

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest
Planning Commission

To be held Tuesday, May 23, 2023 at 5:30 p.m.

- A. Roll Call
 - B. Approval of Minutes – April 25, 2023 Meeting
 - C. Consideration of Landscaping, Buffering, and Tree Protection Ordinance Changes
Chapters 153.034; 153.050-059; 153.060-070.
 - D. Adjourn
-

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

Meeting ID: 830 1514 8121
Passcode: 226922

Planning Commission Meeting Minutes

April 25, 2023

5:30pm

Roll call was taken by Chairman Paul Zimmerman. Those in attendance are Chairman Paul Zimmerman, Mr. Michael Flynn, Mr. Tony Saponaro, Ms. Diane Fourton, Mr. Jonathan Kanipe, Town Manager, Town Attorney, Mr. Billy Clarke, and Director of Public Works, Harry Buckner were present.

Chairman Zimmerman started the meeting at 5:30pm.

Mr. Michael Flynn made a motion to approve the February 21, 2023 minutes, Mr. Tony Saponaro seconded the motion with a revision to add the minimum requirements for landscape screening. The motion was unanimously approved.

Chairman Zimmerman discussed the Consideration of Recommendation to the Board of Commissioner regarding Chapter 153.043-Maximum Roof Coverage. Mr. Zimmerman began review of whether a particular lot fell between the original guidelines (roughly a quarter of an acre apart) or whether they should be able to follow the roof coverage of the higher/lower one, and often a variance of the total number was approved. Mr. Clarke clarified the legislature took away the ability to regulate the minimum square footage.

Mr. Zimmerman suggested starting the chart at a half-acre which would remain at 2,552 square feet and leave the chart "as is" going up to 5.5 acres with additional decimal point in lot size and roof coverage should have square foot designation on the chart. Mr. Zimmerman made a motion to submit the Maximum Roof Coverage-Chapter 153.043 for the Board of Commissioners to consider. Ms. Diane Fourton seconded the motion. The motion was unanimously approved.

The next matter discussed was Chapter 153.048-Impervious Surface Coverage to the Board of Commissioners. This included beginning at half an acre and adding 0 on lot size and square footage percentage and add with rounding language. Mr. Michael Flynn made a motion. Mr. Tony Saponaro seconded the motion and was unanimously approved for the Board of Commissioners to review.

The next matter was Consideration of Recommendation to the Board of Commissioners regarding Chapter 153.071 regarding recreational and commercial vehicle storage. Mr. Michael Flynn made a motion, Mr. Tony Saponaro seconded the motion and was unanimously approved for the Board of Commissioners to review.

The Tree Protection Ordinance and Landscape Plan Ordinance was discussed. Mr. Tony Saponaro said they are making a great deal of progress with this, but there is a bit more work to be done. Mr. Saponaro said the majority of requests that come in are from existing lots from existing homes. The revisions on this updated Ordinance include new definitions that more accurately reflect the Town's existing tree review process and include new categories for removal. There are also separate definitions for residential and non-residential uses. This will include new charts that differentiate replacement amounts within these categories. Also included in the Ordinance are charts that differentiate replacement categories between areas inside and outside of the setbacks.

The Ordinance also includes a "Recommended Planting List" which will be updated bi-annually to reflect best practices. Regarding the new construction landscaping requirements, the final landscaping plan would include specific numbers, species, and locations of those removed and required replanting. The final landscape plan would be part of the zoning approval. There was no additional discussion.

Chairman Zimmerman adjourned the meeting at 6:13 pm.

The next meeting is scheduled for Tuesday, May 23 at 5:30pm.

Ms. Laura Jacobs, Town Clerk
Town Clerk

Mr. Paul Zimmerman,
Chair



PLANNING COMMISSION MEETING STAFF MEMORANDUM

MAY 23, 2023

AGENDA ITEM C CONSIDERATION OF AMENDMENTS TO LANDSCAPING, BUFFERING, AND TREE PROTECTION ORDINANCES

CHAPTERS 153.034; 154.050-059; 153.060-070

Background

Last month, staff presented initial revisions to the Tree Protection Ordinance and received consensus from the Commission to move forward with considering new construction activities for all uses within the Town's existing buffer, screening, and landscape chapter (153.060). Planning Commission member Tony Saponaro and I have finalized new charts for replacement and staff has prepared new language around several sections of the ordinance.

Changes to Existing Ordinances

Due to the volume of changes, as well as incorporating these changes into an existing landscaping and sedimentation control section of the Zoning Ordinance, a chart was created showing significant changes within each portion of the ordinance. The biggest difference from last month was re-writing of the existing landscape and sedimentation control section of the Zoning Ordinance. The purpose behind this is to create requirements for landscape plan submittals to the Town (through our existing zoning application process) and to clearly direct people to the appropriate tree protection ordinance sections in the Zoning Ordinance.

Attachments

1. Summary table showing changes to ordinances
2. Chapter 153.034 – Landscaping and Sedimentation Control Changes
3. Chapter 153.050-059 – New Tree Protection Ordinance language
4. Flow Chart showing process for deciding which regulatory body reviews and considers tree removal requests and how those trigger requirements are met
5. Chapter 153.060-070 – Existing Buffering, Screening, and Landscape Ordinance with revisions to include all new construction activities, including residential, based on certain thresholds.

