space goal) in Town owned property and in coordination with adjoining property owner feedback

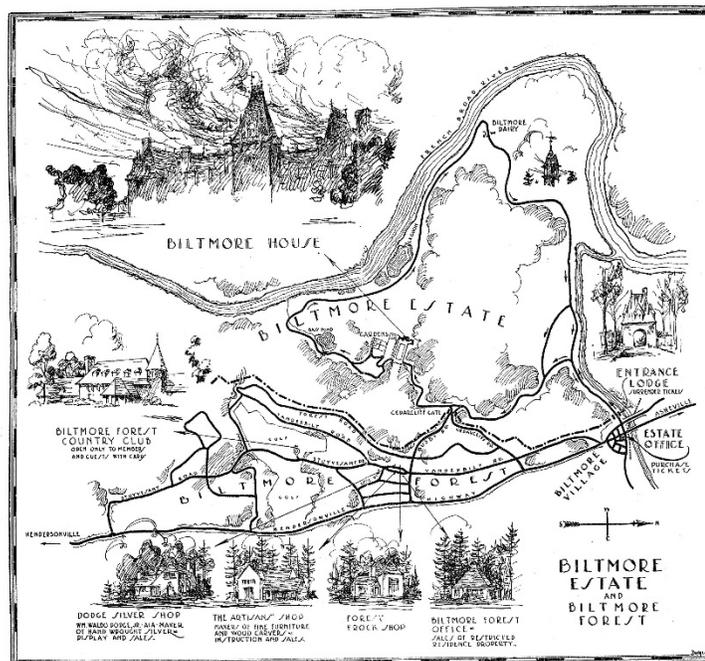


Figure 6. W.W. Dodge Streets Map.

Goal 4 – Support and Enhance Public Spaces, Parks, and Open Spaces

The Town is fortunate to have a history imbued with beauty. The tree lined streets, homes, landscaping, and open spaces combine to promote a feeling of peace. This peaceful feeling is never more apparent than when spending time with neighbors and friends in Rosebank or Greenwood Parks or overlooking the pond at Brooklawn Park. These areas are cherished by Biltmore Forest citizens, and the Town has a stake in enhancing their beauty and promoting their use. The Planning Commission has identified several strategies for focusing on these open public areas.

1. Develop a master plan for all parks.
 - Establish a resident-led committee to evaluate parks and public spaces for potential improvements, including a prioritized list of park maintenance and equipment needs
 - Explore a plan for walking paths that join existing parks or allow walking within one existing park, in conjunction with the overall park master plan
 - Convene public meetings for park master plan development to address concerns related to walking paths, additional park improvements, and gather citizen feedback
2. Execute existing plans for Greenwood Park, including the stream restoration and equipment and accessibility upgrades
3. Ensure any future public spaces are easily accessible
 - Utilize existing bus shelters for walking breaks and renovate roofs, structural components, and landscaping as necessary to promote their use
4. Continue appropriate clearing within the woodland park areas and removal of invasive species
5. Amend Town Zoning and Subdivision ordinances to require dedication of land for parks and/or open spaces, within statutory allowance



Figure 7. Fourth of July Celebration, 2018. (Courtesy Diane Zimmerman)

Conclusion

The Town’s Planning Commission worked diligently, thoughtfully, and with extreme care to create the Town’s 2022 Comprehensive Plan. Significant thought was put into the vision, each goal, and the strategies necessary to achieve these outcomes. The process allowed clear analysis and consideration of what makes Biltmore Forest unique, and what challenges lie ahead. It is the hope of the Planning Commission and Board of Commissioners that this document will serve as a guiding light for the next several years, enabling the Town to continue excelling and providing the highest level of service and satisfaction for its citizens.



**Town of Biltmore Forest
Ordinance 2021-01**

Zoning Text Amendment 2021-01

**AN ORDINANCE TO AMEND THE TOWN OF BILTMORE FOREST
ZONING ORDINANCE**

WHEREAS, the Town of Biltmore Forest has adopted a Zoning Ordinance which regulates the use of land within its corporate limits; and

WHEREAS, the Town of Biltmore Forest Zoning was and is authorized to adopt zoning and land use ordinances pursuant to NCGS § 160D-201(a) *et seq.* and its predecessor statutes; and

WHEREAS, the North Carolina General Assembly adopted S.L. 2019-111 in July 2019, requiring all municipalities and counties that enforce zoning or land use regulations to revise existing land development ordinances to ensure compliance with new consolidated land use statutes effective July 1, 2021; and

WHEREAS, the Town of Biltmore Forest desires to revise its existing zoning ordinance so that it is in compliance with North Carolina law;

NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF BILTMORE FOREST THAT:

Section 1. The attachment to this ordinance, titled "Attachment A" is hereby adopted and shall replace the Town's existing Zoning Ordinance in its entirety.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance amendment is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this section, subsection, sentence, clause, or phrase thereof.

Section 3. All ordinances and clauses of ordinances of the Town of Biltmore Forest in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance amendment shall take effect on July 1, 2021.

Read, approved and adopted this the 8th day June, 2021.



Mayor George F. Goosmann, III



Town Clerk Laura Jacobs



Planning Commission 2021 Survey

1. Considering everything about the Town of Biltmore Forest, how would you rate it OVERALL?

- Excellent
 - Very Good
 - Good
 - Fair
 - Poor
-

2. Thinking about Biltmore Forest, please tell us all your thoughts, feelings and reactions about the Town. (There are no right or wrong answers - just tell us how you honestly feel!)

3. Below, again, are a series of statements about the Town of Biltmore Forest. For each statement, please check the box that best describes how you would rate the Town:

	Excellent	Very Good	Good	Fair	Poor
Being a Town that protects mature trees and the tree canopy?	m	m	m	m	m
Being a Town where it is safe to walk?	m	m	m	m	m
Being a Town that you are proud to live in?	m	m	m	m	m
Being a Town that has professional/competent Police?	m	m	m	m	m
Being a Town that has a professional/competent Public Works Department?	m	m	m	m	m
Being a Town that gives you confidence that zoning ordinances are consistently enforced?	m	m	m	m	m
Being a Town where there are plans to guide future development?	m	m	m	m	m
Being a Town where there are appropriate Parks to use and enjoy?	m	m	m	m	m
Being a Town that is enjoyable for people of all ages?	m	m	m	m	m
Being a Town that has effective speed enforcement?	m	m	m	m	m
Being a Town where there are Social Activities?	m	m	m	m	m
Being a Town where there are guidelines for buffering between neighbors and high traffic zones?	m	m	m	m	m

4. Below, again, are a series of statements about the Town of Biltmore Forest. For each statement, please check the box that best describes how IMPORTANT you would feel each statement is:

	Very Important	Important	Neither Important or Unimportant	Not Important	Not Important at All
Being a Town that protects mature trees and the tree canopy?	m	m	m	m	m
Being a Town where it is safe to walk?	m	m	m	m	m
Being a Town that you are proud to live in?	m	m	m	m	m
Being a Town that has professional/competent Police?	m	m	m	m	m
Being a Town that has a professional/competent Public Works Department?	m	m	m	m	m
Being a Town that gives you confidence that zoning ordinances are consistently enforced?	m	m	m	m	m
Being a Town where there are plans to guide future development?	m	m	m	m	m
Being a Town where there are appropriate Parks to use and enjoy?	m	m	m	m	m
Being a Town that is enjoyable for people of all ages?	m	m	m	m	m
Being a Town that has effective speed enforcement?	m	m	m	m	m
Being a Town where there are Social Activities?	m	m	m	m	m
Being a Town where there are guidelines for buffering between neighbors and high traffic zones?	m	m	m	m	m

5. Below are a series of HYPOTHETICAL directions that the Town could take for various focus areas in the future, where we would appreciate your opinion. (Please check one box for each statement)

	I'd like MORE of this	Current Level is Adequate	I'd like LESS of this
Walking Trails within existing Parks	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
Enforcement of Zoning Ordinances	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
Speed Humps	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
Upgraded Activity Structures for children in the parks	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
Enforcement of Speeding	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
New Planting of Hardwood Trees (Oak, Maple, Walnut, etc) along roads.	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m
Forbidding Clear Cutting for any reason	<input type="radio"/> m	<input type="radio"/> m	<input type="radio"/> m

6. The following questions are simply to help us understand responses.

	Yes	No
Do you live in Biltmore Forest Full-time (>6mo/year), or not?	<input type="radio"/> m	<input type="radio"/> m
Have you ever attended a Board of Commissioners Meeting, or not?	<input type="radio"/> m	<input type="radio"/> m
Are you familiar with the Tree Protection Ordinances, or not?	<input type="radio"/> m	<input type="radio"/> m
Have you ever attended a Board of Adjustment Meeting, or not?	<input type="radio"/> m	<input type="radio"/> m
Are you familiar with the current Fences, Walls, and Gates Ordinance, or not?	<input type="radio"/> m	<input type="radio"/> m
Are you familiar with the Accessory Structure Ordinances, or not?	<input type="radio"/> m	<input type="radio"/> m

Your survey is now complete! In the next few days--IF YOU WOULD LIKE TO DO SO--please take two (2) photos. The first should represent the thing you like the most about Biltmore Forest. The second should represent your Greatest Frustration with Biltmore Forest. When you take your photos, please go to the Town's website (www.biltmoreforest.org) and click on the SURVEY link to anonymously submit your photos and a brief comment about each one.

You should have received a postcard from the Town in the past few days with this link address. Alternatively, please call the Town office.

We plan on making a poster board of these photos for the Board of Commissioners to make the survey come alive! NO NAMES WILL EVER BE ASSOCIATED WITH ANY PHOTO!!!

**Biltmore Forest Planning Commission
Community Survey
Nov-Dec 2021
Final Verbatim Comments**

2. Thinking about Biltmore Forest, please tell us all your thoughts, feelings and reactions about the Town. (There are no right or wrong answers - just tell us how you honestly feel!)

Both residents AND contractors speed too much and there is little apparent enforcement. I'd like to see walking trails and benches between our existing parks and public lands. The Board of Adjustment should be 'recalibrated' because they allow anyone to build anything (even plastic sheds) irrespective of the wishes of residents. They have abrogated their responsibility to the Town. People are clear cutting their lots and 99% of landscaping does NOT include a single real tree--even landscaping designed by local 'experts' Similarly - no one enforces these rules. Finally - Some homes (60 Forest and corner of Cedercliff and HVL Road) are in horrible repair. What can we do???

Love it

Overall truly happy with everything here. Staff is super nice and responsive. Development is happening, but not disruptive, and maintaining the overall character of the neighborhood. Events like the food trucks and trick-or-treating are quaint and well-run. Good job!

This is generally a good neighborhood. There is some loosening of the traditional restrictions on tree cutting and construction that makes it less desirable. Much of the draw to the Forest is just that...a forest. Allowing (or ignoring) more clearing and bigger square footage along with widespread light pollution makes us no different than many other communities. In addition, due to a few residents that insist on shooting household pets, the community is not safe for pets. This has gone on for years and I suspect the authorities know who is behind this. It diminishes the desirability of the Forest.

X

I feel that there are people who drive too quickly on Eastwood Rd and I have almost been hit by people who don't stay in their lane and who come around curve too quickly there. Oddly, speed bumps exist on other roads in the neighborhood but not there.

I love living in the town. Only complaint is that if possible we could make it more walker friendly.

We have lived here about 3 years...it has been fantastic..all the people that work for the town have been exceptional, and everyone we have met has been friendly and welcoming.

I appreciate the town activities, even if we do not attend them all.

At the moment there are an excessive amount of huge dump trucks every day. We live on a busy corner so it comes with the territory.

I know nice places like this take a lot of work..I feel lucky to live here!

I like the current town manager. Need traffic to slow on Stuyvesant.

Very are happy to live in Biltmore Forest. We value the quiet surroundings, friendly neighbors, well maintained homes and properties, beautiful natural forest and nearby access to both the mountains and Blue Ridge Parkway, and the city of Asheville.

beautiful, safe

Very strict design review process with occasionally excessive levels of oversight. But overall great community feel and very safe, clean, and convenient. Police are very helpful (at least assuming you look wealthy enough to live here) and town management and public services are extremely responsive.

We need a DOG PARK! 100s of dogs live in BF. 100s of residents walk them. 100s of dogs and residents could get to know each other and enjoy an opportunity to gather together just like the food truck Friday idea. If there's a dog park, fewer dogs might NOT show up at the food truck events. We have a perfect place for a big park - the triangular area between east forest and vanderbilt. Like the park along the river near river arts district has an area for small dogs and one for large. People get to know each other thru their pets.

I appreciate the Mayor and Bd. of Gov. I appreciate the committees who have devoted time and effort to create a real community ... Food trucks, etc.

I HATE all the speed bumps popping up everywhere especially the poorly designed platform at the BFCC. The nearby movie theatre has a much more car/driver friendly large and smooth speed bump. I suspect the one on Stuyvesant was designed for golfers - a small percentage of our residents

It's one of the best communities to live in, we just need to keep the activities for families growing!

It is a distinct privilege to live in Biltmore Forest. It is a peaceful, safe, and lovely environment

Due to future climate changes that can be reasonably predicted, an effort should be made to "harden" our infrastructure. Power and other services that require stringing wire on poles should be buried.

In addition, a fiber backbone should be part of the infrastructure for internet access in the Forest. Madison County is already delivering such services in a rural environment.

Great community. Beautiful tree canopy. Great landscaping in the neutral ground in front of town hall. Spectacular police and public works employees. A sidewalk along Vanderbilt is needed. The foot traffic along this road is quite significant.

Excellent town.

-Kudos to the Social Committee that organizes events.

-There are NOT ENOUGH amenities for residents. We should have a trail system like B.Park, updated playgrounds, nicer parks & landscaping, benches, a town sign, etc. Either maintain or get rid of those shabby bus stops.

-Communications have improved with calling, but still missing messages even though I'm signed up for alerts. Never got the postcard linking to this survey. Only found out about the survey b/c someone told me.

-Change here moves so slowly. Why are we talking about the same issues for years - traffic, trees, fences?

-Have folks finish renovation construction projects sooner; it shouldn't take 3-4 years! Don't let people cut down dozens of trees at once. If you're not going to cut back foliage to make walking & driving safer, stop saying you will.

-Can something be done about the undeveloped side of Cedarcliff Rd? Is that Biltmore Estate land? Looks terrible & those vine-covered trees look unsafe.

It's a wonderful place to live!

Great community. Need to invest in parks and saving Hemlocks. Lots of Hemlocks in decline. Also need to look at adding sidewalks in certain areas to make it more favorable to walking.

Having grown up in the forest, and returning after many years away, I know how special this place is. It's crucial to retain the integrity of the town and keep the traditions that make it so special. The town provides excellent services, especially the police force, who are ever-present and friendly to the residents.

I have lived in this neighborhood for almost 30 years. I perceive an increase in "recreational hostility" where a small number of our residents derive inappropriate enjoyment from using the town's rules against others. Anonymous complaints should not be allowed. Our systems should continuously reinforce the concept that it is in everyone's best interest to get along with each other.

I support the town staff, police and public works in the work they do on property owners behalf. I do not feel that health, safety and welfare of residents and ,particularly children has been given enough support by Commissioners. Road repair is needed in some parts of the town;
There should be no left turns off of Browntown onto Hendersonville road during working hours. Especially, work trucks and trailers. One block over is a traffic light!

