

ORDINANCE 2023-06

**AN ORDINANCE TO AMEND THE
TOWN OF BILTMORE FOREST ZONING ORDINANCE BY ADDING CHAPTER
153.050 AND DELETING CHAPTERS 93.30 THROUGH 93.41 OF THE TOWN OF
BILTMORE FOREST TOWN CODE**

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 desires to revise a chapter of its existing zoning ordinance;

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

Section 1. Chapter 153.050 shall be added to the Biltmore Forest Zoning Ordinance as follows:

Chapter 153.050 Tree Preservation

TREE PRESERVATION

153.050 Purpose

153.051 Definitions

153.052 Removal of protected trees

153.053 Applications for removal of more than ten (10) protected trees

153.054 Removal of unprotected trees

153.055 Enforcement

153.056 Drip line protection

153.057 Replacement of trees

153.058 Inspections, Appeals, Bond, and Penalty

TREE PRESERVATION

§ 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 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 of Biltmore Forest except as noted in part C below.

(C) This chapter does not apply to properties owned, leased, or controlled by the Town of Biltmore Forest. 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 Article 12, Chapter 105, of the N.C. General Statutes. 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 ordinance 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.

§ 153.051 DEFINITIONS.

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/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.

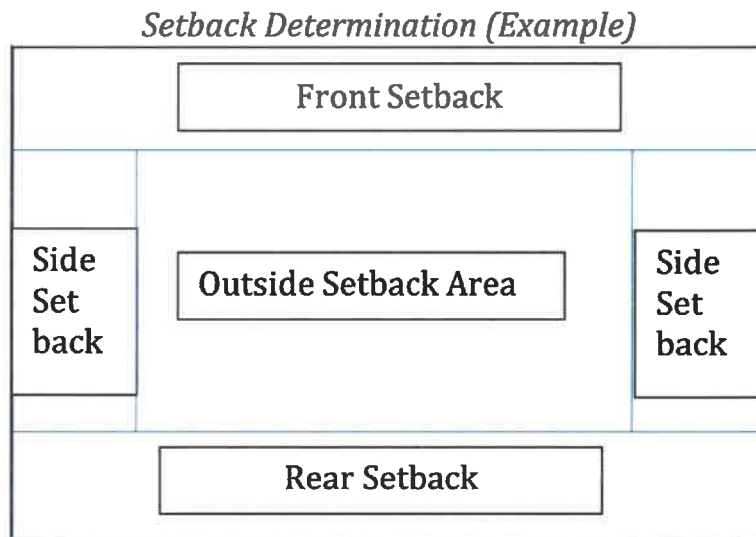
PROTECTED TREE. A protected tree is any tree six inches or more in diameter at a height of four and a half feet from the ground (DBH-diameter at breast height) that is in sound, healthy condition.

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. A minimum of one (1) 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. For the purposes of this chapter, setback refers to the minimum yard setback requirement found in § 153.007 "DIMENSIONAL REQUIREMENTS" of the Town Zoning Ordinance. "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:

- (A) Has a trunk diameter at breast height (DBH) of thirty-six (36) inches or more;
- (B) Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of thirty (30) inches or more.

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).

§ 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 (5) business days of the decision.

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN (10) PROTECTED TREES.

An application to remove more than ten (10) protected trees in twelve (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.

Table 1 - Regulatory Review Body Requirements

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

§ 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.

§ 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.

§ 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.

§ 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		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"	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 3 screening/buffering trees as defined in RPL

** must include a minimum of 5 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		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"+ ^T	2**	4"	1*	3"	1	4"	1	3"

* must include a minimum of 3 screening/buffering trees as defined in RPL

** must include a minimum of 5 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 (1) 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 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. A minimum of one (1) 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 (6) 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 fifty (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.

§ 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 (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.

(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 of the Town of Biltmore Forest Zoning Ordinance.

Section 2. Chapter 93, Sections 93.30 through 93.41, shall be deleted from the Biltmore Forest Town Code due to the removal of this ordinance to the Town of Biltmore Forest Zoning Ordinance.

Section 3. Effective Date.

This ordinance amendment shall take effect upon adoption.

10-9-2023

Date



George F. Goosmann, III

Mayor



Laura Jacobs

Town Clerk