<u>Ordinance Section</u>	<u>Existing Ordinance Title</u>	<u>New Ordinance Title</u>	<u>Draft Change Highlights</u>
153.034	Land Disturbance and Sedimentation Control	Landscaping and Grading Plans, Land Disturbance, and Sedimentation Control	1) Amended Section A to specifically state when landscaping and grading plans are required, increase trigger requirements by requiring L&G plans for any residential construction (new home or addition) that exceeds 500 square feet of roof coverage. Reference made to requirements for non-residential activities requiring plan review and approval per section 153.060. Also specifies that landscaping and grading plans are satisfied when they meet standards set forth in Town's zoning application process (i.e. staff level checklist for requirements) 2) Added Section B to stipulate that all activities must meet tree protection and preservation requirements as set forth in subsequent sections of Zoning Ordinance 3) Moved "pre-construction conference" requirements from tree protection ordinance to this section - seems more appropriate as this type of conference would be required for grading and all other associated activities. 4) Completed "old" section D as this is no longer required with inclusion of the above plan requirements.
153.050-058	Tree Protection Ordinance	Currently housed within Town Code, Chapter 93	All changes shown on attached draft; specific changes from prior drafts include Tables 2 & 3 which are tree replacement requirements for residential and non-residential tree replacement requirements, respectively. This section is being anecdotally referred to as "tree maintenance" as this ordinance is geared toward properties where owners wish to remove unprotected trees or 1-2 protected trees.
153.060-069	Buffers, Screening, and Landscape	Buffers, Screening, and Landscaping Requirements	1) Added language in "purpose and intent" referencing the need to reforest when construction activities take place, particularly on undeveloped lots 2) Require full compliance with new tree replacement standards for any new residential developments that exceed 500 square feet of roof coverage. 3) Maintained existing ordinance language for commercial buildings that required new non-residential construction and anything exceeding 50% of existing tax value to be in full compliance 4) Added tree replacement requirements for new construction and additions as novted above 5) Amended planting list to reflect tree sizes on charts

DRAFT AMENDMENT TO EXISTING LAND DISTURBANCE
AND SEDIMENTATION CONTROL

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

(A) ~~Land disturbance becoming landscaping~~ 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 ~~shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval.~~ Prior to commencing such activity in a public service district, any land-disturbing activity, such as grading projects or removal of natural vegetation other than routine maintenance, shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.
- (2) Any residential construction activity that results in an addition of greater than five-hundred (500) square feet of roof coverage.
- (3) Any non-residential construction activity as defined in § 153.061 of the Town of Biltmore Forest Zoning Ordinance.

(B) All landscape and grading plans shall show compliance with the Town's Tree Protection and Preservation regulations as found in §153.050-153.059 and §153.061(C) for existing residential and non-residential tree maintenance and new construction activities, respectively.

(C) Maintain as natural open space areas. The intent of this requirement is to ensure that these areas are to be maintained as natural open space areas, and that any disturbance such as the building of roads, public utilities, and other such activities be designed and constructed so as to maintain the natural scenic character of these districts. A landscape plan shall be submitted and approved by the Board of Adjustment prior to any land-disturbing activity.

(D) 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 responsible representative of the Town and the applicant to review procedures for protection and management of all 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 (7) 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) The Town shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter.
- e) 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.

(E) 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.

~~(D) Landscaping plans. A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall detail all plantings or reforestation to take place as part of the land-disturbing activity.~~

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

[Chapter 153.050 Tree Preservation](#)

~~CHAPTER 93: TOWN BEAUTIFICATION~~

~~Section~~

~~General Provisions~~

- ~~—93.01— Protection of parkways~~
- ~~—93.02— Policy regarding signs~~
- ~~—93.03— Signs and posters generally~~
- ~~—93.04— Definitions~~
- ~~—93.05— Signs and posters; requirements~~

~~Parks and Recreation~~

- ~~—93.15— Destruction, injury to park property~~
- ~~—93.16— Riding motorized vehicles in park areas~~

Tree Protection

- ~~—153.93.0530~~ Purpose
- ~~—93.34~~[153.051](#) ~~Identification~~[Definitions](#)
- ~~—93.32~~[153.052](#) Removal of protected trees
- ~~—93.33~~[153.053](#) Applications for removal of [more than ten \(10\)](#) protected trees ~~in excess of ten~~
- ~~—93.34~~[153.054](#) Removal of unprotected trees
- ~~—93.35— Pre-construction conference and supervision~~
- ~~—93.36~~[153.055](#) Enforcement
- ~~—93.37~~[153.056](#) Drip line protection
- ~~—93.38~~[153.057](#)- Replacement of trees
- ~~—93.39~~[153.058](#) Inspections, [Appeals, Bond, and Penalty](#)
- ~~—93.40— Appeals~~
- ~~—93.41— Bond~~

- ~~—93.99— Penalty~~

GENERAL PROVISIONS

~~§ 93.01 PROTECTION OF PARKWAYS:~~

~~—(A) It shall be unlawful for any person to willfully destroy, injure, mutilate, carry away, break, or in any manner deface any tree, shrub, plant, grass, or other property of any kind within or upon any of the roads, streets, public grounds, or parkways of the town, nor shall any person allow any animal or pet belonging to him or her or in his or her charge to injure any such property.~~

~~—(B) It shall further be unlawful for any person to allow any animal or to drive any vehicle upon any of the grass or grass plots along the roadways and streets.~~