People walking, running in the morning before the sun is up are risking their lives. Often times, they are in the road without reflectors or lights. Disaster waiting to happen! Yes, we have signs posted about walking against traffic and bicycles single file but people continue to do it.

Any thoughts to picking up recycling every week?

We really need to look closely at all the trees that are leaning into the roads. There are many dangerous trees that are leaning and will fall with the next ice, wind, or rain storm. I think sometimes the town is too conservative in removing these trees.

Tree ordinance is not flexible enough and demonstrates some overreach.

1. Police force members are first class, always respectful and helpful.
2. Towns leaf collection program is outstanding
3. Biltmore Forest always gives a "caring" appearance to everything that is done.

We love living here. I really wish the town would be more strict about people taking care of the ivy growing up their trees. If these crawling vines choke the trees, we will lose many of them and the forested nature of the neighborhood is prized by all of us. This wish extends to public lands as well -- between E Forest and Vanderbilt for example. Maybe a work day for those interested would be fun?

Wonderful place to live. Walking here everyday made dealing with the Covid pandemic possible - so much beauty everywhere you turn.

The wooded feeling of the neighborhood is my favorite feature.

Wonderful place to live.

I love the "small town" feel. I appreciate our services, including community police. I actively sought to live in BF after living in Asheville for 21 years. It is a much nicer place to live, walk and enjoy outside activities. It is still a forest. Biltmore Forest is well run and the prettiest place I've ever lived.

I absolutely love my town. Its caring employees and elected officials are exceptional and the beauty of the forest makes me sigh "ahh" every time I enter the town.

It is a wonderful place to live. I particularly like the friendly way that I am treated by all the staff. I like the way the town is kept up and always looks good.

Good, but not great. Much of the public areas of Biltmore Forest look tired. Overgrown parks and open spaces; vines climbing trees; streetscapes that are in disrepair. Our neighborhood looks unkept and this is problematic for property owners when comparing our property values to Biltmore Park, the Ramble or the Cliffs. We are not what we once were and a concerted effort needs to be made to get us back to the preeminent neighborhood of Asheville.

Lovely place to live. People are friendly.

Generally, things are very good. I feel that the process that's necessary for someone to do something as simple as construct a swing set for their children is beyond ridiculous.

We're in a bit of a "bubble". However, in today's world it is comforting, not embarrassing.

I am happy with the level of service I receive from the town.

There are too many property owners who feel the rules do not apply to them concerning structures, plantings and accessory structures.

I am very happy with town staff (police, garbage, leaf and brush pickup, maintenance).

Great town. I appreciate how there is small town feel when you are off Hendersonville Rd, although you are next to the busy city of Asheville. The Public Works Dept is a major "plus" They continually provide a level of service that is not common these days.

My wife and I moved here 1 year ago and could not be happier. This town is beautiful, safe and welcoming. We should have moved 20 years ago.

Biltmore Forest makes me feel good as I enter the forest. It is most lovely and calming to live here.

Mostly love it. Don't love construction vehicles parking on both sides of the street in front of houses/driveways, makes driving down the street when there are kids playing or pedestrians walking. The streets are very dark and while I mostly like that, it can be a challenge. My kid and I miss the old style town mailbox.

Would like to see more opportunities to recycle

I feel very fortunate to live in a community where the residents and the Town departments work in conjunction to maintain all the positive things about small town living. I also feel safe because of the professionalism of the BFPD.

we are in the Biltmore Forest part of the Ramble (Chauncey Circle). we don't know if the Police routinely monitor us, we know there is no curbside pickup of leaves and limbs, we could opt out of garbage and recycling, but we pay full taxes so we use that service. The next page has activities and facilities that we don't use so most answers are left blank

Beautiful neighborhood. Nice folks. Good police department and adequate other services (sanitation, leaf and brush pick up, snow removal). Seems odd that the Town has not had a long term master plan or a plan to manage and enhance forested areas. For example, the questions in part 5 about trees show superficial thinking about managing the forest. Were these questions, especially the question about clear cutting (how do you define this term?), included in the survey based on advice/input from a professional with experience in creating master plans for towns like BF? It doesn't appear so.

Until the city permits homeowners to fence their property, there will be little to know opportunity to enhance and beautify their homes and subsequently BF. The deer have and will continue to decimate any plant material other than hardwood trees and certain evergreens. The result is homeowners do no landscaping or they plant the same plants which are all green void of any color or interest.

I feel very blessed to live in Biltmore Forest.

Nothing negative, it's a fine little town.

I do enjoy living here very much. Having built our house a few years back, however, I did not find it very welcoming to new comers. We followed building guidelines closely, being told that there were never any exceptions. However, we later found out that exceptions are frequently granted well beyond the few minor exceptions that we would have liked to request. Very unfortunate.

It is the best place I have ever lived!

A pleasant town to live in. TOO much truck traffic. Good police protection & security.

It is a beautiful town of a size conducive to the development of close neighborhoods. There is a personal and effective relationship among the residents and the town administration, staff and employees who provide the services which allow us to live safely, securely and well.

Beautiful place to live

Biltmore Forest is making a great effort to bring neighbors together through community gatherings, which is a nice addition.

I am not crazy about the new houses going up resulting in the loss of trees, undeveloped land.

It is a wonderful community of homeowners that mostly care about others in the community. It is nice that there are opportunities to gather. It is also nice to be able to walk the neighborhood mostly in safety. Recently, there seem to be an awful lot of construction trucks and large dump trucks racing through town. It would be nice perhaps, to have a walking path somewhere in town.

As a resident of the Ramble - Biltmore Forest living on Chauncey Circle, I continue see idiots towing their horse trailers at speeds approaching at least 40mph+ on their way to the Equestrian Center. They continue dragging their trailers over the grass as if they ("horse people") have no regard for BF property.

I saw a ray of hope when BF (I assume) posted a digital speed monitor at the corner of Chauncey Circle and Niagara. THIS WAS EFFECTIVE in reducing speeds.....then it was taken as if it was some kind of experiment. WHY WAS IT TAKEN DOWN?? With what I pay in taxes each year, you can sure as hell afford to place it their permanently!

I'm pleased to live in BF. We're very satisfied with the services and conveniences offered by the Town.

It is an unbelievably great setting for our home. It affords the opportunity to live in a beautiful pastoral wooded area with the amenities of a municipality and hospital care within easy reach. Limited traffic and well adjusted speed limits allow great walking conditions. Having grown up in a city, I never tire of the privilege seeing deer, bears, and turkey. The Town's administration is relentlessly receptive and helpful.

Safe place to live. Too expensive. Quiet. Beautiful.

Beautiful place to live. I feel safe here

Excellent place to live - beautiful and safe.

Very beautiful.

The Town is a peaceful oasis adjoining an increasingly hectic and busy City of Asheville. Once you exit Hendersonville Road you know that you have entered somewhere special.

This is a poorly constructed question which reduces the value of the survey. It does not address any specifics to provide solutions on any issue.

Wonderful, friendly community.

BF is a community in transition - older, established residents are leaving, and new residents, many with only indirect ties to the Asheville economy are arriving. BF needs to evolve to be welcoming to these newcomers who will become the future heart of the community. Town government needs to become more inclusive and less exclusive - of and for the many rather than of and for the few. Everyone wants to preserve what is wonderful and beautiful and attractive about BF, but unless this is done with energy and imagination and with a view towards the future, the community will stand still or go backwards, ceding prominence and desirability to others like the Ramble and the Cliffs. BF was once unique within Asheville - it is no longer so. Notably, BF was created 100 years ago from a managed forest - it is no longer so and many of the roadside and other trees are old, dying, dead and a danger to all. The town needs a new comprehensive forestry management plan - not only a tree ordinance.

Lovely community, generally good neighborly spirit, quiet, helpful police force and town hall personnel

Some ordinances should be changed: Eg fencing, tree removal,

setbacks on certain streets that make neighbors too close
Wonderful place to live

Town does a great job

Town employees are excellent

It's a nice quiet safe place to live that is close to amenities.

I love living in Biltmore Forest. It's a beautiful town with a very rich history and many wonderful traditions.

Could be more family friendly in terms of walking and biking. Quite close to downtown is a plus for us with large lots. We appreciate the town services.

like living here ,!

Love the town and feel incredibly safe.

We are lucky to live here. First rate Police Department and public works.

Love the police department, love the public works as well- I am concerned about the amount of cyclists, and car/construction traffic on our roads. I know it is necessary but at same time quite dangerous. As a daily walker, there are times that I have almost been pushed off the road or almost hit by both cars and cyclists....the cyclists are equally as dangerous, not only do they speed around corners and almost hit me as a pedestrian but the also ride Side by side and ignore cars on the road.

Mayberry~ and that is a tough title to achieve... I think we have a great neighborhood with caring officers. We all know each other... or we know of each other.

Love the park events!

I feel safe here. Neighbors are very friendly. Town employees are very capable and treat everyone so well. I don't like the new contemporary houses, especially those not shielded behind landscaping, that are changing the character of the town's beauty. I wish the police would do a better job of keeping construction vehicles off the streets, especially on blind curves and busy corners. With all of our walkers, it's becoming dangerous for them and harder for us drivers to see and avoid them.

Overall, this is a very nice residential area and town. Having our own police force and a great fire company taking care of the town is very good, and better than relying on City of Asheville or Buncombe County. Living here and in another state as well, I am hearing more people saying that Asheville is cool, but it has big problems right now. We all know the extreme liberal politics of the City of Asheville and also Buncombe County are increasing crime, drugs and homelessness as well as other social issues that don't come to mind at the moment. Having our own police force and fire department is protecting us from these Asheville problems and issues. I appreciate this more today than 20 years ago when we purchased our house.

Well kept up community with a community spirit. The Town is helping with these.

I like the efforts for group events like food truck Fridays. Amazing place to live. Great for walking running and biking. Some of the streets are very dark and I wish more people would follow the speed limits. Feel like the police really look out for residents

Roads need to be safer for autos, bicyclists, and pedestrians by clearing side easements of brush, branches etc., placed by private owners or Town neglect. This is a very dangerous situation at present for which the Town is ultimately liable.

Love it! I have called the police on occasion and found the response time to be quite slow.

Walking the neighborhood is dangerous in many areas. Steep and uneven terrain due to erosion and encroachment of vegetation along the roadside make using certain shoulders impossible. Blind curves and crests are prevalent too. There's no place to go when drivers recklessly approach the combination. The situation is indeed dangerous. Given the available tax proceeds, it seems indigestible that public works cannot keep the shoulders safe to use, or that super mitigation means and methods be deployed to render the neighborhood safe for its residents to walk. Erosion near bridges, culverts, drains and road surfaces all seem to be allowed to degrade to the point that remediation is more expensive than necessary. Most asphalt work done seems to be of very poor quality, ie. Improper compaction, drainage slope, minimum thickness. Quality control of vendors doesn't seem to be there.

There should be land purchased for. Ire greenways and walking trails. I would also like a gatehouse. Especially after last summer and due to all the construction trucks that no one keeps track off.

I would also like a keyed garbage entrance. Best Buy employees throw a lot of crap in there.

The water drainage on Greenwood Road has been problematic over many years. This was quite dramatically demonstrated when the system was overwhelmed by Fred this year. We have pointed this out to the town officials on several occasions but nothing has been done.

The street shoulders are in bad shape in many places. One onerous place is at Parkway and Stuyvesant turning right off of Parkway. Going into the ditch there would probably total a car and possibly cause bodily injury.

Too many trees are disappearing. Traffic laws don't seem to be enforced for work trucks.

I am totally impressed with the Town staff. The service is extraordinary and all done with a smile or a friendly wave. I appreciate how friendly the "neighborhood" is. I occasionally wonder about all the people I don't recognize walking, maybe lots of seasonal residents and visitors? If I could change anything, I would wish for greater diversity among both residents and staff; and an action to preserve as much of the actual forest as we can, and encourage new home builders to invest in slow-growing, long-lived trees and native plants.

I feel like we should be able to install privacy gates on our properties. The rise in crime in the neighborhood makes us feel quite vulnerable and having an electric gate at the entrance to our drive would make us feel much safer.

One of my concerns is that we are losing the white pines. Perhaps we could replace them with some larger hardwood trees.

The best thing about this town is its police department

Wonderful location. Tremendous employees! Love the independent police force. The public works folks are always so pleasant and helpful. could do without some of the non-resident bikers not following the rules of the road.

The town is overly intrusive on homeowner's rights to make changes to their property and homes, e.g. fences, tree removal, sheds, etc.

Good services with respect to brush and yard debris pick up, and Wednesday garbage pick up.

It is one of the most beautiful areas in the country. We are all lucky to live in BF. The Town needs to keep the charm that was established in the 1920's. Special treatment allowing things such as more trees being cut for new homes sites and on the BFCC golf course should be stopped. The bus stop at the corner of Southwood/Stuyvesant that was knocked down by a tree should be replaced. We can't lose the charm of the Town.

I am very pleased to be a member of the town.

IT all begins with leadership, and I think the Town is blessed with excellent and caring leaders who listen to residents, act on issues promptly and motivate pride in those of us fortunate enough to live here. The openness of the Board of Commissioners' meetings, kind and available key personnel and office staff make me feel part of a larger family. Also, probably the best run police force anywhere -- I cannot say enough about the sense of security here, even though I know there are interesting and concerning episodes so clearly described in the BoC meetings. The police here indeed 'serve and protect'. While near a bustling small city, it is always a calming and peaceful feeling driving off Hendersonville road and into the Forest. I appreciate the low speed limits, friendly waves from fellow residents, abundance of trees and the interesting homes

We feel that we are very fortunate to live here. We feel safe here. We really love where we live. Everyone from the Town staff, Police Department and Utilities have been more than helpful in answering questions and responding to service requests promptly. Especially appreciate the job that Mr. Kanipe is doing as Town Manager.

A great Town

Wonderful people and a great community

A safe place

It is home

Great leadership availability

Quick answers, easy to work with

Lucky to live in BF

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It was very hard to see how there was no phone call to all the citizens about the Ash Tree Borer when there was still a few weeks to treat the trees. I brought brochures from the NC Forest Service saying it was cheaper to treat than to cut them down. Most citizens might not even have known that they had Ash Trees--even though it may not have been their favorite trees, but needed to be treated. Now they are stuck with the expense of having them removed--as was the Town at taxpayers expense. Five years ago we were told that Wildeacre would "Save the Natives, take out the invasives and not touch the creek banks even if there were invasives, because that held the banks". Many fine Natives were cut, many invasives were left, creek banks stripped. Then they were left to do another woodland. We need genuine leadership and care for our greenery and waters. Maybe hiring someone more interested than our current helpers. We need a new Forester!

I can't imagine living anywhere else. So glad to live in a forest just minutes from downtown. I think the neighborhood is beginning to suffer from too many mega mansions and too many part time residents. I am sorry that the town does not have more condominium/garden home options than the few across from the Town Hall. I would like to one day have the option to downsize but still stay in Biltmore Forest. This is a great Town to live in with nice neighbors and friendly people. I feel safe here with our police and well governed by our Mayor and Council.

*It would be nice if residents of Biltmore Forest and the Town officers, etc used Biltmore Forest instead of Asheville in their addresses.

