

## PROPOSED AGENDA

Meeting of the Town of Biltmore Forest Planning Commission

To be held Wednesday, April 1, 2019 at 4:00 P.M.

- I. Call to Order
- II. Approval of Minutes from March 6, 2019
- III. Discussion and Review of Potential Amendments to Town Zoning Ordinance
- IV. Adjourn

TOWN OF BILTMORE FOREST  
PLANNING COMMISSION MEETING, MARCH 6, 2019

Those in attendance:

Mr. Doug Bailey, Chairman

Ms. Toya Hauf

Ms. Marjorie Waddell

Mr. Jonathan Kanipe, Town Manager

Chairman Doug Bailey called the meeting to order at 4:00 PM.

Ms. Toya Hauf made a motion to approve the minutes from April 25, 2018. Ms. Marjorie Waddell seconded the motion. The minutes were unanimously approved.

Mr. Jonathan Kanipe updated the Board on last year's meeting where the Planning Commission discussed updating the Ordinance to discuss fences, walls, and driveway gates. There was no recommendation made at that time due to the Planning Commission asking for more information from the public related to proposed changes. Last September, an open house was held to review potential changes to accessory structures, driveway gates, and walls. The survey response rate was 185 out of 675 households. The Board of Commissioners asked for Planning Commission feedback on the proposed changes during the February meeting. The proposed draft from last August was composed into a simpler Ordinance. Mr. Kanipe referred to Section 153.049, which breaks fences, gates, and walls out of the accessory structure ordinance and into its own specific guidelines. Mr. Kanipe suggested the Planning Commission review the proposed Ordinance and determine how to proceed.

Mr. Doug Bailey asked the audience for comments.

Mrs. Joyce Young provided a letter to the Board. She made a point regarding rear yard versus backyard in this letter. Mr. Kanipe thanked Mrs. Young for her feedback.

Mr. Bailey asked if this would go through the Design Review Board. Mr. Kanipe said the regular Zoning approval process still goes through the Design Review Board. This is the level of administrative approval that it has to go through before going to the Design Review Board. It is not regulatory but advisory.

Mr. Bailey said the back and rear yard sometimes back up to a neighbor's side yard. Mr. Kanipe said the idea would be on a case by case basis by showing plans.

Ms. Zimmerman suggested taking away "may" be required and adding "must" be required. Ms. Zimmerman said the word "may" sounds too permissive.

Mr. Kanipe said the fences allowed under the new ordinance would have to comply with the setbacks.

Mr. Pigossi asked how a side yard is determined. Mr. Kanipe used the example of a teardrop shaped lot and noted that if the home was situated very high on the property then there is not necessarily a lot of room in the backyard. The front plane of the house, whether it is angled or not, is the front of the house. The side yard extends to the portion between the house and runs parallel to the side yard. It becomes distinct and different on each individual lot. We remind people if they situate their house far back, then the front yard becomes very restricted in terms of what can be constructed there.

Ms. Zimmerman asked about the guidelines for a corner lot. Mr. Kanipe said corner lots are required to have a different setback on the street. There is a thirty-foot setback for a corner lot.

Mr. Bailey asked if a neighbor was to get a wall, would the surrounding neighbors be notified of the proposed project. Mr. Kanipe said it would not be required to notify the neighbors under this proposed Ordinance.

Ms. Young asked what the Planning Commission's opinion on this is. Mr. Bailey said it is not up to them, but as a resident, he would certainly like to be informed if a neighboring property owner were putting up some type of structure.

Ms. Rhoda Groce asked why neighbors would not be proactive instead of reactive. Mr. Kanipe said this is more for streamlining. A variance should only be used when there is a true hardship. The idea was not to limit neighbor input. Mr. Kanipe said this portion could certainly be revisited.

Ms. Young said this would change the way the Town looks. Mr. Kanipe said the idea was to have uniformity through administrative language. This came about in the Board meeting this past September. Ms. Young said the language is currently uniform by not allowing these structures.

Ms. Zimmerman asked if the Board of Adjustment makes a ruling, is the ruling is enforceable. Mr. Kanipe said yes it is enforceable. The Design Review Board is an advisory board and not a regulatory board.