~~(2013 Code, § 15-1) Penalty, see § 93.99~~

~~§ 93.02 POLICY REGARDING SIGNS:~~

~~—This subchapter sets forth the Town of Biltmore Forest policies and regulations regarding the size, type and location of signs. The subchapter is intended to regulate size, type and location of signs, ensure that signs are not located in the public right of way, do not pose a threat to public safety, do not unreasonably interfere with aesthetic quality and are consistent with the nature of a primarily residential community. It is not the intent of this subchapter to regulate the content of signs or to limit the right of free speech.~~

~~(Ord. 2021-02, passed 2-9-2021; Ord. 2022-03, passed 3-8-2022)~~

~~§ 93.03 SIGNS AND POSTERS GENERALLY:~~

~~—Except as set forth herein, no sign of any kind, including posters, advertisements, billboards, announcements and like, shall be erected by any person in any district zoned R-1, R-2, R-3, R-4 or R-5 unless the sign, type, size and intended location comply with this subchapter or unless prior approval of the sign type, size, and intended location are first obtained from the Town Manager or Board of Commissioners. Any sign erected in violation of this subchapter shall be promptly removed.~~

~~(2013 Code, § 15-2) (Ord. 2021-02, passed 2-9-2021; Ord. 2022-03, passed 3-8-2022)~~

~~§ 93.04 DEFINITIONS:~~

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

~~—CONSTRUCTION SIGNS. Signs identifying a company or individual constructing or renovating a house or building on property in the town.~~

~~—IDEOLOGICAL SIGNS. Signs advocating support for a particular system of ideas and ideals which may form the basis of an economic or political theory and policy.~~

~~—INVISIBLE FENCING SIGNS. Signs advertising the location of underground (invisible) fencing on a property or the location of installed underground utilities.~~

~~—NO TRESPASSING SIGNS. Signs providing notice, in a manner reasonably likely to come to the attention of intruders, not to enter the property on which the sign(s) are located.~~

~~—ON-PREMISES COMMERCIAL SIGNS. Signs located on or attached to buildings in the zoning districts in the town where commercial businesses are allowed.~~

~~—POLITICAL SIGNS. Signs advocating support for a particular candidate for political office or political party.~~

~~—REAL ESTATE SIGNS. Signs advertising the sale or lease of residential or commercial real property.~~

~~—SECURITY COMPANY SIGNS. Signs indicating that a security system has been installed on a property.~~

~~(Ord. 2021-02, passed 2-9-2021; Ord. 2022-03, passed 3-8-2022)~~

~~§ 93.05 SIGNS AND POSTERS; REQUIREMENTS.~~

~~—(A) Real estate signs. No person, either as owner or real estate agent, shall post any sign except as follows:~~

~~—(1) One sign per lot, not to exceed six square feet in size, not to contain any electrical component and not to be lighted in any way;~~

~~—(2) If the sign is posted by a real estate agency, the wording shall be limited appropriately to indicate that the property is for sale or rent, the name and telephone number of the agency, the listing firm website, and the multiple listing service number, texting code, or individual website assigned to the home for sale;~~

~~—(3) If the sign is posted by an owner, the wording shall be limited to appropriately indicate that the property is for sale or rent, the name of seller, if so desired, a telephone number, and individual website assigned to the home for sale;~~

~~—(4) Wording shall be the same on both sides of the sign if both sides are exposed to the roadway;~~

~~—(5) The sign shall be set back at least 20 feet from the nearest edge of the pavement of the public road on which the house fronts or faces and in no event shall the sign be located within any public road right-of-way;~~

~~—(6) No portion of the sign shall extend more than four feet above the ground;~~

~~—(7) The sign shall be removed no later than three days after the closing of the sale of the property;~~

~~—(8) If a sign is for commercial use in the R-4 or R-5 Residential Zoning District and does not comply with the limitations herein, application must be made to the Board of Commissioners for approval; and~~

~~—(9) The owner of a residential lot and the real estate agent placing a real estate sign on the residential lot shall each be responsible for any violation of this section.~~

~~—(B) Construction signs. Signs advertising the name of an individual or company constructing or renovating a house or other building on a property are allowed as follows:~~

~~—(1) On any residential lot on which construction or renovation has begun, neither the general contractor nor the owner of the residential lot shall post or permit to be posted more than one sign in addition to any sign required by law to be posted (e.g. building permits and the like);~~

~~—(2) The general contractor may place one sign on the residential lot on which construction or renovation has begun, which sign shall not exceed six square feet in size and shall be limited in wording to the street number or address of the property and the name, address, and telephone number of the general contractor. The general contractor's sign shall also be subject to divisions (A)(1), (A)(4), (A)(5), and (A)(6) above. The general contractor's sign shall be removed from the property not later than three days from the completion of construction by the general contractor or occupancy by the owner of the property being constructed, whichever comes first; and~~

~~—(3) The sign shall be set back at least 20 feet from the nearest edge of pavement of the public road on which the house fronts or faces. The sign shall not be posted in the public right-of-way.~~

~~—(4) The owner of the residential lot and the general contractor shall be responsible for any violation of this section.~~

~~—(C) No trespassing signs. No trespassing signs are allowed on private property provided the signs are erected as follows:~~

~~—(1) The sign(s) shall be posted in a manner reasonably likely to come to the attention of intruders and include notice not to enter the premises, with verbiage limited to the following, or some combination thereof:~~