This is my 26th home in 22 worldwide towns/cities. It is in the top 5. A wonderful town. Well managed, reasonable property taxes. Feel safe. Good services. Friendly caring neighbors. Parks. Clean, decent maintained streets. Town ordinances mostly fair. Streets need better lighting. Speeding needs attention. Need to upgrade equipment and certain certifications of a fairly new maintenance work force. Quite sure it's in the works. Thank Duke for putting power utilities underground.

I think the Town is special! with special dedicated employees. Great police, Public Works and Admin Staff. We are blessed.

Proud to be a BF resident and love living here with my family. My wife is a native and we live less than 1/2 mile from the house in which she grew up. I've lived in Asheville almost 20 yrs but only 5 in BF, which is certainly the most enjoyable, livable & beautiful spot in Avl. I was born in NYC & grew up on the North Shore of L.I. on Manhasset Bay, which was called West Egg in The Great Gatsby. I miss the salt water & air but love the mnts!

It's a well run town, which addresses problems when they arise.

We love living here. a beautiful place! Love the town service providers (garbage, recycling, yard waste personnel) just wish we had yard waste picked up more often. such old trees and plants - something is always coming down and i like to get it picked up and to the curb as soon as possible or otherwise it is overwhelming.

the alert systems are wonderful and keep us up to date. we love that the police make rounds regularly and work so hard to stay vigilant.

a very pleasant, quiet place to live

I feel extremely fortunate to live in such a lovely, safe and friendly environment

Beautiful and safe place to live.

I think it's generally doing well. I would like to see more park improvements at some point. Also, the town needs to do a better job of holding property owners responsible for incomplete work/tearing down houses. For example, I think the vacant properties at 49 Hilltop Road, 61 Forest Road, and 26 E. Forest Road are very bad for the town. (Particularly the first two properties). I don't know what can be done, but I would urge the town to look at more stringent requirements/penalties for properties like those three.

The board of adjustment should use more common sense when working with home owners. Rules and bylaws are necessary but should be flexible with reason.

Still outstanding. I am a 74 year old native who has seen some changes mostly for the good. If I have a complaint it would be the increase in part time residents. We should not be a second home community. How about a severe tax penalty for second homes.

large lots, great walking, pretty

The serpentine roads and thick forests are its signature which should never change, This luxurious use of land is totally absent in new communities like the Ramble which has different attributes. The safety and privacy are stellar yet it remains neighborly and welcoming. The location is superb with amenities within or very close by. The only thing I would like to see improved is the neatness of many overgrown lots.

Very nice safe neighborhood; one Thing that really upsets me about the town is selective enforcement of bylaws. It seems that some people do you things such as putting accessory structures on the property, fences in the front yard and do not get any prior approval while others have to go through an elaborate process which can be expensive to get these things approved.

We love our town. Please try to keep newcomers from cutting down all their trees, we're starting to get a Biltmore Park look.

I wish properties were required to prune (or allow the Town to prune) their street side trees, bushes, vines in order for walkers to be safe, not have to step out into the road esp busy Vanderbilt, and blind curves. This includes the hotel as well as homes.

I love living in an area with so many trees and with beautiful streets on which to walk - and drive for that matter. The trees are a double edged blessing - I fear for many of the really large old ones on Vanderbilt that lean into the road. Wind storms can be frightening when traveling on Vanderbilt, especially the north section. The town communicates well with the residents and all of the services are provided with a nice attitude by friendly employees. The town is the best positioned place in Asheville. I can get where I need to be pretty quickly.

Feels like a National Park! Beautiful, safe, and kind & considerate neighbors

We have very few amenities as compared to newer communities. This really has begun to affect a families expectations when buying a house.

Town is great. Employees are great. Management/Administration is great.

Construction traffic and tradesfolk can get a little aggressive with speed and respect for pedestrians, particularly at beginning of day, mid day and end of day. Maybe traffic calmers on Vanderbilt Road south of Park?

Some residents and golf course users drive too fast/ aggressive as well.

Like have a community dumpster for household trash as we just don't generate enough to warrant having regular pickup. Hate to see the stuff some just place by dumpsters or fill them up with that I think might eventually limit this resource for residents. Recycle pickup and mail delivery to the house is great.

Neighbors can be hard to meet and develop relationships with. Might be an artifact of those who chose to live here, the dynamics of the spread out community, social status, etc. Just an observation that has also been shared by some we meet.

Hate the noise and pollution of gas powered leaf blowers. Maybe limit days/hrs?

It's a great place to call home. It's a beautiful neighborhood. The Town does a great job with trash collection, recycling -- they make it very easy on the residents. They are also excellent with snow removal, the July 4th event, and food truck get togethers. I appreciate how the Town has increased opportunities for community engagement in recent years. We could do even more.

This is my dream neighborhood.

As a new resident the services and management are superior to Asheville city, very commendable. It's a great place to live. I wish some residents would take care of their yards better.

Very happy to live here

Please see email sent to Jonathan Kanipe. Not enough space here.

I'm a proud resident of BF. Love everything about it. My wife and I feel safe. The public utilities are wonderful - police, trash, etc.

its a great oasis in the midst of a rapidly expanding city and Hendersonville Road. let's keep it that way!!
Great place for a family

I love the old trees, the open spaces, the density restrictions, the neighbors, and the club. I love to run, walk, walk my dog, and ride my bike around the neighborhood. I enjoy seeing neighbors do the same and particularly like seeing kids riding their bikes around. The police force is excellent and I am very thankful for them. The administration and the services the town offer are very nice too. I am a big fan of trees and want the town to continue to protect them and to plant more along with requiring residents to do the same.

I think it is a fairly traditional-though changing-town with a very "old school" mentality. There are folks here with wealth who seem to think their money is equivalent with power. The police force is outstanding. I've never seen police who care so much. I wish there were sidewalks. I wish the parks were cleaned up regularly.

Is fantastic place to live!

Wonderful place. The town should conduct a survey to assess the environmental impact the golf course. Is BFCC in regulatory compliance with respect to chemicals used to to maintain the fairways. Is there chemical runoff fouling local streams?

Great neighborhood

It is 100% wrong and unfair that 90% of BF has a 5 foot town setback and 10% has 10 foot town setback. Especially considering the sections with 10' setback have wider roadways.

Also the inconsistency and unfairness of some residents getting variants for setbacks and others do not for similar requests. The town promised to go back and enforce the setback rules upon residents that weren't within the rules, but I have not seen one change to unapproved items in town setbacks being moved.

The inequality and favoritism coming from the town board is in excusable.

I grew up here and moved back 17 years ago. First of all it is beautiful; most of the houses are very attractive. I love the peace and quiet of it. I love our police department, and knowing they are around the corner makes me feel very secure. The town is meticulously clean thanks to the town employees who work so hard to keep it that way.

Warm friendly place, even though there are generational and political differences

Too much traffic. We need to limit access.

Wonderful sense of community

Very safe community. Reliable police force. Appreciate debris pick up. Would like weekly recycling or a place to bring recycling. Would like ability to access city service bills online.

Wish speeding were monitored more uniformly.

Grew up here. Love it

I have been very pleased with the meet-ups, the food trucks and the community celebrations that seem to appeal to all ages bringing our community together. It's nice to get to know the neighbors and the kids.

It is such a pleasure to live in a community where residents, administrators, public service personnel are on the same team with the ongoing goal of making Biltmore Forest a wonderful and safe community.

New residents often feel out of the loop.

If yard waste p/u falls on a Friday the crews come the following Monday at earliest. I think the employees may work longer

4 day workweeks with Fridays off. That may only apply during the warm months.

You can p/u new directories each month at town hall. They are updated monthly.

It was years before I heard of Christmas contribution being coordinated through town hall.

In addition,

Wooded/green (park and private property)spaces need to be kept/expanded for wildlife habitats (deer/bird/opossum/water life) for feeding, movement and reproduction. Dead trees provide important habitats for several bird species. Leave some downed trees and skeleton trees that can be left standing safely.

The waterways must be protected. Emptying saline/chlorine pool water (with or without cleaning chemicals) into live waterways/wetlands can only harm water quality and damage flora and freshwater life. Protecting the French Broad watershed is important.

I love BF. A bit disappointed that with an aging neighborhood things have not been kept up. Dead and very dangerous trees.

The park equipment for the young kids could be so much better. The drainage pipes need to be upgraded. Thank goodness Duke energy is finally getting the lines underground. I have endured many long power outages. Often. Can we please upgrade and keep this neighborhood current and safe.

Excellent community with continual support for all residents.

Protected, cared for, thoughtfully and conservatively managed.

Love it! Happy to have a police force, happy the homes are well kept, close to BFCC, not much traffic

New construction should not allow "Mega" houses, stricter setback laws, and stop "treeing" the whole property to build! Seems to be no respect for neighbors and their property!

Privileged to live here. Feel very safe and secure because of Police Department.

I do believe a historical Committee should be assembled to protect the homes in Biltmore Forest. These Ridiculously large homes being built is ruining the classic look of Biltmore Forest. I think all of the workers at the township do an amazing job!

The town is a great place to live.

I like the community events and gatherings that help bring neighbors together. We should continue those events
I love the community aspect- I feel as if I enter paradise as soon as I turn off of Hendersonville rd. Lately, there are too many construction vehicles- walking has become a nightmare

There has been too much unfettered development and too much "bending" of the rules. We are starting to look like every other mid scale neighborhood with McMansions unencumbered by trees or other desirable distractions. We used to be a "forest". That is disappearing quickly.

We've been here almost a year and we've had great experiences and are very pleased with the Town.
Good services - quiet and safe.

It was a forest now its being clear cut.... Spreading traffic with people texting from their SUV's makes walking dangerous... It is not very bike friendly. We could use more speed bumps particular on streets right off 25, like Eastwood.

I think it would be awesome to gate Biltmore

Neighborly, safe, friendly
Leaf/ limb service excellent

Very helpful town manager
Beautiful home

Love the climate, location, the friend and family feel, and our independent status from the City Of Asheville.
We really like living here.

The police and Maintenance People are outstanding. The city administration also does a great job. The parks are shabby and many of residents don't keep up their yards groomed giving the town a unkept look. Our beautiful hardwood trees are dying from ivy growing on them.

Disappointed that road shoulders were not repaired this summer as expected, and pedestrian traffic not more encouraged and supported. The expectation that pedestrians can/should walk into forested/landscaped/blind spot areas instead of cars slowing down and moving over for pedestrians is dated, unacceptable and a public health and liability concern.

Safety while walking is a concern. The old infrastructure is a concern.

I feel very safe and happy with friendly police and town service folks. The Christmas lights in front of Town Hall are spectacular!

More attention should be payed to keeping the wooded "parks" cleaner looking. Get rid of excess debris and fallen trees. The tree ordinance is out of line. Nobody should have to replant a fallen tree or a dead tree after removal. The pine trees are a real hazard to home owners and should be allowed to be removed no matter how many you have without a permit and without having to replace them.

The police force does a very good job protecting the home owners and should be commended.
I love BF

When we had bus service, there were occasional shelters, which were also useful for resting while on a walk, but also in case of rain. Most were simply removed. Something similar would be useful now; they don't need to be elaborate....

It friendly and quite with excellent services and beautiful surroundings.

Biltmore Forest is a wonderful place to live. The town needs to cut back over growth through out the neighborhood. It is out of control and very dangerous.

Friendly- older - organized- Adelgid problem killing look and feel - outdated architecture- safe- clean

In general beautifully maintained and managed however I do wish there were more options for walking
Great town to live in. Very happy with Town mgr and staff.

It has been the perfect place to raise a family. We moved here in 1982 and still live in the same house. Our son,
daughter-in-law and grandchildren live here also.

I think the town is very good place. Two areas to improve are walking at night - I notice some people walk with dark
clothes and make it difficult to be seen when driving. I also have been a walker when people do not seem to see me
and almost hit me and my dogs. I am very conscious about wearing reflective vests or carrying a flashlight or
headlamp.

The second issue is parents taking personal responsibility for their children. I moved off of White Oak Rd because the
parents are not taking responsibility for their children. When these children are teens, it is going to be a mess to deal
with. It is not appropriate for kids to call their neighbors "Karen", vape in neighbor's yards, for kids to use their bikes to
sideswipe neighbors walking dogs or throwing balls at rescue dogs, to run around in the dark in dark clothing. The
police are being called but cannot take action even when there is video of the vaping and the parents don't care or tell
the neighbor to move.

It is a very clean, safe place.

Our town is a unique and beautiful oasis-my blood pressure goes down the minute I enter the town limits! We are all
the stewards of this historic spot and must all be responsible for maintaining its environs and promoting its community
for the next generations.

BF is beautiful and a lovely place to live. I wish we were more interested in maintaining the neighborhood piece. I
personally would love for it to be gated as a way to cut down on all the congestion and speeding.

I believe the Town leadership (elected and non-elected) is doing a good job of managing the municipality.

The Town Manager is very responsive, fair and polite. The Chief of Police is very responsive and helpful.

We need a dog park. Dog parks provide a wonderful opportunity to meet & greet neighbors that one would not
otherwise have! We have plenty of areas suited for doggie play time off lease. There's a wonderful dog park along
the river in one of the people's parks. There's an area for small dogs and one for large dogs. Hope the Town will
consider...

Reflective clothing. All walker, bicycles, etc. You know what I mean. Someone is going to get hurt or killed.

Its beauty. Safety - excellent Police Force. Excellent Town Management of our tax dollars. Protection of our Natural
Resources. The involvement of residents to keep our town special. Excellent Public Works Department. Friendliness
of all staff. Excellent Leadership. Love living here.

Lived here all my life

Safety and Police are main factors.

Location - shopping and food nearby

Easy access to highways

Happy

Lived here for 55 years. Feel very fortunate---GRateful for the beauty, people, police, public works, leadership, etc.

The importance of care of our tree canopy and the visual integrity of BF need greater attention by decision makers as well as residents. At the policy level, the property being developed at Stuyvesant corner adjacent to the golf course is a glaring example of inadequate mechanisms to control development, presenting an in-your-face replica of a New Jersey property belonging to rapper Cardi B. Adding insult to injury, this look-at-me house has led to the loss of countless historic trees that will never be replaced despite restoration promises. At the homeowner level, if we remove an old tree for whatever reason without permission we are fined, but if a resident allows ivy, bittersweet, and other vegetation to disfigure a tree leading to its early demise--nothing happens. The town long ago should have developed an education plan for homeowners with proper incentives to recognize and act upon the need to preserve trees that may be on individual properties---but belong to all of us in BF!

continued....BF is part of the Greater Asheville COmmunity. Perhaps we should be in front of pressing issues, not reluctant followers. THE Town's slow and sotto voce agreement to join the recent COVID-19 mandate led by the City and County. Enough said.

There needs to be a lot more interaction between the Town and residents and the present arrangements to encourage and facilitate resident participation and communication are inadequate. We have attended countless Board meetings over the years struggling to hear what is being said. It was frustrating enough before the pandemic when Board discussions were difficult to follow even sitting in the front row. And now, in-person meetings have not accommodated even minimally acceptable means of virtual access. There is no need for BF to deny its residents similar access and encouragements to participate in the affairs of the community. Broad participation can only make BF stronger.

We are fortunate to have an Administrative team led by Jonathan.