Mr. Kanipe discussed driveway gates. Last year, there was a request that came before the Board of Adjustments. They found there was no Ordinance specifically applying to driveway gates. This portion of the Ordinance is related to driveway gates. The proposed Ordinance says they cannot be in the front and side yard setback. They cannot be in any setbacks. The height requirement is no more than 8 feet. Mr. Bailey asked if 8 feet is the typical height. Mr. Kanipe said

yes. Mrs. Zimmerman suggested making the columns and gates all the same height requirement. Mr. Kanipe said this was a good suggestion. There would have to be access for emergency vehicles to access. Ms. Young asked if it was one gate per property. Mr. Kanipe said it is one gate per driveway.

This Ordinance also discusses replacement of current fences, gates, or walls, which would be allowable. If these entities are being repaired, it is considered a maintenance issue and is allowed. Replacement over fifty percent goes before the Board of Adjustment and will continue to do so.

Mrs. Zimmerman suggested putting up a height restriction. Mr. Kanipe said the new Ordinance states six feet is the new height requirement. The maximum height for a deer fence is eight feet. Mrs. Zimmerman said fencing material should be clarified. Mr. Kanipe said chain link is not allowed.

Mr. Pigossi referenced the rear yard. Mr. Pigossi asked if one could fence across the back and fence to the side of the rear yard. Mr. Kanipe said someone could fence the rear of the house within the setback.

Ms. Hauf said she does not understand why anyone in Biltmore Forest would need a fence, as this is an open community. Ms. Hauf said the only reason she could see someone having a fence is for insurance purposes. If deer fencing is allowed it should be of specific material and abut the estate and the parkway. Ms. Hauf does not think creating an ordinance that allows fences, whether regulated or not, is a good idea because it is propagating a bad idea. Ms. Hauf said just because there are fences now does not mean the Board should keep allowing them. Ms. Hauf said that the people here live in a forested area where there are already trees that buffer and fences should not be required unless it is for safety purposes such as a pool. Ms. Hauf also said that if something happens to an existing fence, it should not be replaced just because they already exist.

Mr. Kanipe asked the Board members for their feedback. Mr. Bailey suggested having a meeting with all the Planning Commission members to discuss what steps to take next. Mr. Bailey said he appreciated all the audience members' feedback.

Ms. Hauf said it is taking a long time to make this decision and they have not come to a conclusion yet. Ms. Hauf suggestion putting a moratorium on fences, walls, and gates until a decision has been made by the Board on how to move forward. Mr. Kanipe said a Public Hearing is required for a moratorium so it will take some time to schedule it. The Board agreed to meet within the next month. Mr. Kanipe will email the Board some dates, and subsequently scheduled for Monday, April 1, 2019 at 4pm.

The meeting was adjourned at 5:03pm.

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Jonathan Kanipe  
Town Manager

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Doug Bailey  
Chairman

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George F. Goosmann, III, Mayor  
Fran G. Cogburn, Mayor-Pro Tem  
E. Glenn Kelly, Commissioner  
Doris P. Loomis, Commissioner

Jonathan B. Kanipe,  
Town Manager

## MEMORANDUM

APRIL 1, 2019

To: Planning Commission Members  
From: Jonathan Kanipe, Town Manager  
Re: Review of Potential Ordinance Changes  
Date: March 28, 2019

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### Background

The Planning Commission met March 6<sup>th</sup> and reviewed potential changes to the Town's Zoning Ordinance. During this meeting, the Commission received substantial feedback from the public regarding proposed changes and posed questions regarding the ordinance. The Commission did not make a recommendation to the Board of Commissioners at that time and requested a subsequent meeting to review all materials and discuss this issue in detail.

### Materials Enclosed

Staff has provided a copy of the unchanged ordinance amendment for the Board's discussion. Note, there were several items mentioned in the meeting that likely will be changed, but in the interest of full discussion regarding this specific ordinance amendment, the previous version as presented last month is re-presented.

### Process Moving Forward

The Planning Commission has the ability to recommend or not recommend these ordinances or to offer suggested alternatives to the Board of Commissioners. Regardless, the Board of Commissioners will have to hold a public hearing before the consideration of these or any land use zoning ordinances.

The Town Attorney will be present and available to address any questions or concerns regarding this proposed ordinance or other variations of it. Please let me know if there are additional materials or further information needed before the meeting.