~~—(a) No Trespassing~~

~~—(b) Do Not Enter~~

~~—(c) Private Property~~

~~—(2) The sign(s) shall not exceed two square feet in size, not contain electrical components, and not be lighted in any way, including reflective, luminous, or "glow in the dark" components.~~

~~—(3) The sign(s) must be set back at least ten feet from the nearest edge of the pavement on the public road or street, and in no event shall the sign be located within any public road or right-of-way.~~

~~—(4) If a property has multiple driveways, a sign may be allowed at each driveway entrance.~~

~~—(5) There may be no more than one sign every 50 feet. There may be no more than four signs on a single parcel.~~

~~—(6) Signs may not be placed within a side yard or rear yard setback, according to the setbacks in place for that specific zoning district. The only exception to this provision is found in division (C)(7) below.~~

~~—(7) Properties that abut non-residential property may place no trespassing signs on the property line, but only on the property line where these properties abut non-residential property.~~

~~—(8) No portion of the sign(s) shall extend more than two feet above the ground.~~

~~—(9) Signs may not include neon, "day-glow", or fluorescent colors.~~

~~—(10) The owner of a residential property placing a no trespassing sign on the property shall be responsible for any violation of this section.~~

~~—(D) Political and ideological signs. Political and ideological signs are allowed on private property provided the signs are erected as follows:~~

~~—(1) Each sign shall not exceed four square feet in size and not contain any electrical component or be lighted in any way;~~

~~—(2) The sign shall not be located within the town owned public right-of-way or on town property and must be set back at least 20 feet from the nearest edge of the paved road on which the house fronts or faces and shall not encroach on the public right-of-way;~~

~~—(3) No portion of the sign is to extend more than four feet above the ground;~~

~~—(4) A sign located on private property requires the owner's approval;~~

~~—(5) Up to four political signs may be placed on private property beginning 30 days before the beginning of early voting for a primary or general election. Political signs should be removed within five days after the primary, general or special election; and~~

~~—(6) Political and ideological signs are not allowed on town property.~~

~~—(E) Security company signs. Security company signs are allowed on private property as follows:~~

~~—(1) On any residential or business property with a commercial security system, up to two signs bearing the name of the security company and appropriate contact information, may be posted;~~

~~—(2) The signs shall not exceed one square foot in size, not contain electrical components and not be lighted in any way;~~

~~—(3) The signs shall be set back at least ten feet from the nearest edge of the pavement on the public road or street.~~

~~—(F) Invisible fencing signs. Signs indicating the presence and location of underground fencing are allowed as follows:~~

~~—(1) On any property with an underground "invisible fence," up to two signs noting the presence of the invisible fence and the name of the company providing the fence may be posted on the property;~~

~~—(2) The signs shall not exceed one square foot in size, not contain electrical components and not be lighted in any way;~~

~~—(3) The signs shall be set back at least ten feet from the nearest edge of the pavement on the public road or street.~~

~~—(4) For the purpose of this subchapter, temporary flags indicating the installation of underground (invisible) fencing shall be removed no later than 45 days after installation.~~

~~—(G) Flags for underground utilities. Flags for underground utilities are allowed on a temporary basis to indicate the presence and location of underground utilities.~~

~~—(H) Signs located in the R-4 and R-5 Zoning Districts:~~

~~—(1) On any lot occupied by a business in the R-4 and R-5 Districts, on-premises signs are allowed provided the following definitions and permit requirements are met:~~

~~—(2) For the purpose of this division (H), the following definitions shall apply unless the context clearly indicates or requires a different meaning:~~

~~—ATTACHED SIGN. Any sign attached to, applied on, or supported by the front wall or wall facing street of a building.~~

~~—CLEARANCE. The vertical distance from the established finished grade to the lowest edge of the sign.~~

~~—DEVELOPMENT IDENTIFICATION SIGN. A sign bearing only the name of the multiple tenant development.~~

~~—ERECT. To construct, build, raise, assemble, install, place, replace, locate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.~~

~~—FREESTANDING POLE SIGN. A sign which is permanently affixed to the ground by a pole or other structure and which is not part of the building.~~

~~—GRADE. The lowest point at which a sign is attached to the ground.~~

~~—GROUND SIGN. A freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to the building.~~

~~—HEIGHT. The vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.~~

~~—INTERNALLY ILLUMINATED. Any sign designed to provide artificial light either through exposed lighting on the sign face or through transparent or translucent material, from a light source within the sign.~~

~~—LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use.~~

~~—MULTIPLE TENANT DEVELOPMENT. A development in which there exists a number of individual or separate activities and in which there are appurtenant-shared facilities (such as parking areas).~~

~~—NONCONFORMING SIGN. Any sign which was allowed when erected or displayed but which does not conform with the standards of this subchapter, and any sign which was not allowed but was nonetheless impermissibly created or displayed before the effective date of this subchapter and any amendments thereto.~~

~~— ON-PREMISES SIGN. Any sign used for the purpose of displaying, advertising, identifying, or directing attention to a business, products, operations, or services sold or offered on the lots where the sign is located.~~

~~— SETBACK. The horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is not a curb, the measurement shall be made from the edge of the pavement.~~