Need deer control--ticks--Lyme Disease! I have been diagnosed, as has my neighbor and his yardman. This is a HEALTH ISSUE and eventually a property value issue if not addresses. REDUCE THE DEER! Quotes I have heard recently: "Biltmore Forest has most of the Lyme cases in WNC"--my dermatologist. "BF has a reputation for Lyme"---resident. "It's all over BF"--BF resident,

CHAPTER 153: ZONING

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Editor's note:

Legislative history for the sections in this zoning chapter include the initial zoning ordinance, passed 10-19-1983 and the latest amendment, passed 6-8-2021. The following is a list of all zoning amendments: Ord. passed 10-19-1983; Ord. passed 2-25-1986; Ord. passed 11-29-1994; Ord. passed 12-14-1999; Ord. passed 1-9-2001; Ord. passed 10-9-2001; Ord. passed 7-9-2002; Ord. passed 3-7-2003; Ord. passed 11-9-2004; Ord. passed 12-14-2004; Ord. passed 7-12-2005; Ord. passed 9-12-2006; Ord. passed 1-9-2007; Ord. passed 12-11-2007; Ord. passed 6-10-2008; Ord. passed 9-16-2008; Ord. passed 2-8-2011; Ord. passed 9-13-2011; Ord. passed 12-13-2011; Ord. passed 4-17-2012; Ord. passed 4-9-2013; Ord. passed 7-9-2013; Ord. passed 8-12-2013; Ord. passed 8-11-2015; Ord. passed 2-11-2020; and Ord. passed 6-8-2021

GENERAL PROVISIONS

§ 153.001 TITLE.

This chapter shall be known as the "Zoning Ordinance of the Town of Biltmore Forest, North Carolina".
(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

§ 153.002 AUTHORITY AND ENACTMENT.

The Town Board of Commissioners, pursuant to the authority granted by G.S. Ch. 160D, hereby ordains and enacts into law the following articles and sections for the purpose of promoting the health, safety, morals, and general welfare of the community.

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

§ 153.003 JURISDICTION.

The provisions of this chapter shall be applicable to all land within the corporate limits of town, as established on the map entitled "Official Zoning Map, Town of Biltmore Forest" with the exception of land owned by the town and land used by the town or entities contractually obligated to the town 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.

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

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.004 INTERPRETATIONS AND DEFINITIONS.

(A) *Tense; singular and plural.* 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.

(B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, 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.

ALLEY. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

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.

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.

BOARD OF ADJUSTMENT. The Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.

BOARD OF COMMISSIONERS. The Town of Biltmore Forest Board of Commissioners.

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.

BUFFER STRIP. 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.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space.

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.

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 the 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 above the immediately adjoining ridge line of the roof.

BUILDING, PRINCIPAL. A building used for the same purpose as the principal use of the lot.

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.

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.

CLOTHING AND JEWELRY SALE. The sale to the public of clothes and jewelry that have been brought to the home for that purpose.

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.

COMMERCIAL SERVICE or PROFESSIONAL SERVICE. Establishments or professions charging a fee for providing a service to the public.

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 chapter.

DAY NURSERY and PRIVATE KINDERGARTEN. A use of land and buildings to provide group care for children.

DISTRICT. A section of the Town of Biltmore Forest in which zoning regulations are uniform.

DWELLING. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of G.S. Ch. 160D, Art. 12, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

DWELLING, MULTI-FAMILY. A building or portion thereof used or designed as a residence for two or more families living independently.

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one family.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EASEMENT. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation, or persons.

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 the auction must be personal property that has been owned by the resident(s) of the 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 consecutive days and the hours for the sale shall be between 10:00 a.m. and 8:00 p.m.

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**.

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 such sale per year. The sale shall not begin before 8:00 a.m. and shall end by 5:00 p.m.

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.

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 human-made.

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.

HOME OCCUPATION. An occupation providing a service carried on by the occupants of a dwelling; provided, that certain conditions are met as listed in § 153.008(C)(5).

HOME STAY. Rental of a part of a dwelling unit or accessory structure for consideration, including in kind compensation, to a transient person or persons for a period of less than 90 days. Advertising and renting a room or rooms in a dwelling unit of accessory structure on Airbnb or similar internet web sites would be an example of a **HOME STAY**. **HOME STAYS** are not allowed in any zoning district in Biltmore Forest.

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.

INCOMPATIBLE LAND USE. A land use requiring a special 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.

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.

INDIVIDUAL WATER SYSTEM. Any well, spring, stream, or other source used to supply a single connection.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of G.S. Ch. 160D, Art. 10. Legislative decisions for development regulations shall be approved on first reading by simple majority vote.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LIVING AREA. Includes 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.

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. Includes the words **PLOT** or **PARCEL**.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

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.

LOT WIDTH. The distance between side lot lines measured at the front building line.

MAY. The word **MAY** is permissive.

MOBILE HOME. 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.

NONCONFORMING USE. Any parcel of land, use of land, building, or structure existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

ORDINANCE. The Zoning Ordinance of the Town of Biltmore Forest.

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.

PARKS. Includes 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, and the like. The term **PARK** shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

PERSON or **APPLICANT.** Includes a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.

PLANNED UNIT DEVELOPMENT. 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 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 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.

PLANNING COMMISSION. The Town of Biltmore Forest Planning Commission.

PROTECTIVE BARRIER. A protective barrier is either:

(a) A temporary fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails;

(b) A temporary fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or

(c) A temporary fence using an equivalent material.

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.

PUBLIC WATER SYSTEM. Water systems serving 15 or more residential connections or serving more than 25 year-round residents are classified as public water supplies, and plans and specifications must be approved by the State Department of Human Resources, Division of Health Services. Also, water supply systems serving from two to 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.

RECREATION USER NONPROFIT. An indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of North Carolina.

RECREATION USER PROFIT. An indoor or outdoor recreation facility operated on a profit basis.

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 rights-of-way 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.

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.

ROOF COVERAGE. For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter 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 spaces 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, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**.

ROOT PROTECTIVE ZONE. A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances:

(a) A one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or

(b) 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.

SHALL. The word **SHALL** is mandatory.

SHORT TERM RENTAL. Rental of a dwelling unit or accessory structure for consideration, including in kind compensation, for a period of less than 90 days. **SHORT TERM RENTALS** are not allowed in any zoning district in Biltmore Forest.

SPECIAL USE. A use 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 chapter to maintain the safety and general welfare and orderly development of the community.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties. **STREET** also includes the words **ROAD** and **HIGHWAY**.

STREET LINE. The edge of the roadway pavement.

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.

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.

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 State Building Code occurring on a regular basis.

VARIANCE. As defined in G.S. § 160D-705(d) together with any amendments thereto.

WHOLESALE BUSINESS. The sale of goods in large quantities usually for resale.

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.

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**; however, in the consideration and determination of applications for special use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the **FRONT** and side yards to the street and adjoining properties in any determination.

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.

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 § 153.007, 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.

ZONING ADMINISTRATOR. An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

ZONING MAP or BILTMORE FOREST ZONING MAP. The official zoning map of the Town of Biltmore Forest.

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

§ 153.005 ESTABLISHMENT OF ZONING DISTRICTS AND MAP.

(A) *Use districts.* For the purpose of this chapter, the town is hereby divided into the following use districts:

- (1) R-1 Residential District;
- (2) R-2 Residential District;
- (3) R-3 Residential District;
- (4) R-4 Residential District;
- (5) R-5 Residential District; and
- (6) P-S Public Service District.

(B) *Establishment of district boundaries.* The boundaries of these districts are hereby established as shown on the official zoning map of the town.

(C) *Establishment of zoning map.* A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this zoning ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the map and post any changes thereto as they may be made.

(D) *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:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, or other bodies of water, shall be construed to follow such lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines;

(4) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefor 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; and

(5) 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 divisions (D)(1) through (D)(4) above, the Board of Adjustment shall interpret the district boundaries.

(E) *Statement of district intents.*

(1) *R-1 Residential District.*

(a) 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.

(b) Nonresidential 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.

(c) 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.

(d) Consistent with, and to protect the existing character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(2) *R-2 Residential District.*

(a) 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.

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(3) *R-3 Residential District.*

(a) 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 special uses when design plans show that such developments will be compatible with the surrounding development and available public services.

(b) 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 dwelling units per acre. Nonresidential 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.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(4) *R-4 Residential District.*

(a) The R-4 Residential District provides areas for residential uses, and for special 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.

(b) Land uses in this District, other than single-family detached dwelling units, will require a special 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.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(5) *R-5 Residential District.*

(a) 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.

(b) 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 special use permit as a means of assuring and promoting safety and good design.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(6) *P-S Public Service District.*

(a) This District is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction.

(b) It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development.

(c) 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.

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

§ 153.006 PERMITTED USE TABLE.

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

<i>Zoning Districts</i>					
<i>USE</i>	<i>R-1</i>	<i>R-2</i>	<i>R-3</i>	<i>R-4</i>	<i>R-5</i>
<i>Zoning Districts</i>					

USE	R-1	R-2	R-3	R-4	R-5
Accessory buildings, structures and uses (does not include rental units by other than a family member)	S	S	S	S	S
Banks				S	S
Bone fide farms	S		S	S	P
Business or special schools (art, craft, dance, and the like)				S	S
Churches/religious assembly				S	S
Clothing and jewelry sales*	P	P	P	P	P
Country, athletic and social clubs	S	S	S	S	S
Commercial business					S
Commercial services (excluding retail trade)				S	S
Day nurseries/day care				S	S
Estate auction sale**	P	P	P	P	P
Fundraising events for nonprofits or political campaigns****	P	P	P	P	P
Garage/yard sales***	P	P	P	P	P
Home business activity*****	P	P	P	P	P
Home occupations				S	S
Libraries				S	S
Medical and dental services				S	S
Planned unit development*****			S	S	S
Professional and business offices				S	S
Public recreational facilities - nonprofit (parks, playgrounds, scenic parkways and open space)	P	P	P	P	P
Public utility station and substations	S	S	S	S	S
Retail businesses					S
Schools, public and private	S	S	S	S	S
Single-family residential dwelling unit	P	P	P	P	P
P = permitted S = allowed as a special use (approval required by Board of Adjustment) Blank space = not permitted Use not listed = not permitted zoning districts					

(B) *General provisions.* The following are general provisions applicable to the table in division (A).

(1) Only two clothing or jewelry sales may be held per year at each dwelling, not to exceed five 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 § 153.004.

(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 § 153.004 for additional limitations.

(3) Only one 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 § 153.004.

(4) Only four fundraising events may be held per year at each dwelling. No such event shall last longer than five hours in a single day and any such event must end by 11:00 p.m. 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.

(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. See § 153.004.

(6) Where there is proposed more than one principal building per lot or where there is proposed any building with a gross floor area of 50,000 square feet or more, a planned unit development must be sought. See § 153.004 for additional requirements.

(C) Home stays and short term rentals are not allowed in any district. There may be only two rentals of a dwelling unit or

accessory structure in any calendar year.

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

§ 153.007 DIMENSIONAL REQUIREMENTS.

(A) *Table.* The following table sets out dimensional requirements.

Districts	Minimum Lot Area In Square Feet	PUD Residential Density Maximum Number of Dwellings Per Acre	Minimum Yard Setback Requirement in Feet				
			Minimum Lot Width At Building Line in Feet	Front Yard From Street Edge	Side Yard	Rear Yard	Maximum Height 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	Footnote 6	8	100	50	15	20	40
PS	No Min.	0	No Min.	No Min.	No Min.	No Min.	Not App.

(B) *General provisions.* The following are footnotes applicable to the table in division (A).

(1) *Footnote 1.* The minimum lot area for lots not served by public water and/or sewer shall be subject to approval by the 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 the table in division (A).

(2) *Footnote 2.* 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.

(3) *Footnote 3.* On all corner lots, a 30-foot side yard setback is required.

(4) *Footnote 4.* 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 special use permit in accordance with § 153.110(C), without the need for a variance pursuant to § 153.110(D).

(5) *Footnote 5.* Height requirements may be varied upon approval of the Board of Adjustment.

(6) *Footnote 6.* Whichever is greater, 20,000 square feet, or twice the gross floor area of the building.

(7) *Footnote 7.* An increase in the side and rear yard setbacks is required for homes (structures) that exceed 25 feet in height. Homes (structures) greater than 25 feet in height shall be setback from the side and rear property lines an additional one and one-half feet for each one foot, or portion thereof, that the home (structure) exceeds 25 feet in height.

(8) *Footnote 8.* 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 areas 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

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

§ 153.008 SPECIAL USES.

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

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

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

(C) *Special use standards.*

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

(2) *Planned unit developments.*

(a) *Purpose.* The purpose of this division 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.

(b) *Planned unit development defined.* In this chapter, 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 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 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.

(c) *Land development standards.*

1. The following land development standards shall apply for all planned unit developments.

2. These planned unit developments may be located only in certain specified districts as special uses, subject to a finding by the Board of Adjustment that the following conditions be met.

a. *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.

b. *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 special) 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.

c. *Density requirements.* The proposed residential density of a planned unit development (dwelling units per acre as shown in § 153.007) 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.

d. *Frontage requirements.* Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.

e. *Minimum requirements.*

i. *Waiver.* 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.

ii. *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.

iii. *Required distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the Board of Adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

iv. *Streets.* 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.

f. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walls, 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.

g. *Perimeter requirements.*

i. 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.

ii. 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.

h. *Plans and documentation.* Plans and accompanying documentation shall 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.

i. *Preliminary plans.* Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with § 153.038.

j. *Pedestrian and bicycle path circulation system.* Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

k. *Parking areas, service areas, and the like.* 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.

I. *Open spaces, recreational areas, and the like.* Where applicable, conveyance and maintenance of open space, recreational areas, and communally owned facilities shall be in accordance with the Unit Ownership Act (G.S. Ch. 47A) and/or any other appropriate mechanisms acceptable to the Board of Adjustment.

(3) *Country, athletic and social clubs.*

(a) Off-street parking shall be sufficient to meet the requirements found in §153.038.

(b) The Board of Adjustment may require buffering along the side and rear lot lines that meet the requirements as outlined in § 153.063, "Buffer Strip and Screen Requirements." This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) The proposed hours of operation shall not be detrimental to the surrounding property due to noise, lights, traffic, and the like.

(d) 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 placed so as not to cast light on nearby residential uses.

(4) *Public utility stations and substations.*

(a) Structures shall be enclosed by a woven wire fence at least eight feet high.

(b) The lot shall be suitably landscaped along the side and rear property lines with vegetation that meets the requirements as outlined in § 153.063, "Buffer Strip and Screen Requirements." This planting requirement may be modified by the Board of Adjustment where adequate buffering exists in the form of vegetation and/or terrain.

(c) Entrances and exits shall be designated and designed accordingly to promote public safety.

(5) *Home occupation.* An occupation providing a service carried on by the occupants of a dwelling; provided, that:

(a) The occupation is conducted entirely within the dwelling and not in an accessory building or out of doors;

(b) 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;

(c) 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;

(d) Any need for parking generated by the conduct of such home occupation shall be met off the street and not in the front yard;

(e) 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;

(f) 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; and

(g) No retail sales shall be conducted as part of the home occupation.

(6) *All commercial services, professional office uses, consumer services, and retail businesses.*

(a) Off-street parking shall be sufficient to meet the requirements found in §153.038.

