

ORDINANCE 2021-01
AN ORDINANCE TO AMEND SECTION 93 OF THE TOWN CODE
OF THE TOWN OF BILTMORE FOREST

TREE PROTECTION

Section 93.30 Purpose

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 Section 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.

Preservation of trees is the intent of this Ordinance. This Ordinance shall apply to all properties within the Town of Biltmore Forest except properties owned, leased or controlled by the Town. 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. Trees provide buffer and a natural canopy, and are a hallmark of the Town requiring protection. Damage to and removal of trees requires regulation and control.

Section 93.31. Identification

For purposes of this Ordinance, a protected tree ("Protected Tree") is any tree six inches or more in diameter at a height of 4 ½ 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 ordinance does not apply to trees that are less than six inches in diameter, regardless of the height of the tree.

Section 93.32. Removal of Protected Trees

No person shall remove or in any way damage any Protected Tree on a property without first filing an application for said removal, receiving approval from the Town Manager or Town Arborist for the removal, and paying any applicable fee. The Town Manager, in his or her discretion, 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'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, may allow up to ten Protected Trees to be removed. Any Protected Trees removed shall be replaced as outlined in Section 93.38 below.

Section.93.35. Pre-Construction Conference & Supervision

Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between the 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.

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 ordinance.

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 ordinance. At the option of the town, a compliance bond may be required

Section 93.36. Enforcement

If any unauthorized removal, cutting or damage to trees takes place, the Town Manager may issue a Stop-Work Order which shall remain in effect until all corrections are made to bring the Property in compliance with this Chapter.

Section 93.37. Dip 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. Landscape plans, to the extent feasible, shall protect this area around the tree.

Section 93.38. Replacement of Trees

Any Protected or Unprotected Tree removed shall be replaced in that general area of the property within fifty feet of the trunk of the former tree as follows:

Minimum Size of Existing Tree	Replacement of Protected Tree	Replacement of Un-Protected 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

A violation of this Ordinance is a Class 3 misdemeanor under North Carolina law. The penalty for violating this ordinance 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 the Ordinance including injunctive relief, and a civil penalty of \$250.00 for each day's violation of the ordinance pursuant to N.C.G.S. 160A-175.

Upon determining that a violation 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 N.C.G.S. 14-4, or may take such other enforcement action as may be necessary to carry out the purposes of this Ordinance.

Section 93.41. Bond

At the option of the Town, a bond or other type of guarantee can be required of the property owner when initiating new construction, to ensure that all permits and agreements are met, to the satisfaction of the Town.

This the 12th day of January, 2021.



George F. Goosmann, III
Mayor

Attest:



Laura Jacobs
Town Clerk

SEAL