~~— SIGN. Any words, lettering, numerals, parts of letters or numerals, figure, phrases, sentences, emblems, devices, designs, trade names, or trademarks by which anything is known, made of any material, except live vegetation, including any surface, fabric, or other material background structure designed to carry such devices, as are used to designate or attract attention.~~

~~— SIGN STRUCTURE. Any structure which supports, has supported or is capable of supporting a sign.~~

~~— SINGLE TENANT. A single business establishment, activity or use.~~

~~— WALL SIGN. Any sign painted or attached flat against and parceled to the exterior wall or surface of a building or other structure and/or which projects from the wall or surface.~~

~~— (3) On-premises single-tenant signs:~~

~~— (a) Allowed within the R-4 and R-5 Zoning District may be either:~~

~~— 1. Freestanding. Pole or ground; or~~

~~— 2. Attached. Wall.~~

~~— (b) Two business identification signs are allowed per lot, only one of which shall be a freestanding or ground sign. For freestanding or attached signs, the total allowable area per face of selected sign(s) shall not exceed 40 square feet per face, with two faces per freestanding or ground sign allowed. In the event the freestanding sign is less than the 40 square feet per face allowed, the size of the attached sign erected may be increased by that difference. Signs may be internally or externally illuminated.~~

~~— (c) Additionally, the following requirements must be met based on the type of sign selected:~~

~~— 1. If freestanding pole or ground, then the sign shall be a maximum of eight feet in height with a minimum setback of ten feet; and~~

~~— 2. If wall, then the maximum projection from a wall shall be six inches.~~

~~— (4) On-premises multiple-tenant development signs:~~

~~— (a) On-premises multiple-tenant development signs allowed within the R-4 and R-5 Zoning District may be either:~~

~~— 1. Freestanding; pole or ground attached; or~~

~~— 2. Wall.~~

~~— (b) For a multiple-tenant development, the development itself is allowed one identification sign. For a freestanding sign, the total allowable area per face of selected sign shall not exceed 60~~

~~square feet with two faces per freestanding or ground sign allowed. If freestanding pole or ground, the sign shall be a maximum of 20 feet in height and minimum setback of 15 feet. Individual tenants within the development shall be allowed one attached wall sign not to exceed ten square feet, and at the due discretion of the Board of Commissioners, not more than two, not to exceed ten square feet. The maximum projection from a wall shall be six inches.~~

~~—(I) The owner of the business establishment erecting a sign shall be responsible for any violation of this subchapter.~~

~~—(J) Any sign removed by the town for violation of division (A) or (B) of this section shall be disposed of by the town within five days from the date the sign is removed from the residential lot unless the residential lot owner, real estate agent or general contractor, as the case may be, claims said sign within the five-day period.~~

~~(2013 Code, § 15-2) (Ord. passed 9-15-1987; Ord. passed 12-8-1990; Ord. passed 9-2002; Ord. 2021-02, passed 2-9-2021; Ord. 2022-03, passed 3-8-2022)~~

~~PARKS AND RECREATION~~

~~§ 93.15 DESTRUCTION, INJURY TO PARK PROPERTY:~~

~~—It shall be unlawful for any person to cut, break, trample, injure, or take any plants, flowers, shrubbery, trees, or vegetation within any municipal park or playground area, or to deface, injure, or remove any benches, seats, playground equipment, or any other appurtenances of such parks or playground areas.~~

~~(2013 Code, § 13-1) Penalty, see § 10.99~~

~~§ 93.16 RIDING MOTORIZED VEHICLES IN PARK AREAS:~~

~~—It shall be unlawful for any person to ride any motorcycle, go cart or other type of motorized vehicle in any park or playground area, except on trails or in areas specifically designated therefor.~~

~~(2013 Code, § 13-2)~~

~~Cross-reference:~~

~~—General provisions of motor vehicles, see §§ 70.01 through 70.04~~

TREE PROTECTION

§ ~~93.30~~[153.050](#) PURPOSE.

(A) In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve ~~the quality and flavor that form so much of~~ 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. Reference is hereby made to § 153.034 of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot.

(B) Preservation and appropriate replacement of trees is the intent of this subchapter. This subchapter shall apply to all properties within the Town of Biltmore Forest except ~~properties owned, leased or controlled by the town~~ as noted in part C below. 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 ~~T~~town. Trees provide buffer and a natural canopy, and are a hallmark of the ~~town~~Town requiring protection. Damage to and removal of trees requires regulation and control.

(C) Exceptions. This subchapter does not apply to properties owned, leased, or controlled by the Town of Biltmore Forest. This subchapter does not apply to properties that have a State of North Carolina approved and active forestry management plan. 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 copy of this plan to the Town of Biltmore Forest each calendar year by January 31.

(2013 Code, § 19-1) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.34~~153.051 ~~IDENTIFICATION~~DEFINITIONS.

~~—(A)—~~**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 may 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/her designee.

PROTECTED TREE. A protected tree is any tree six inches or more in diameter at a height of four and a 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 fifty (50) percent of the total replacement trees must come from the RPL with twenty-five (25) percent of the total replacement trees being those species identified as trees of preference, as defined below. The replanting list is updated every six (6) months and is available for distribution from the Town.

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

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 and includes the following:

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

(B) A trunk DBH of twenty-four (24) inches or more in the case of the following species:

SPECIFIC SPECIES TO BE ADDED HERE PRIOR TO FINAL CONSIDERATION BY PLANNING COMMISSION

UNREGULATED TREE. A tree that is less than six (6) inches in diameter, regardless of height or species, is to be unregulated and not subject to the provisions of this chapter.