(b) A driveway permit as required by the State Department of Transportation shall be submitted along with the site plan, where applicable.

(c) 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 at either the side, rear, or front of the proposed development, based upon the location of adjacent and/or nearby residential dwellings, topography, existing or proposed screening, or other factors that 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.

(7) *Libraries, schools, and churches.* Libraries, schools and churches shall provide a buffer that meets the requirements as outlined in § 153.063, "Buffer Strip and Screen Requirements".

(8) *Accessory buildings.*

(a) All accessory buildings shall meet the standards of the State Building Code where applicable.

(b) All accessory buildings shall be of a design compatible with the principal building on the lot and with the structures in the neighborhood.

(c) An additional parking space shall be required when an accessory building is permitted for use as a dwelling by a family member.

(d) Accessory buildings shall comply with the district's setback requirements.

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

§ 153.009 EXCEPTIONS AND MODIFICATIONS.

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

(B) *Front yard setback for dwellings.* The front yard setback requirements of this chapter for dwellings shall not apply on any lot where the average front yard setback of existing buildings located within 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.

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

(D) *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.

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

§ 153.010 AMENDMENTS.

(A) *Generally.* This chapter, including the zoning map, may be amended by the Town Board of Commissioners in accordance with the provisions of this subchapter.

(B) *Initiation of amendments.* Proposed changes or amendments may be initiated by the Town 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.

(C) *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 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 12 months by the Board of Commissioners.

(D) *Application fee.* A fee, in an amount as set by the Board of Commissioners from time to time, shall be paid to the town for each application for an amendment to cover costs of advertising and other administrative expenses.

(E) *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 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 32-day period shall constitute a favorable recommendation.

(F) *Public hearing.*

(1) Before enacting any amendment to this chapter, 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 the county once a week for two successive weeks, the first publication shall not appear less than ten days or more than 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.

(2) (a) 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 (including parcels abutting the subject property by street, railroad, or other transportation corridor) 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 town may require the applicant to provide a fee equivalent to the cost of producing and mailing notifications to owners as specified above.

(b) 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.

(G) *Decision.*

(1) The Town Board of Commissioners shall make a decision on the proposed amendment to this chapter initiated by owners of private property within the town within 60 days after the public hearing.

(2) There shall be no time limit after a public hearing for Board action concerning all proposed amendments initiated by the Town Board of Commissioners, the Planning Commission, or the Board of Adjustment.

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

§ 153.011 VIOLATIONS AND REMEDIES.

(A) *Violations.*

(1) Whenever, by the provisions of this chapter, 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 chapter shall constitute a separate violation and a separate offense.

(2) Each day of violation and noncompliance shall be considered a separate offense.

(B) *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 chapter, 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.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021) Penalty, see § 153.999

§ 153.012 LEGAL STATUS PROVISIONS.

(A) *Conflict with other laws.*

(1) When provisions of this chapter 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 chapter shall govern.

(2) 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 chapter, the provisions of that statute or local ordinance or regulation shall govern.

(B) *Effective date.* This chapter shall take effect and be in force on October 18, 1983.

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

§ 153.013 CONFLICTS OF INTEREST.

Pursuant to § 160D-109, the following regulations are set forth regarding conflicts of interest for legislative decisions regarding a development regulation adopted pursuant to this chapter as follows.

(A) *Governing board.* A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(B) *Appointed boards.* Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(C) *Administrative staff.* No staff member shall make a final decision on an administrative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

(D) No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff

support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(E) *Quasi-judicial decisions.* A member of any board exercising quasi-judicial functions pursuant to this chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(F) *Resolution of objection.* If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(G) *Familial relationship.* For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Ord. passed 6-8-2021)

GENERAL REGULATIONS

§ 153.025 EFFECT ON EVERY BUILDING AND LOT.

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 chapter.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021) Penalty, see § 153.999

§ 153.026 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 principal building and its customary accessory building on the lot, except in the case of a designed planned unit development.

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

§ 153.027 LOT FRONTAGE.

All lots shall front on a public street. It is suggested, but not required, that garage doors not face or be visible from the public street, that garage doors not be more than ten feet wide, and if there are multiple garage doors, that there be at least 18 inches of separation between them.

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

§ 153.028 REQUIRED YARDS AND OTHER SPACES.

No part of a yard or open space, or off-street parking or loading space required in §§153.038 and 153.039, or required in connection with any building for the purpose of complying with this chapter, shall be included as a part of a yard, open space, or off-street parking, or loading space similarly required for any other building.

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

§ 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

(a) The maximum number of accessory buildings permitted on a lot shall be one;

(b) The maximum roof coverage area for accessory buildings shall be 750 square feet;

(c) The maximum height for accessory buildings shall be 25 feet;

(d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;

(e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;

(f) The accessory building must be designed in the same architectural style as the principal structure;

(g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and

(h) Solar collectors shall be regulated in accordance with G.S. § 160D-914.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be

made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

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

Editor's note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.030 HOME OCCUPATIONS.

Standards pertaining to home occupations are contained within the special use standards, specifically §153.008(C)(5).

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

§ 153.031 VISIBILITY AT INTERSECTION AND OBSTRUCTIONS WITHIN TOWN RIGHTS-OF-WAY.

Sight distances at intersections must meet the standards for secondary roads established by the State Department of Transportation. On corner lots, no planting, structure, sign, fence, wall, or other obstruction shall be erected so as to interfere with the sight distance. In accordance with § 91.02(C)(2), the construction of curbing or obstructions across the town right-of-way is prohibited.

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

§ 153.032 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.

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

§ 153.033 SIGNS IN RESIDENTIAL DISTRICTS, R-1, R-2, R-3, R-4, AND R-5.

(A) A small sign showing the name of the owner or occupant or the street number of a lot shall be permitted on any lot. Additional sign requirements, including real estate and construction company signs, are found in § 93.02.

(B) The design or layout of signs proposed for any special use shall be presented along with the development plan as specified in § 153.008(B).

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

§ 153.034 LANDSCAPING AND GRADING PLANS, LAND DISTURBANCE, AND SEDIMENTATION CONTROL.

(A) *Plans required.* A landscaping and grading plan, as defined in the town's zoning application process, are required for any or all of the following activities.

(1) Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot. 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 Town Board of Adjustment regardless of the area to be disturbed.

(2) Any residential construction activity that results in an addition of greater than 500 square feet of roof coverage.

(3) Any non-residential construction activity as defined in §153.061.

(B) All landscape and grading plans shall demonstrate compliance with the town's tree protection and preservation regulations as found in §§ 153.050 through 153.059 and § 153.061(C) for existing residential and non-residential tree maintenance and new construction activities, respectively.

(C) *Pre-construction conference and supervision.*

(1) Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between a representative of the town and the applicant to review procedures for protection and management of protected trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the Ordinance Administrator that such activity is taking place.

(2) The applicant shall provide the following at least seven days prior to the pre-construction conference.

(a) Approved landscaping plan, showing all protected and unprotected trees to be removed, and all replacement trees to be planted.

(b) Chart showing the quantity of trees, scientific species name, and tree designation (protected, unprotected, or tree of preference) and replacement quantities required.

(c) Final grading plan showing tree preservation limits and limits of disturbance.

(D) *Construction supervision and additional compliance requirements.*

(1) The town shall have developed sites inspected periodically to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter. Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer/contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this subchapter. At the option of the town, a compliance bond may be required.

(2) Compliance with G.S. § 113A-54. 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 State Sedimentation Control Commission, State Department of Natural Resources and Community Development.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021; Ord. 2023-05, passed 10-9-2023)

§ 153.035 BUFFER STRIP REQUIRED.

From the time of the adoption of this chapter, all special 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 § 153.063, "Buffer Strip and Screen Requirements."

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

§ 153.036 NONCONFORMING LAND USES OR STRUCTURES.

Any parcel of land, use of land, building, or structure existing at the time of the adoption of this chapter, 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.

(A) *Nonconforming vacant lots.*

(1) This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the County Register of Deeds office, which at the time of adoption of this chapter or any amendment thereto fail to comply with the minimum area and width requirements of the districts in which they are located.

(2) Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located; provided, that:

(a) Where the lot area is not more than 20% below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a zoning compliance permit; and

(b) Where the lot area is more than 20% below the minimum specified in this chapter 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.

(B) *Nonconforming occupied lots.* This category of nonconformance consists of lots, occupied by buildings or structures at the time of the adoption of this chapter 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.

(C) *Nonconforming uses or structures.*

(1) This category of nonconformance consists of buildings or structures used at the time of enactment of this chapter 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 chapter such as size and height restrictions.

(2) Such uses except as provided in division (E) below may be continued as follows:

(a) 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.

2. For the purpose of this chapter, the rank order of uses from higher to lower shall be:

- a. Residential;
- b. Public; and
- c. Commercial services.

(b) When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

(c) A nonconforming use may not be extended or enlarged, nor shall a nonconforming structure be altered except as follows:

1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible;
2. Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible;

3. At the time of adoption of this chapter, 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; and

4. When any nonconforming use of a building or structure is discontinued for a period in excess of 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.

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

(E) *Nonconforming home occupation.* Any property owner whose home occupation was made nonconforming by the ordinance amendment adopted on July 9, 2002, shall have until July 8, 2005 to conform to the current terms of the ordinance.

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

§ 153.037 ACCESSORY STRUCTURES OR BUILDINGS UTILIZED AS DWELLINGS.

(A) Upon adoption of this chapter, accessory buildings used as dwelling units and occupied by a “family” (see definition in § 153.004) member shall be a conforming use. Such units occupied by a non-family member shall be nonconforming uses.

(B) (1) The definitions and provisions of this chapter provide for this situation.

(2) Therefore, the following shall apply:

(a) An existing accessory structure occupied at the time of adoption of this chapter 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 (see § 153.036(C)(2)(c)4.), then such unit could only be reoccupied by a family member.

(b) New accessory structures intended for use as dwellings shall only be occupied by a family member.

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

§ 153.038 OFF-STREET PARKING.

(A) 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.

(B) 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 feet by 20 feet, plus the necessary access space unless otherwise authorized by the Board of Adjustment.

(1) *Minimum parking requirements.* The required number of off-street parking spaces specified below for each use shall be provided.

<i>Residential Uses</i>	<i>Required Parking</i>
<i>Residential Uses</i>	<i>Required Parking</i>
<i>Business and Consumer Services of All Kinds</i>	
Business and special schools	1 space for each students
Clubs and lodges	1 space for each 3 members
Day nursery and private space for each kindergarten	1 space for each staff member, plus 1 space for each 5 students
<i>Business Uses</i>	
Commercial services; retail space	1 space for each 200 square feet of gross floor
Medical and dental offices	5 spaces per doctor or dentist
Professional and business offices	1 space for each 300 square feet of gross floor space
<i>Public and Semi-Public Uses</i>	
Churches	1 space for each 4 seats in the principal assembly room

Public building space	1 space for each 200 square feet of gross floor space
Recreational facilities	2 spaces for every tennis, squash, or racquetball court; health exercise facility—1 space per 50 square feet; golf or country clubs— 2 spaces per tee; places of recreation and assembly shall have 1 space for each 200 square feet of gross floor space
Schools; public/private	1 space for each classroom and administrative office, plus 1 space for each 20 seats or 1 space for each 400 square feet of area used primarily for public assembly
Residential Uses	
Residential dwellings in a residential planned unit development	2 spaces for each dwelling unit
Residential dwellings, single-family	2 spaces for each dwelling unit

(2) *On-site parking of vehicles.*

(a) 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.

(b) Temporary parking (less than five hours per day) is excepted from the requirements of this section for vehicles operated by persons who are visiting the owners or occupiers of the residence.

(c) Nothing herein shall be deemed to modify or impact, in any way, the requirements found under §153.071, "Recreational and Commercial Vehicle Storage."

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

§ 153.039 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 12 feet by 40 feet, and an overhead clearance of 14 feet in height. All businesses shall have at least one such space.

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

§ 153.040 NO LOT SUBDIVISION OF PLATTED AND RECORDED LOTS.

(A) It is the express intention and purpose of this chapter to preserve the town as primarily a low- density residential area. To this end, subject to § 153.042, the number of lots within the town shall be limited to those lots as shown on plats recorded in the County Register of Deeds. Therefore, upon adoption of this chapter, all lots in the town that have been previously platted and recorded with the County Register of Deeds shall be deemed and established as individual lots, and shall remain individual lots, and shall not be subdivided.

(B) If an owner has acquired contiguous or adjoining lots, and the terminology of the deeds or other instruments of conveyance expresses intent that the lots shall be joined together as one residential lot, the 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 the 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 the lots seem to constitute one residential site, then the property shall not thereafter be subdivided, nor revert back to individual, separate lots.

(C) 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.

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

§ 153.041 MINIMUM DWELLING UNIT SIZE.

(A) Each dwelling unit hereafter erected on any lot shall contain the following specified minimum living area floor space.

(B) 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 chapter 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 chapter 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.

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

§ 153.042 SUBDIVISION OF TRACTS OF LAND.

(A) 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.

(B) Provisions shall be made for all utilities and access necessary to properly service said subdivision, subject to the provisions of Ch. 152. All other requirements of this chapter shall likewise be applicable to said subdivision before said owner shall be allowed to subdivide the tract of land.

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

§ 153.043 MAXIMUM ROOF COVERAGE.

(A) (1) (a) The **MAXIMUM ROOF COVERAGE** is defined as the total area under roof, of all primary and accessory structures and buildings on the lot. This is measured from the outside edge of the gutter, if any, vertically to the ground.

(b) The maximum roof coverage assures the total size of buildings and structures is proportional to the size of the lot.

(2) The maximum roof coverage permitted is as follows:

The below table can also be used by simply rounding up or down to the nearest lot acreage. For lots larger than five and one-half acres or for exact MRC allowances for lots falling between points in the below table, the below equation shall be used as the definitive allowance.

<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>
0.50	2,552	1.60	5,836	3.25	7,837
0.60	3,067	1.70	6,008	3.50	8,047
0.70	3,502	1.80	6,169	3.75	8,241
0.80	3,879	1.90	6,322	4.00	8,424
0.90	4,212	2.00	6,467	4.25	8,595
1.00	4,509	2.20	6,736	4.50	8,756
1.10	4,779	2.40	6,981	4.75	8,921
1.20	5,024	2.60	7,207	5.00	9,054
1.30	5,250	2.80	7,417	5.25	9,191
1.40	5,459	3.00	7,611	5.50	9,325
1.50	5,654				

(B) (1) *Lots exceeding six acres in size.* Multiply the lot size by 43,560; multiply this number by 3.25% (0.0325); provided, that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet.

(2) 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.

(C) 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 § 153.110(D).

(Ord. 2023-04, passed 7-1-2023)

§ 153.044 MATERIAL AND COLOR REQUIREMENTS FOR RESIDENTIAL DWELLING UNITS.

(A) The town is a unique community concerned with historic continuity. The town and its citizens are interested in the exterior appearance of residential structures, including the materials and color used in constructing and reconstructing such

structures. To that end, those persons constructing new residences or renovating or expanding existing residences are encouraged to consider the provisions of this section regarding building materials

(B) 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.*

(a) 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.

(b) As required in § 153.087, 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.

1. *Siding.*

a. *Suggested 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; and

b. *The following exterior siding materials are discouraged.* 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, and the like), sheet glass, or glass block (not to include glass used for windows, sunrooms or conservatories), glazed brick.

2. *Roofing visible from adjacent property.*

a. *Suggested 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; and

b. *The following roofing materials are discouraged.* Tin, unpainted aluminum, galvanized steel, asphaltic roll roofing, composition rubber, EPDM or PVC single ply roofing fabric, tar and gravel, asphalt and gravel.

(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) *Suggested 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 this division (B)(2). Dwellings which are painted in colors that are considered to be nonconforming at the time of the adoption of this chapter may not be repainted the same color; and

(b) *The following exterior colors are discouraged.* The use of day-glow or fluorescent colors is discouraged.

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

§ 153.045 SITE DESIGN AND BUILDING FORM AND MASS FOR RESIDENTIAL DWELLING UNITS.

(A) (1) The town 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.

(2) 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.

(B) 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, e.g., native flora and curvilinear roadways.

(a) *Built of planted landscape elements*

1. *Permitted.* All native flora and materials, (e.g., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete masonry paving units); and

2. *Prohibited.* Abrupt physical configurations, (e.g., site revisions causing excessive tree removal, land slope revisions greater than natural repose).

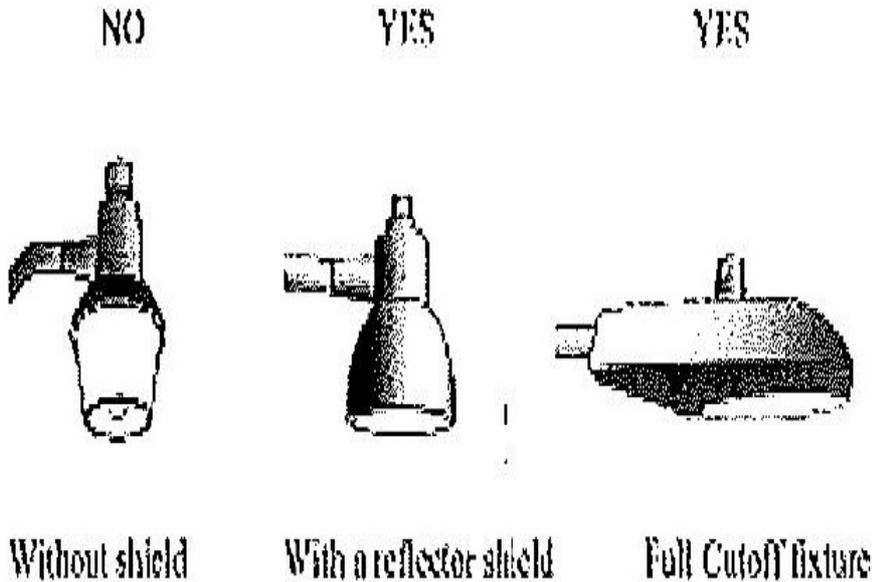
(b) *Site lighting.* Permitted; low-intensity security or decorative lighting, up to two street lamps in front yards not to exceed eight-feet in height and located a minimum of ten feet from the edge of the road.

(2) *Prohibited.*

(a) High-intensity flood or spot lighting of either 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; and

(b) Examples of shielding should be as follows.



(3) *Building forms and mass.*

(a) *Intent.* 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.

(b) *Roof form.*

1. *The following roof forms are encouraged.* Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, and arch; and

2. *The following roof forms are discouraged as inconsistent with existing structures in the town.* Trapezoidal, butterfly, complex curvilinear (screw, bullet, mushroom shape), conical, polygonal (except as roof of minor tower), A-frame, Quonset huts, geodesic domes, and roundettes.

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

§ 153.046 MATERIAL AND COLOR REQUIREMENTS FOR COMMERCIAL BUILDINGS.

(A) The town 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 to regulate the exterior appearance of commercial structures, including the exterior materials and color used in constructing and reconstructing and painting buildings.

(B) 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 that will blend with the existing commercial structures and natural features of the town. As required in § 153.087(B)(1), 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; and

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, and the like), 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; and

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 that 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 that 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 this division (B)(2).

(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% 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) 1. All electrical and mechanical equipment located at ground level shall be screened from view (100% 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.

2. 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.

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

§ 153.047 SITE DESIGN AND BUILDING FORM AND MASS COMMERCIAL BUILDINGS.

(A) The town 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.

(B) 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, (e.g., native flora and curvilinear roadways).

(a) *Built or planted landscape elements.*

1. *Permitted.* All native flora and materials, (e.g., trees, bushes, flowers, stone, asphalt or concrete pavement, concrete or brick masonry paving units). Refer to §§ 93.30 through 93.40 for tree removal regulations.

2. *Prohibited.* Final grades that result in slopes greater than 1:1; retaining walls that exceed seven feet in height for property zoned (R-4) and exceed 12 feet in height for property zoned (R-5).

(b) *Site lighting/exterior lighting.* With the exception of Americans with Disabilities Act, being 42 U.S.C. § 12101, lighting requirements and street lighting, the following design standards shall apply when exterior lighting is proposed and/or required:

1. *Shielding.*

a. 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.

b. Exterior lighting shall not project above the horizontal plane of the building.

2. *Color.* Warm lighting colors are required.

a. The blue-white colors of florescent and mercury vapor lamps are prohibited.

b. Lamps emitting a color temperature in excess of 5,000 degrees Kelvin are prohibited.

3. *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.

4. *Light fixtures.*

a. The height of light fixtures shall be in proportion to the building mass and no more than 14 feet high.

b. 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.

5. *Advertising.* The operation of searchlights or similar sources for advertising, display or any other commercial purpose is prohibited.

(2) *Building forms and mass.*

(a) *Intent.* 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.

(b) *Roof form.*

1. *Permitted.* Gable, mansard, hip, gambrel, shed, pyramidal, salt box, barrel, vault, arch, and flat; and

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.

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

§ 153.048 IMPERVIOUS SURFACE COVERAGE.

(A) (1) The maximum percentage of a residential lot that can be devoted to impervious surfaces, as defined in §153.004, is established to assure that the character of the town is preserved and to control stormwater and runoff directed to the streets and adjacent properties.

(2) The maximum impervious coverage is proportional to the lot size. The maximum area permitted is as follows:

<i>Lot Size (Acres)</i>	<i>Max. Impervious Surface (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Impervious Surface (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Impervious Surface (Ft.²)</i>
0.50	8,102	1.60	18,352	3.25	24,597
0.60	9,708	1.70	18,886	3.50	25,250
0.70	11,067	1.80	19,390	3.75	25,858
0.80	12,244	1.90	19,886	4.00	26,427
0.90	13,282	2.00	20,318	4.25	26,961
1.00	14,310	2.20	21,158	4.50	27,465
1.10	15,050	2.40	21,925	4.75	27,941
1.20	15,817	2.60	22,630	5.00	28,393
1.30	16,522	2.80	23,284	5.25	29,233
1.40	17,175	3.00	23,892	5.50	29,625
1.50	17,783				

(B) Lots on which new construction and/or development activity could cause the amount of impervious surface on the lot to exceed the amounts 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 § 153.110(D).

(C) 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.

(D) The equation which may also be used to calculate maximum impervious coverage (MIC) is: MIC= 8812.5 LN (Acreage), where 'LN' is the natural logarithm mathematical function. This may be calculated using Excel, if necessary.

(Ord. 2023-04, passed 7-1-2023)

§ 153.049 FENCE, GATE AND WALL REGULATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Fences shall not exceed six feet in height except that fences designed to prevent deer or other wildlife from entering the property shall not exceed ten feet in height. Deer fences shall be constructed in accordance with North Carolina Wildlife Resources Commission standards for "Permanent Woven Wire Fencing" and "Permanent Solid-Wire Fencing." Copies of these standards are available at the Town Hall or at the following web address (<https://www.nxwildlife.org/Learning/Species/Mammals/Whitetail-Deer/Fencing-to-Exclude-Deer#42041180-permanent-fencing>).

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

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

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

TREE PRESERVATION

§ 153.050 PURPOSE.

(A) In order to maintain the unique characteristics of the town as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Trees provide buffer and a natural canopy, and are a hallmark of the town requiring protection. The town is focused on maintaining the current health of the forest and increasing species diversity, with a primary goal to replace hardwood trees, other native trees, and trees of preference more quickly. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust, and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the town.

(B) Preservation and appropriate replacement of trees is the intent of this chapter. This chapter shall apply to all properties within the town except as noted in division (C) below.

(C) This chapter does not apply to properties owned, leased, or controlled by the town. This chapter does not apply to properties that perform forestry activity on forestland taxed on the basis of its present-use value as forestland under G.S. Article 12, Chapter 105. Once an active forestry management plan is no longer in place, the exception for the property will be removed. Property owners with an active forestry management plan shall provide a current copy of this plan to the town each calendar year by January 31.

(D) This subchapter applies to residential and non-residential tree removal that does not involve construction activity. Refer to § 153.034 for landscaping plan requirements and § 153.061 for tree removal and replacement guidelines related to all construction activity.

(Ord. 2023-06, passed 10-9-2023)

§ 153.051 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NON-RESIDENTIAL USES. For the purposes of this chapter, non-residential uses may include specific uses found throughout the town that do not encompass single-family or multi-family residential dwellings. These uses may exist within a residential zoning district, but by actual use, are not residential in nature. Examples of these uses include, but are not limited to, public or private schools; country, athletic, and social clubs; medical or dental offices and campuses.

ORDINANCE ADMINISTRATOR. For the purposes of this chapter, the ordinance administrator charged with administration, inspection, review, and enforcement is the Town Manager or his or her designee.

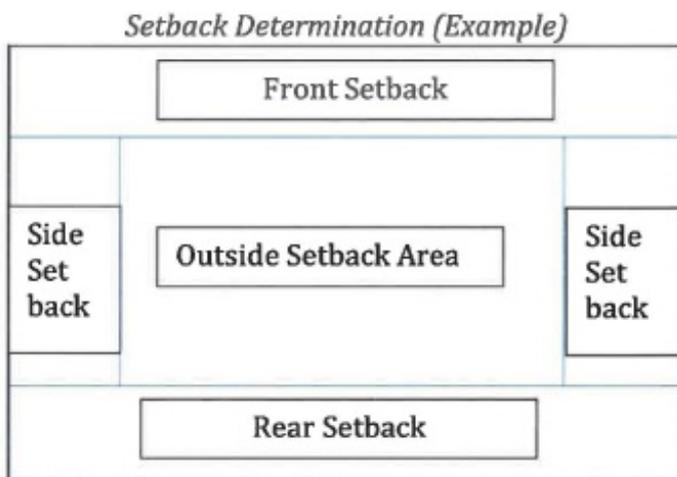
OUTDOOR RECREATION ACTIVITIES. Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment, and taking place at prescribed non-residential places, sites, or fields. Active recreational uses and supporting services include swimming, tennis, golf, baseball and other field sports, track, and playground activities.

PROTECTED TREE. A protected tree is any tree six inches or more in diameter at a height of four and one-half feet from the ground (DBH-diameter at breast height) that is in sound, healthy condition.

RECOMMENDED PLANTING LIST (RPL). A list developed and updated by the town arborist that includes preferred species based on the tree being removed and acceptable replacement locations. For all replanting requirements, a minimum of 50% of the total replacement trees must come from the **RPL** with 25% of the total replacement trees being those species identified as trees of preference, as defined below. A minimum of one tree scheduled for replacement shall come from the tree of preference (TOP) list as defined below. The replanting list may be updated periodically and is available on the town's website.

RESIDENTIAL USES. For the purposes of this chapter, residential uses include single-family detached dwelling units found within the R-1, R-2, and R-3 zoning districts and includes attached multi-family residential units found within the R-1, R-2, and R-3 zoning districts.

SETBACKS. The minimum yard setback requirement found in §153.007. **INSIDE SETBACK AREA** is the length found from the street or property line, and **OUTSIDE SETBACK AREA** is the remainder of the property area. An example of setback locations are shown below.



TREES OF PREFERENCE (TOP). Trees that warrant additional attention and regulation due to being a preferred native species or having distinctive height and/or diameter. **TREES OF PREFERENCE** include any healthy, living tree with the following characteristics.

- (1) Has a trunk diameter at breast height (DBH) of 36 inches or more;

(2) Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of 30 inches or more.

UNPROTECTED TREE. A tree that is six inches or more in diameter at a height of four and one-half feet from the ground, and is dead, produces no foliage during normal growing seasons, or a tree that is diseased or damaged to the extent that it is structurally compromised and poses a safety hazard, or a tree that, for any other reason, poses a safety hazard. Safety hazard concerns are evaluated by the town arborist in accordance with best management practices developed by the International Society of Arboriculture (ISA).

UNREGULATED TREE. A tree that is less than six inches in diameter, regardless of height or species, is to be unregulated and not subject to the provisions of this chapter.

(Ord. 2023-06, passed 10-9-2023)

§ 153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without receiving approval from the appropriate regulatory review body for the removal and paying any applicable fee. Any protected trees removed shall be replaced as outlined in § 153.057 below.

(B) If the Ordinance Administrator concludes the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this chapter, he or she may refuse to approve such removal, or permit the removal of a lesser number of protected trees. Further, in his or her discretion, the Ordinance Administrator may require that the applicant provide a tree survey showing the location, size, and type of protected trees on a property, including common scientific names. The tree survey shall clearly indicate which protected trees are indicated for removal and which will be left undisturbed. In the case of new construction, the site plan must show the location of building, driveways, terraces, and other structures on the property. All protected trees must be clearly tagged as to retention or removal. The Ordinance Administrator may also require an applicant to provide documentary evidence, in the form of a survey or other documentation sufficient, in the opinion of the Ordinance Administrator, to confirm that the protected tree(s) are on the applicant's property. An applicant has the right to appeal a decision of the Ordinance Administrator to the Board of Adjustment within five business days of the decision.

(Ord. 2023-06, passed 10-9-2023)

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN PROTECTED TREES.

An application to remove more than ten protected trees in 12 successive months shall be made to the appropriate regulatory review authority as shown below. A fee for this application shall be paid along with the application.

Protected Trees Requested for Removal	Regulatory Review Body
1-10 trees	Ordinance Administrator
11-30 trees	Board of Adjustment
31+ trees	Board of Commissioners

(Ord. 2023-06, passed 10-9-2023)

§ 153.054 REMOVAL OF UNPROTECTED TREES.

(A) An unprotected tree may be removed by the property owner after notifying the town of the plans to remove the tree(s) and receiving approval to do so from the Ordinance Administrator.

(B) The Ordinance Administrator may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report the findings, in writing, to the town before final approval is given. The town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

(C) Any unprotected trees removed shall be replaced as defined in §153.057 below.

(Ord. 2023-06, passed 10-9-2023)

§ 153.055 ENFORCEMENT.

Any unauthorized removal, cutting, or damage to protected or unprotected tree(s) may result in the Ordinance Administrator placing a stop-work order on any activity on the property. This order shall remain in effect until all corrections are made to bring the property into compliance with this chapter, up to and including a final landscaping plan showing the full tree replacement as required by § 153.057 below.

(Ord. 2023-06, passed 10-9-2023)

§ 153.056 DRIP LINE PROTECTION.

The health of protected trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Final landscape plans shall protect this area around the tree and denote tree save areas on the plan.