UNPROTECTED TREE. A tree that is six inches or more in diameter at a height of four and a 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).

~~For the purpose of this subchapter, a protected tree (“protected tree”) is any tree six inches or more in diameter at a height of four and a half feet from the ground (DBH diameter at breast height), that is in sound, healthy condition. A tree that is dead, produces no foliage during normal growing season, or a tree that is diseased or storm damaged to the extent that it is structurally compromised and, thus, poses a safety hazard, or a tree that, for any other reason, poses a safety hazard, is an “unprotected tree.” This subchapter does not apply to trees that are less than six inches in diameter, regardless of the height of the tree.~~

(2013 Code, § 19-2) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.32~~153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without first filing an application for removal, receiving approval from the ~~Town Manager or Town Arborist~~Ordinance Administrator for the removal, and paying any applicable fee. The ~~Town Manager, in his or her discretion,~~Ordinance Administrator may allow the removal of up to three protected trees on the perimeter of a property or lot within the front, side, or rear yard setbacks, as such setbacks are defined in the ~~town~~Town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the ~~Town Manager, in his or her discretion~~Ordinance Administrator, may allow up to ten (10) protected trees to be removed. Any protected trees removed shall be replaced as outlined in § ~~93.38~~153.058 below.

(B) If the ~~Town Manager~~Ordinance Administrator concludes that the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this subchapter, 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 ~~Town Manager~~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~~Town Manager~~ 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~~Town Manager~~, 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~~Town Manager~~ to the Board of Adjustment within five (5) business days of the ~~Town Manager's~~ decision.

(2013 Code, § 19-3) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.33~~153.053 APPLICATIONS FOR REMOVAL OF ~~PROTECTED TREES IN EXCESS OF TEN~~MORE THAN TEN (10) PROTECTED TREES.

~~(A) An application for a permit to remove more than ten (10) protected trees in twelve (12) successive months on a property must be presented directly to the Board of Adjustment. shall be made to the appropriate regulatory review and approval authority as shown below. A fee of \$50.00 shall accompany the application.~~ A fee for this application, as set forth annually in the adopted Schedule of Fees, shall be paid along with the application.

Table 1 - Residential Tree Replacement Requirements

<u>Protected Trees Requested for Removal</u>	<u>Regulatory Approval Body</u>
<u>1-10 Trees</u>	<u>Ordinance Administrator</u>
<u>11-30 Trees</u>	<u>Board of Adjustment</u>
<u>31+ Trees</u>	<u>Board of Commissioners</u>

~~(B) An application for the removal of 30 or more protected trees on a property must be submitted to the Board of Commissioners for review and approval. A non-refundable fee of \$100.00 plus \$5.00 for each protected tree requested for removal shall accompany the application. Such applications will be considered on case-by-case basis. The cumulative removal of 30 or more protected trees from a single property in one year will result in a formal review and must be approved by the Board of Commissioners. As a part of its review, the Board of Commissioners shall have the authority to require replacement and replanting of trees as the Board determines is necessary, including the specific location of replacement trees. The decision of the Board of Commissioners shall be final.~~

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.34~~153.054 REMOVAL OF UNPROTECTED TREES.

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

(B) The Ordinance Administrator~~Town Manager~~ 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 § ~~93.38~~153.058 below.

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

~~§ 93.35 PRE-CONSTRUCTION CONFERENCE AND SUPERVISION.~~

~~—(A) Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between a responsible representative of the town and the applicant to review procedures for protection and management of all 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 Town Manager that such activity is taking place.~~

~~—(B) The Town Manager shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter.~~

~~—(C) 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.~~

~~(2013 Code, § 19-4) (Ord. passed ---; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)~~

§ ~~93.36~~153.055 ENFORCEMENT.

~~—If a~~Any unauthorized removal, cutting, or damage to protected or unprotected ~~may result in the Ordinance Administrator trees takes place~~placing, ~~the Town Manager may issue~~ a stop-work order on any activity on the property. This order ~~which~~ 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 153.038 below.

(2013 Code, § 19-5) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.37~~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~~ landscape plans, ~~to the extent feasible,~~ shall protect this area around the tree and denote tree save areas on the plan. There shall be no soil disturbance within the drip line of trees on adjacent properties without prior written approval from the Town and adjacent property owner.

(2013 Code, § 19-6) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.38~~153.057 REPLACEMENT OF TREES.

(A) ~~Any protected or unprotected tree removed shall be replaced in that general area of the property within 50 feet of the trunk of the former tree as follows:~~ 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		UN-PROTECTED		PROTECTED		UN-PROTECTED	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	x	x	1	2"	x	x
13"-18"	1	2"	1	2"	1	3"	x	x
19"-36"	1*	3"	1	2"	2	2"	x	x
36"+***	1**	4"	1*	3"	2	3"	1	3"

* must include a minimum of 3 screening/buffering trees
 ** must include a minimum of 5 screening/buffering trees
 *** 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		UN-PROTECTED		PROTECTED		UN-PROTECTED	
	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"+***	2**	4"	1*	3"	1	4"	1	3"

* must include a minimum of 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