(Ord. 2023-06, passed 10-9-2023)

§ 153.057 REPLACEMENT OF TREES.

(A) The replacement of protected and unprotected trees and trees of preference shall be established in accordance with the following requirements.

Table 2 - Residential Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
Table 2 - Residential Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	x	x	x	x	x	x
13"-18"	1	2"	1	2"	1	2"	x	x
19"-36"	1*	3"	1	2"	1	2"	x	x
36"+ ^T	1**	3"	1*	3"	2	2"	1	2"

* Must include a minimum of three screening/buffering trees as defined in RPL
 ** Must include a minimum of five screening/buffering trees as defined in RPL
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

Table 3 - Non-Residential Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	x	x	x	x	x	x
13"-18"	2	2"	x	x	1	2"	x	x
19"-36"	2*	3"	1	2"	1	3"	x	x
36"+ ^T	2**	4"	1*	3"	1	4"	1	3"

* Must include a minimum of three screening/buffering trees as defined in RPL
 ** Must include a minimum of five screening/buffering trees as defined in RPL
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

(B) A replacement tree may be planted up to one year prior to the removal of any tree in order to count toward replacement. Replacement trees planted after existing tree removal shall be in the ground within six months of removal of the original tree. The Ordinance Administrator may, for good cause shown, and in his or her sole discretion, extend this period for an additional six months.

(C) The town’s recommended planting list (RPL) shall be utilized by applicants when determining what species of trees are to be replanted. A minimum of 50% of the total replacement trees shall come from the RPL with a minimum of 25% of total replacement trees coming from the trees of preference (TOP) list. A minimum of one tree scheduled for replacement shall come from the tree of preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

(D) See the above charts for the minimum replacement size for all deciduous trees. Evergreen trees that are planted as

replacement trees shall be a minimum of six feet in height at the time of planting.

(E) (1) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Ordinance Administrator or by the Board of Adjustment (in the case of an appeal to the town) or the Ordinance Administrator may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive. For existing residential lots where mature canopies remain after tree removal, replacement requirements may be amended regarding location and species to provide the best opportunity for healthy growth. This replacement requirement discretion is meant solely to allow for maintenance of existing residential lots where the canopy is thick and growing new trees would be impractical and/or difficult. This allowance is not intended for new residential construction.

(2) For non-residential lots, if replanting inside the setback results in an adverse condition to town roads, other public property, other private property, or results in an undue hardship for an outdoor recreation activity, a variance application may be filed with the Board of Adjustment to replant the appropriate number of trees in a different location.

(3) Non-residential properties that include an outdoor recreation activity as a primary purpose, as defined above, are provided a tree removal allowance not to exceed net 50 trees outside the setback of the property in a calendar year. Net removal is defined as the number of protected trees removed minus the number of trees re-planted on the property where the outdoor recreation activity occurs. Prior to removal of trees pursuant to this section, the property owner should submit to the Ordinance Administrator notice of the tree(s) to be removed. For purposes of this net removal allowance, a property owner needs only to submit to the Ordinance Administrator documentation of any protected trees removed and any trees replanted as a record of same for each calendar year. Unprotected trees outside the setback of a non-residential property with an outdoor recreation activity as a primary purpose may be removed without replacement, provided that notice is given to the Ordinance Administrator regarding the necessity for removal.

(F) The town encourages a diversity of species during replanting, with a focus on replenishing hardwood trees within the forest. However, to provide appropriate screening and buffering, particularly among non-residential uses, trees that have a lower canopy (height) at maturity are also encouraged for inclusion in a replanting plan. This combination will ensure the canopy is varied in both height and species.

(G) Replacement trees shall not be planted within the town's right-of-way or in an area to obstruct the view of traffic.

(Ord. 2023-06, passed 10-9-2023)

§ 153.058 INSPECTIONS, APPEALS, BOND, AND PENALTY.

(A) All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the Ordinance Administrator six months following any construction to ensure the trees are in a healthy condition. The Ordinance Administrator may require replacement or replanting of replacement trees if the appropriate replacement trees are not in place during this review.

(B) Any person aggrieved by a decision made under this subchapter by the Ordinance Administrator may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be subject to review by the Board of Commissioners.

(C) At the option of the town, a bond or other type of guarantee can be required of the property owner and/or applicant when submitting a tree removal application to ensure all replanting requirements are met to the satisfaction of the town.

(D) Any violation of this chapter shall be subject to the penalty provisions found in §153.999.

(Ord. 2023-06, passed 10-9-2023)

BUFFERS, SCREENING, AND LANDSCAPING REQUIREMENTS

§ 153.060 PURPOSE AND INTENT.

(A) The town 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.

(B) Landscape requirements for new construction and substantial additions are set forth below, in order to:

(1) Encourage the preservation of existing trees and vegetation on undeveloped residential lots and ensure the reforestation of the lot when tree removal is required for any construction activities.

(2) Ensure landscape plans presented to the town include considerations for native species, reforestation, environmental protection, and effective stormwater management.

(C) 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 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 stormwater 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; and

(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 the town while allowing flexibility to promote well-designed and creative landscape plantings.

(Ord. 2023-07, passed 10-9-2023)

§ 153.061 GENERAL INFORMATION.

(A) *Applicability.*

(1) Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments within the town limits.

(2) (a) The following developments are required to be in full compliance with this section.

(b) New residential development, including additions, exceeding more than 500 square feet of roof coverage, and all nonresidential development, including special uses; and

(3) New parking spaces or lots shall comply with the provisions of §153.064.

(B) *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 § 153.034, a landscape and grading plan meeting town requirements shall be reviewed and approved prior to any grading.

(C) *Tree replacement requirements.* The following tree replacement requirements are in place for all developments as defined in division (A)(2).

Table 1 - New Construction Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
Table 1 - New Construction Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	1	2"	1	2"	x	x
13"-18"	2	2"	1	2"	2	2"	1	2"
19"-36"	2*	3"	2	2"	2	3"	2	2"
36"+ ^T	2**	4"	2*	3"	2	4"	2	3"
* Must include a minimum of three screening/buffering trees as defined in RPL								
** Must include a minimum of five screening/buffering trees as defined in RPL								
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements								

(D) *Alternative compliance.*

(1) 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 chapter.

(2) 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;

(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.

(3) The property owner must submit a plan of the area for which alternative compliance is requested to the Town Manager 14 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.

(4) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. Upon recommendation from the Design Review Board following their review, alternative compliance plan 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.

(Ord. 2023-07, passed 10-9-2023)

§ 153.062 EXISTING VEGETATION IN R-4 OR R-5 ZONES.

(A) 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 at the discretion of the Ordinance Administrator as described below.

(B) As required in § 153.052, no person shall remove or in any way damage any protected trees without first filing an application for the removal and receiving approval from the town. This requirement is applicable to both residential and non-residential uses within the town.

(C) Special attention shall be given to protected trees located within 20 feet of the 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 within non-residential land use.

(a) Vegetation located in the buffer strip. 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.

1. Trees designated for preservation may be credited at the rate of the following.

Two-inch to six-inch caliper tree = one tree

Seven-inch to 12-inch caliper tree = two trees

Thirteen-inch to 18-inch caliper tree = three trees

Nineteen-inch to 24-inch caliper tree= four trees

Twenty-five-inch and greater= five trees

2. 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 within six months from removal of the dead trees or shrubs.

(2) Protection of existing trees and shrubs during construction.

(a) 1. 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.

2. Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within 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) 1. All contractors shall be made aware of the areas designated for protection.

2. No disturbance shall occur within the protective barriers, including:

- a. Grading;
 - b. Filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or state cooperative extension specialist is installed to protect the tree from suffocation;
 - c. Temporary or permanent parking;
 - d. Storage of debris or materials, including topsoil;
 - e. Disposal of hazardous wastes or concrete washout; and
 - f. Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.
3. If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or state cooperative extension specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.
4. 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 § 153.063(B)(5). The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two feet directly below the tree roots to minimize root damage.
5. 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 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".

(Ord. 2023-07, passed 10-9-2023)

§ 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter 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.

(B) 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.

(1) *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 Manager is required prior to initiating any disturbance of the buffer.

(2) *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 Manager 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 feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.

(3) *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-foot wide strip shall be installed to screen the nonresidential 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.

(4) *Coordination with stormwater drainage provisions.* If the buffer strip is to be used as part of the area for required stormwater runoff absorption as outlined in Chapter 52 of this code, then the shrubs and trees within the buffer shall be water tolerant.

(5) *Coordination with utility easements.* In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of division (C) above maybe altered to be only ten 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.

(6) *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.

(Ord. 2023-07, passed 10-9-2023)

§ 153.064 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.

(A) 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 ten 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.

(B) (1) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip ten feet wide shall be established and continuously maintained between the growing strip and parking area(s).

(2) Street trees shall be planted within the landscaped planting strip in accordance with §153.066 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;

(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.

(3) 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.

(C) (1) (a) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three parking spaces, with some appropriate clustering of trees permitted, and six-foot by 18-foot projecting landscaped islands generally between ten and 12 parking spaces.

(b) Whenever possible, interior parking spaces should have a continuous planter strip six feet wide between rows of parking.

(2) 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.

(D) 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.

(E) 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.

(F) 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.

(Ord. 2023-07, passed 10-9-2023)

§ 153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES.

(A) 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.

(B) 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.

(C) Screen types include:

(1) A continuous hedge of evergreen shrubs planted in a five-foot strip spaced a maximum of 36 inches apart; and

(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-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50% of the fence or wall.

(Ord. 2023-07, passed 10-9-2023)

§ 153.066 STREET TREES.

(A) (1) Street trees are required for all developments meeting the applicability requirements of §153.061(A). 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.

(2) 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.

(3) This does not imply that trees must be spaced exactly 30 or 40 feet apart.

(4) 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.

(B) Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in §153.064(A) and also according to regulations from the State Department of Transportation.

(Ord. 2023-07, passed 10-9-2023)

§ 153.067 CERTIFICATION OF COMPLETION.

(A) 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% of the cost of installing the required landscaping to guarantee the completion of the required planting.

(B) Upon approval of the financial surety, the certificate of completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

(Ord. 2023-07, passed 10-9-2023)

§ 153.068 MAINTENANCE.

(A) 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 § 153.999 if not replaced within 30 days of notification.

(B) 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.

(Ord. 2023-07, passed 10-9-2023)

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

(A) 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 or trees 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.

(B) Electric vehicle (EV) charging stations are hereby included as a utility structure for the purposes of this chapter. The town recommends that EV charging stations be installed inside a garage and out of the public view. However, when this is not possible, the following requirements shall apply.

(1) The EV charging station shall not be located within a front, side, or rear yard setback.

(2) (a) The EV charging station shall be screened from the public road and adjacent properties per requirements in division (A) above. The only exception to this requirement is that screening is not required in a location inhibiting the ability to charge the vehicle per the manufacturer's recommendation.

(b) A site plan shall be provided to the town prior to installation indicating the location, species, and planting timeline for screening. This site plan shall also include applicable setback lines for the appropriate zoning district and the distance of the proposed EV charging station to each property line.

(3) Upon approval from the town regarding the placement of the EV charging station, the property owner must obtain building inspections approval from Buncombe County for installation. The applicant shall provide all appropriate

documentation submitted to Buncombe County, and subsequent approvals, to the town once permitted.

(Ord. 2023-07, passed 10-9-2023)

§ 153.070 PLANT SPECIFICATIONS.

(A) *Recommended plant species.* Plants may be chosen from the recommended plant list (RPL) available from the town. 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.

(B) *Minimum plant size requirements.*

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

(2) Small-maturing deciduous tree. Smaller than 35 feet at maturity. The tree shall be at least one and one-half inch caliper and eight to ten feet high at time of planting;

(3) Evergreen tree. Minimum height of eight feet at time of planting; and

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

(C) *Plant standards.*

(1) All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1.

(2) Plants shall be healthy, well-branched, and free of disease and insect infestation.

(Ord. 2023-07, passed 10-9-2023)

ADMINISTRATION, ENFORCEMENT, AND APPEALS

§ 153.085 GENERAL PROCESS; DUTIES OF THE ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, PLANNING COMMISSION, BOARD OF COMMISSIONERS, AND COURTS ON MATTERS OF ADMINISTRATION.

(A) All questions arising in connection with this chapter shall be presented first to the Zoning Administrator, who shall be responsible for the day-to-day administration of this chapter. The Board of Adjustment shall have the authority to rule on matters of interpretation of this chapter, consider appeals from decisions of the Zoning Administrator, issue special 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 Town Board of Commissioners in connection with this chapter 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 chapter.

(B) The duties of the Board of Commissioners in connection with this chapter shall be the duty of considering and passing upon the initial ordinance and any proposed amendments or repeal of this chapter 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 by G.S. § 160A-361.

(C) Any board, including the Board of Commissioners, Board of Adjustment, Planning Commission, and Design Review 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.

(D) Pursuant to G.S. § 160D-309, all members appointed to the Board of Commissioners, Board of Adjustment, Planning Commission, and Design Review Board shall, before entering their duties, qualify by taking an oath of office.

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

§ 153.086 ZONING ADMINISTRATOR.

(A) The town shall appoint a Zoning Administrator. It shall be the duty of the duly appointed Zoning Administrator, or their designee, to administer and enforce the provisions of this chapter.

(B) 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 special use permits shall first be presented to the Zoning Administrator who in turn shall refer the applications to the Board of Adjustment.

(C) (1) If the Zoning Administrator finds that any of the provisions of this chapter are being violated, the person responsible for such violation shall be notified in writing for such violation, indicating the nature of the violation and ordering the action necessary to correct it.

(2) The Zoning Administrator 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 chapter 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.

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

§ 153.087 CERTIFICATE OF ZONING COMPLIANCE REQUIRED.

(A) (1) 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.

(2) No certification of zoning compliance shall be issued except in conformity with the provisions of this chapter.

(B) Upon approval of a special use permit or variance by the Board of Adjustment, the Zoning Administrator shall issue a certificate of zoning compliance.

(1) *Applications for zoning compliance certificate.*

(a) All applications for zoning compliance certificates shall be accompanied by plans 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 § 153.069 and such other information as may be necessary to provide for the enforcement of the provisions of this chapter, 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.

(b) Refer to § 153.130 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 chapter.

(2) *Zoning compliance certificate fee.*

(a) All applications for a certificate of zoning compliance shall be accompanied with an application fee based upon construction cost.

(b) Additional fees for special use, variance, or other land development applications may be authorized by the Board of Commissioners annually within the Fee Schedule of the town.

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

§ 153.088 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.

(A) If connection is to be made to the town water or sewer systems, the applicant shall obtain approval for a tap from the town.

(B) If individual septic tanks and/or wells are to be used, the applicant shall obtain preliminary approvals from the County Health Department.

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

§ 153.089 BUILDING PERMIT REQUIRED.

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

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

§ 153.090 CERTIFICATE OF OCCUPANCY REQUIRED.

(A) A certificate of occupancy issued by the Zoning Administrator is required prior to:

(1) Occupancy or use of a building hereafter erected, altered, or moved; and

(2) Change of use of any building or land.

(B) (1) (a) In conjunction with the final building inspection, the Zoning Administrator shall certify that all requirements of this chapter have been met.

(b) The applicant shall call for such certification coincident with the final building inspection or within ten days following completion.

(c) 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 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 chapter.

(2) (a) A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this chapter.

(b) 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.

(c) 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.

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

§ 153.091 CONSTRUCTION OF PROGRESS.

If no substantial construction progress has been made within six months of the date of the issuance of the building permit, the town shall contact the County Building Inspections and inquire as to whether the building permit is still valid. If the building permit is no longer valid, then the certificate of zoning compliance issued by the town will be considered expired.

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

§ 153.092 CONSTRUCTION COMPLETION.

(A) 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 60 days of issuance of the building permit.

(B) The construction or remodeling shall be substantially complete within two years of the date of issuance of the building permit for the construction.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021) Penalty, see § 153.999

§ 153.093 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 chapter, 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.

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

§ 153.094 NOTICE OF VIOLATIONS AND INSPECTIONS.

(A) When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this chapter or other local development regulation or any state law delegated to the local government for enforcement purposes in lieu of the state or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. § 160D-1123 or G.S. § 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to G.S. § 160D-405.

(B) Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable state and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(Ord. passed 6-8-2021)

§ 153.095 APPEAL FROM THE ZONING ADMINISTRATOR.

(A) All questions arising in connection with this chapter 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.

(B) 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 § 153.111.

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

§ 153.096 REVOCATION OF DEVELOPMENT APPROVAL.

In addition to initiation of enforcement actions under G.S. § 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any state law delegated to the local government for enforcement purposes in lieu of the state; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable state or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. § 160D-405. If an appeal is filed regarding a development regulation adopted by a local government pursuant to this chapter, the provisions of G.S. § 160D-405(e) regarding stays apply.

(Ord. passed 6-8-2021)

BOARD OF ADJUSTMENT

§ 153.105 ESTABLISHMENT OF BOARD OF ADJUSTMENT.

(A) A Board of Adjustment is hereby established. The Board shall consist of five members appointed by the 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 chapter shall serve the balance of the term to which the members were appointed.

(B) Upon completion of these terms of office, additional appointments shall be made on a staggered- term basis with one member appointed for a term of one year; two members appointed for a term of two years and two members appointed for a term of three years. All additional appointments to the Board shall be for three-year terms.

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

§ 153.106 SELECTION OF ALTERNATE MEMBERS.

The Board of Commissioners shall also appoint one 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-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 § 153.107.

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

§ 153.107 RULES OF CONDUCT FOR MEMBERS.

(A) Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below.

(B) 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.

(C) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested.

(D) No Board member shall vote on any specific matter unless he or she shall have attended a majority of the hearings on that matter.

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

§ 153.108 GENERAL PROCEEDINGS OF THE BOARD OF ADJUSTMENT.

The Board shall annually elect a Chairperson and a Vice-Chairperson from among its members. The Chairperson 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 Chairperson, or in his or her absence the Vice-Chairperson, may administer oaths and request the attendance of witnesses in accordance with G.S. § 160D-406. 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.

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

§ 153.109 MEETINGS.

(A) *Board meetings.* Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine. All Board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meeting Law.

(B) *Quorum*. A quorum shall consist of three 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 special use permit when there are less than four members present.

(C) *Voting*. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 153.107. The required vote to decide appeals and applications shall be as provided in §153.111(D), 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.

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

§ 153.110 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

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

(A) *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 chapter;

(B) *Administrative review*.

(1) The Board of Adjustment shall hear and decide requests for special use permits, variances, and appeal of decisions of the Town Manager. The term **DECISION** includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for special uses and variances. The Board of Adjustment may hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development in the town.

(2) Notice of hearings conducted pursuant to this division (B) shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listings to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular Board meeting without further advertisement.

(3) The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. The Board of Adjustment must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. The Board may allow parties without standing to present competent, material, and substantial evidence that is not repetitive. If an objection arises at the hearing as to the inclusion or exclusion of administrative materials, the Board Chair must rule on this objection at the hearing. An appeal of this ruling may be considered by the full Board pursuant to G.S. § 160D-406(d). Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Town Manager. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant or property owner as may be applicable, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Town Manager shall certify that proper notice has been made.

(4) Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari (G.S. § 160D-406(k)). A petition for review shall be filed with the Clerk of Superior Court within the period specified by G.S. § 160D-1405(d).

(5) Members of the Board of Adjustment exercising quasi-judicial functions shall not have a fixed opinion on a matter prior to hearing; shall not have undisclosed ex-parte communication with an applicant, a close familial, business, or other associational relationship with an applicant or a financial interest in the outcome. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(6) The Chair of the Board of Adjustment or any member acting as Chair and the Town Manager are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class I misdemeanor.

(7) The Chair of the Board of Adjustment or anyone acting as Chair, may subpoena witnesses and compel the production of evidence. Any person with standing under G.S. § 160D-406(g) may make a written request to the Chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair or person acting as the Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person subpoenaed fails to obey the subpoena, the Board of Adjustment or the party that requested the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed.

(C) *Special uses.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. A site plan has been submitted as required in §153.008; and

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

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

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

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

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

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

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

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

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

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

Editor's note:

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

§ 153.111 APPEALS AND APPLICATIONS.

(A) *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 special use permits shall first be presented to the Zoning Administrator, who in turn shall refer the application to the Board of Adjustment. Applications for variances and special use permits must be made by a person with a property interest in the property or a contract to purchase the property.

(B) *Appeals.*

(1) The Board of Adjustment shall hear and decide appeals from decisions of the Town Manager.

(2) The following apply to all appeals heard by the Board of Adjustment:

(a) Any person who has standing under G.S. § 160D-406(d) or the town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Manager. The notice of appeal shall state the grounds for the appeal.

(b) The Town Manager shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owners. The written notice shall be delivered by personal delivery, first-class mail, or other electronic forms. If provided via electronic form, the file must be protected from further editing.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from the receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "zoning decision" or "subdivision decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided, the sign remains on the property for at least ten days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The Town Manager shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from are taken. The Town Manager shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) 1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Town Manager certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

2. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Town Manager a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed.

3. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(g) Subject to the provisions of division (B)(2)(f) above, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

(h) 1. During the conduct of a hearing, any party may appear in person or by agent or by attorney at the hearing.

2. The order of business for the hearing shall be as follows:

a. The Chair, or such person as he or she shall direct, shall give a preliminary statement of the case;

b. The applicant shall present the argument in support of the appeal or application;

c. Persons opposed to granting the appeal or the application shall present their argument against the application;

d. Both sides will be permitted to present rebuttals to opposing testimony; and

e. The Chair or such person as he or she shall direct shall summarize the evidence which has been presented, giving the parties the opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to only 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. The Town Manager, or other town official who filed the notice of violation, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Town Manager.

(i) When hearing an appeal pursuant to G.S. § 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. § 160A-393(k).

(j) The parties to an appeal that has been made under this division (B) may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(C) *Hearings.*

(1) *Time.* After receipt of notice of an appeal or an application, the Board Chairperson shall schedule a time for a hearing which shall be within 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) *Notice.* In any application for projects involving planned unit developments, the Board shall give notice of the hearing in a newspaper having general circulation in the county five 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 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) *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.

(D) *Decisions.*

(1) *Time.* A decision by the Board shall be made within 30 days from the time of hearing.

(2) *Form.*

(a) 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. In addition, 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 Chairperson upon approval of the minutes by the Board.

(b) 1. 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.

2. 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.

3. Where a special 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 special use have been met.

(3) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board in granting a variance or a special use permit shall expire if a building permit for such use is not obtained by the applicant within six 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 special 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.

(6) Variance and special use approvals run with the land.

(7) Revocations of previously approved variance and special use approvals must follow the same process as used for the approval.

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

Editor's note:

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

§ 153.112 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment may be taken to the courts pursuant to G.S. § 160D-406(k).

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

DESIGN REVIEW BOARD

§ 153.125 PURPOSE AND INTENT.

(A) 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.

(B) 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 the town. 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.

(C) The purpose of this subchapter 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.

(D) 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 subchapter to unduly restrict design freedom when reviewing and approving project architecture in relationship to the proposed land use, site characteristics, and interior building layout.

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

§ 153.126 COMPOSITION OF DESIGN REVIEW BOARD AND MEETING PROCEDURE.

(A) The Town Board of Commissioners hereby establishes a Design Review Board.

(B) 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.

(C) 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 not all terms expire simultaneously. Vacancies shall be filled for the unexpired term only.

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

(E) The Board of Commissioners shall also appoint one 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.

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

§ 153.127 DEVELOPMENT SUBJECT TO DESIGN REVIEW.

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

- (A) All new commercial buildings and new accessory and/or appurtenant buildings;
- (B) All exterior expansions, additions, alterations, and modifications of existing commercial buildings and their accessory and/or appurtenant buildings;
- (C) All new single- and multi-family dwellings and new accessory and/or appurtenant buildings;
- (D) All exterior additions, alterations, and modifications to existing single- or multi-family dwellings and accessory and/or appurtenant buildings;
- (E) All new accessory and appurtenant buildings on the premises of existing dwellings;
- (F) Driveway redesign or realignment for new and existing residential and commercial buildings; and
- (G) Any mechanical equipment when it is installed as part of a new commercial building.

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

§ 153.128 APPLICATION REQUIRED TO BE FILED.

(A) 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.

(B) Applications shall be submitted at least two weeks prior to the meeting in order to give the Board members adequate time for study.

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

§ 153.129 DUTIES AND POWERS OF THE DESIGN REVIEW BOARD.

(A) 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 §§ 153.044 through 153.047.

(B) (1) The Design Review Board has the authority to review plans and recommend redesign of a building or driveway.

(2) 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.

(C) Review shall take into account compliance with other town ordinances that effect design, such as this chapter and §§ 93.30 through 93.40.

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

§ 153.130 SUBMITTAL REQUIREMENTS.

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

- (1) Site plan;
- (2) Floor plans; and
- (3) Exterior elevations, including type and color of all exterior building materials, awnings, exterior lighting, and fencing.

(B) In addition to division (A) 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; and
- (7) Other information as required.

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

DEVELOPMENT AGREEMENTS

§ 153.145 DEVELOPMENT AGREEMENTS.

Pursuant to G.S. Chapter 160D, Art. 12, the Town of Biltmore Forest may enter into a development agreement with developers, subject to the procedures outlined below.

(A) Before entering into a development agreement, a local government shall conduct a legislative hearing on the proposed agreement. The notice provisions of G.S. § 160D-602 applicable to zoning map amendments shall be followed for this hearing. The notice for the hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 25, 51(a), (b), (d).)

(B) *Content and modification.* A development agreement shall, at a minimum, include all of the following:

- (1) A description of the property subject to the agreement and the names of its legal and equitable property owners.
- (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
- (3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
- (4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
- (5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
- (6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
- (7) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(C) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period. If required by ordinance or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date does not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. § 160D-1008 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.

(D) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.

(E) The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this chapter. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.

(F) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be determined by ordinance adopted pursuant to G.S. § 160D-1003 or as provided for in the development agreement.

(G) Any performance guarantees under the development agreement shall comply with G.S. § 160D-804.1. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 26, 51(a), (b), (d).)

(Ord. passed 6-8-2021)

§ 153.146 VESTING.

- (A) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws

applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

(B) Except for grounds specified in G.S. § 160D-108(c) or G.S. § 160D-108.1(f), a local government may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.

(C) In the event state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement.

(D) This section does not abrogate any vested rights otherwise preserved by law. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 27, 51(a), (b), (d).)

(Ord. passed 6-8-2021)

§ 153.147 BREACH AND CURE.

(A) Procedures established pursuant to G.S. § 160D-1003 may include a provision requiring periodic review by the Zoning Administrator or other appropriate officer of the local government, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.

(B) If the local government finds and determines that the developer has committed a material breach of the agreement, the local government shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.

(C) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement, provided the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. § 160D-405.

(D) An ordinance adopted pursuant to G.S. § 160D-1003 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this subchapter shall be construed to abrogate or impair the power of the local government to enforce applicable law.

(E) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

(Ord. passed 6-8-2021)

§ 153.148 AMENDMENTS.

Subject to the provisions of G.S. § 160D-1006(e), a development agreement may be amended or terminated by mutual consent of the parties. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

(Ord. passed 6-8-2021)

§ 153.149 CHANGE OF JURISDICTION.

(A) Except as otherwise provided by this subchapter, any development agreement entered into by a local government before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.

(B) A local government assuming jurisdiction may modify or suspend the provisions of the development agreement if the local government determines that the failure of the local government to do so would place the residents of the territory subject to the development agreement or the residents of the local government, or both, in a condition dangerous to their health or safety, or both. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

(Ord. passed 6-8-2021)

§ 153.150 RECORDATION.

The developer shall record the agreement with the Register of Deeds in the county where the property is located within 14 days after the local government and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(Ord. passed 6-8-2021)

§ 153.999 PENALTY.

(A) Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) 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-year time period shall subject the property owner to a fine of \$250 per day.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021; Ord. 2022-04, passed 10-11-2022)

§ 92.01 ABATEMENT OF NUISANCES.

(A) (1) Whenever a nuisance shall exist on any premises in the town, the Chief of Police or the County Health Officer shall give notice to the owner or occupant of the premises of the existence of the nuisance and shall direct that the nuisance be abated.

(2) It shall be unlawful for any person receiving a notice to abate a nuisance, given pursuant to this section, to fail to start abatement of the nuisance within 24 hours after such notice.

(B) In the event the owner or occupant of the premises shall fail to abate a nuisance on his or her premises after having been given notice pursuant to division (A) above, the town may abate the nuisance and the costs of abatement shall be certified to the tax collector and collected as taxes.

(2013 Code, § 10-1) Penalty, see § 10.99

Statutory reference:

Abatement of public health nuisances, see G.S. § 160A-193

§ 92.04 CLEANLINESS OF PREMISES.

(A) Owners or occupants of premises shall be required to keep such premises free from noxious weeds, trash or any other form of refuse which may be dangerous or detrimental to the public health or which may be unsightly.

(B) Proper maintenance requires that grass and weeds are to be cut neatly as reasonably required.

(C) Areas, such as decks, porches, yards and play areas, and the like, that are in view of neighboring property or in view from the streets, shall be maintained and arranged in an orderly open, uncluttered manner, utilizing furniture and appointments appropriate to the area.

(D) Failure to comply with this provision shall constitute a misdemeanor and shall also be subject to abatement as a nuisance as provided in § 92.01.

(2013 Code, § 10-4) Penalty, see § 10.99

§ 130.02 SOUNDS IMPACTING RESIDENTIAL LIFE.

(A) (1) As a means of controlling and reducing noise levels in the town, all construction activities and property maintenance, including delivery of worker's material, machinery, or equipment to or from a work site, must be conducted from 7:30 a.m. until 6:00 p.m., on Monday thru Saturday.

(2) Such activities are prohibited on Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. These restrictions apply on all properties within the town, except for clubs.

(B) Should conditions on any property within the town occur that have the potential of injury or damage to persons or property during prohibited hours, persons in charge or involved in such matters shall contact the town's police officer in charge, present the problem, and seek permission to take appropriate action.

(C) Any sound from radio, music, or other noises are not permitted to the extent that they disrupt the quiet enjoyment of property.

(2013 Code, § 12-2) (Ord. passed 11-12-2006) Penalty, see § 130.99