*** If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

Minimum size of existing tree	Replacement of protected tree	Replacement of unprotected tree
6-12" DBH	2 trees	1 tree
13-18" DBH	3 trees	1 tree
19-30" DBH	4 trees	2 trees
30" DBH or greater	5 trees	3 trees

—(B) A replacement tree may be planted up to one (1) year prior to the removal of any tree in order to count toward replacement. ~~Any~~ Replacement trees planted after existing tree removal shall be in the ground within six months of removal of the original tree. The ~~Town Manager or Board of Adjustment~~ Ordinance Administrator may, for good cause shown, and in their sole discretion, extend this period for ~~up to~~ 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. ~~Subject to the approval of the Town Manager or the Board of Adjustment, replacement tree(s) may be planted in advance of any tree removal.~~ A minimum of fifty (50) percent of the total replacement trees shall come from the RPL with a minimum of twenty-five (25) percent of total replacement trees coming from the Trees 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 the minimum replacement size for replacement for all deciduous trees is two inches diameter (measured from one foot above ground level). Evergreen trees that are planted as replacement trees shall be a minimum of eight (8) feet in height at the time of planting. for a large-maturing deciduous tree, and one and one-half inch diameter for a small-maturing deciduous tree, or eight feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance in § 153.070.~~

—(E) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the ~~Town Manager~~Ordinance Administrator or by the Board of Adjustment (in the case of an appeal ~~from to the town~~Town) or the ~~Town Manager~~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 amendment is meant solely as a means 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.

(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.

~~—(F) In the event any tree dies or falls due to any condition whatsoever, including acts of God, each such tree shall be replaced as provided in division (A) above. By way of illustration and not limitation, this replacement is required as to each dead or fallen tree caused by one or more of the following conditions: disease, fire, drought, water, ice, sleet, snow, flood, hurricane, tornado, wind, storm of any type, lightning, earthquake or other earth movement. This division (F) shall apply only to properties within the town in excess of five acres.~~

(2013 Code, § 19-7) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ ~~93.39~~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 ~~Town Manager or his or her designee~~Ordinance Administrator six months following any construction ~~and/or replacement trees,~~ to ensure the trees are in a healthy condition. The ~~Town Manager~~Ordinance Administrator ~~can~~may require replacement or replanting of replacement trees if the appropriate replacement trees are not in place during this review:

~~(2013 Code, § 19-8) (Ord. passed ---; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)~~

~~§ 93.40 APPEALS:~~

~~—Any person aggrieved by a decision made under this subchapter by the ~~Town Manager or his or her designee~~ Ordinance Administrator may file, within five (5) 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.~~

~~(2013 Code, § 19-9) (Ord. passed ---; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)~~

~~(B) _____~~

~~§ 93.41 BOND:~~

~~(C) _____ —At the option of the ~~T~~town, a bond or other type of guarantee can be required of the property owner and/ or applicant when ~~initiating new construction~~ submitting a tree removal application, to ensure ~~that all replanting requirements permits and agreements~~ are met, to the satisfaction of the ~~town~~ Town.~~

~~(2013 Code, § 19-11) (Ord. passed ---; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)~~

Any violation of this chapter shall be subject to the penalty provisions found in §153.999 of the Town of Biltmore Forest Zoning Ordinance. § 93.99 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.~~

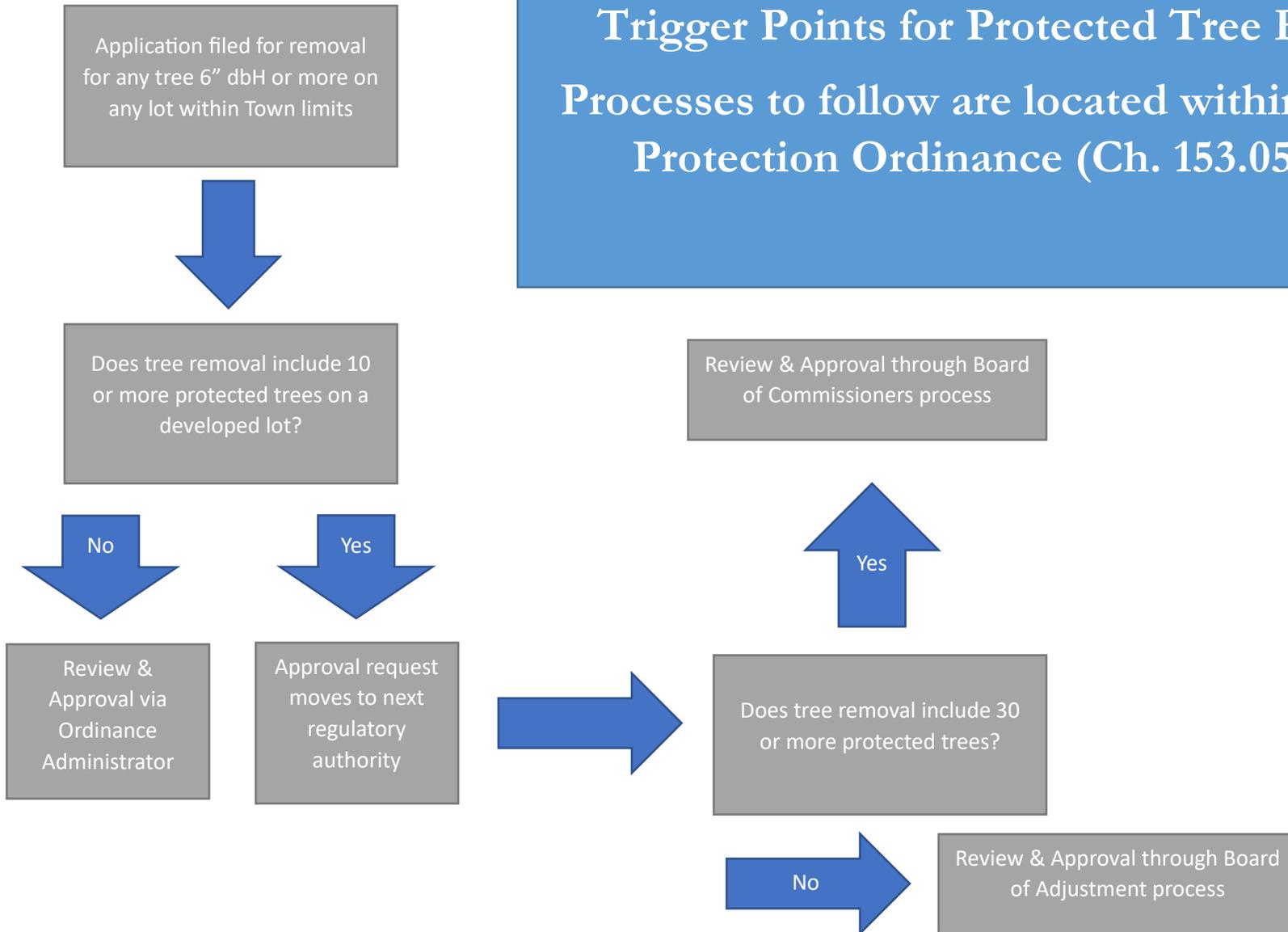
~~—(B) (1) A violation of §§ 93.30 through 93.41 is a Class 3 misdemeanor under North Carolina law. The penalty for violating §§ 93.30 through 93.41 shall be \$250 per day. Each day of continued violation shall be a separate offense. The town shall also have the right to pursue civil remedies for a violation of §§ 93.30 through 93.41 including injunctive relief, and a civil penalty of \$250 for each day's violation of the subchapter pursuant to G.S. 160A-175.~~

~~—(2) Upon determining that a violation of §§ 93.30 through 93.41 has occurred, the Town Manager shall record the nature of the violation and send a notice of violation to the responsible person or entity by regular and certified mail or by hand delivery. The responsible person or entity shall have 30 days from the date of the letter to correct the violation. If the violation is not corrected within 30 days, the Town Manager may proceed with criminal charges pursuant to G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purpose of §§ 93.30 through 93.41.~~

~~(D) _____ (2013 Code, § 19-10) (Ord. passed ---; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)~~

Trigger Points for Protected Tree Removal

Processes to follow are located within the Tree Protection Ordinance (Ch. 153.050-059)



Note: These processes exist within current ordinance and remain within revised ordinance

BUFFERS, SCREENING, AND LANDSCAPING REQUIREMENTS~~E~~

§ 153.060 PURPOSE AND INTENT.

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

§ 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) The following developments ~~shall bring the entire site into full compliance~~ are required to be in full compliance with this section:

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

(b) Non-residential Renovations ~~renovations~~ with a total cost exceeding 50% of the assessed value of the building, ~~excluding single-family dwellings~~, according to the county tax records.

(3) New parking spaces or lots are not required to comply with the provisions of this section.

~~(B)~~ ~~(B)~~ Landscape and grading plan required. Applicants are advised to meet with ~~T~~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 ~~by the Board of Adjustment~~ prior to any grading.

(C) Tree Replacement Requirements.

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

Table 1 - New Construction Tree Replacement Requirements

SIZE OF TREE REMOVED (DBH)	INSIDE SETBACK AREA				OUTSIDE SETBACK AREA			
	PROTECTED		UN-PROTECTED		PROTECTED		UN-PROTECTED	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	1	2"	1	2"	n/a	n/a
13"-18"	2	2"	1	2"	2	2"	1	2"
19"-36"	2*	3"	2	2"	2	3"	1	2"
36"+***	2**	4"	2*	3"	2	4"	2	2"
* must include a minimum of 3 screening/buffering trees								
** must include a minimum of 5 screening/buffering trees								
*** If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements								

(C) 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.

(4) 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.

(5) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. The Design Review Board shall make a recommendation of approval, approval with conditions, or denial within ten working days of reviewing the request for alternative compliance. The Design Review Board's recommendation shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

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

§ 153.062 EXISTING VEGETATION.

(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.

(B) As required in § 93.32, no person shall remove or in any way damage any protected trees without first filing an application for the removal and receiving a permit from the Town Manager. 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.

2-inch to 6-inch caliper tree = 1 tree

7-inch to 12-inch caliper tree = 2 trees

13-inch to 18-inch caliper tree = 3 trees

19-inch to 24-inch caliper tree = 4 trees

25-inch and greater = 5 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.

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

§ 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 Ch. 52, 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. passed 10-19-1983; Ord. passed 6-8-2021)

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

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

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

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

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

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

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

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

§ 153.070 PLANT SPECIFICATIONS.

(A) Recommended plant species. Plants may be chosen from the recommended plant species list available from the Town ~~Manager~~. 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 ~~four to five~~eight (8) 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. passed 10-19-1983; Ord. passed 6-8-2021)