**An Ordinance Amending the Town of Biltmore Forest Zoning Ordinance**

WHEREAS, Biltmore Forest, originally part of the Vanderbilt Estate, was established almost 100 years ago. Since its establishment, Biltmore Forest has been a forested residential community with substantial open space. Historic continuity and preservation of the forest environment requires substantial open space for trees, plants and wildlife.

WHEREAS, Given the Town's proximity to the Biltmore Estate, the Estate's large deer population, and the prevalence of other species including bear, the Town, through its Board of Adjustment, has received and continues to receive requests to approve fences and gates. The Board Commissioners is committed to preservation and protection of the forested residential community and to accommodating reasonable requests from its residents. Current and prospective residents can participate in this effort by landscaping with plants that will not attract deer, confining dogs and other household pets with invisible fencing, limiting the construction of new fences, gates, and walls, and removing and not replacing existing fences, gates, and walls.

NOW, THEREFORE BE IT ORDAINED, by the Board of Commissioners for the Town of Biltmore Forest that the following amendments to the Zoning Ordinance and subsequent regulations be placed on fence, gate, and wall construction and replacement as of the effective date of this ordinance.

**§ 153.029 – Accessory Structures and Buildings**

*ADD the following under § 153.029 (B):*

**New Number “3” states as follows:**

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

§ 153.029 (C) is deleted in its entirety.

**§ 153.049 - Fence, Gate, and Wall Regulations**

(A) New fences, gates, or walls may be approved by the Town Manager and do not have to be approved by the Board of Adjustment, so long as the gate, fence or wall meets the following requirements.

- (1) The fence, gate, or wall is constructed entirely within the backyard, is not located in any side or rear yard setbacks and is constructed of materials deemed acceptable in 153.049(D)
- (2) Mature vegetation or other buffering sufficiently obscuring the structure from neighbors may be required.



*New Town Zoning Ordinance*  
*Section 153.049*

(B) A driveway gate and supporting columns may be approved by the Town Manager and does not have to be approved by the Board of Adjustment so long as it meets the following requirements:

- (1) The Driveway Gate and columns must not be located in the front or side yard setback of a property in order to allow sufficient time and space when multiple vehicles are entering a property
- (2) The Driveway Gate shall not be more than eight (8) feet in height.
- (3) The Driveway Gate must provide access for emergency services and first responders. This may be done via a lockbox code, strobe or siren activation switch, or other method with demonstrated reliability.
- (4) The Driveway Gate must open wide enough to provide for ingress and egress of emergency vehicles.

(C) Replacement of existing fences, gates, and walls may be approved by the Town Manager so long as the replacement fence is constructed of materials deemed acceptable in 153.049 (D) and meets the requirements below. Otherwise, replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence, gate, or wall must include a photograph of the existing fence or wall, specify the type of fence, gate, or wall, include a map or sketch depicting the height and length of the fence, gate, or wall and state whether or not the fence, gate, or wall is located within any setbacks.

- (1) Existing chain link fences or gates may not be replaced with new chain link fences or gates.
- (2) Existing fences, gates, or walls in the front yard may not be replaced. No new fences, gates, or walls shall be allowed in the front yard.
- (3) Repair of more than half of an existing fence, gate, or wall shall be considered a replacement and shall be subject to this ordinance.

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

- (1) Wooden fencing or gates shall be of natural color or painted in a manner compatible with the residence and the lot.
- (2) Non-wooden fencing or gates shall be black, dark green or brown to blend with surrounding trees or vegetation.
- (3) No new chain link fencing or gates shall be allowed.
- (4) Fences may not exceed six (6) feet in height without approval from the Board of Adjustments. Fences designed to prevent deer or other wildlife from entering the property may not exceed eight (8) feet in height.

New Town Zoning Ordinance  
Section 153.049

- (5) Walls should be constructed of stone or similar material, and should be compatible with the construction materials of the house located on the same property.
- (6) When a fence, gate, or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence, gate, or wall, or, remove the fence, gate, or wall at the property owner's expense. If the property owner fails to repair or remove the fence, gate, or wall, the Town may remove the fence, gate, or wall and recover the cost of removal, including the cost of disposal, if any, from the property owner.

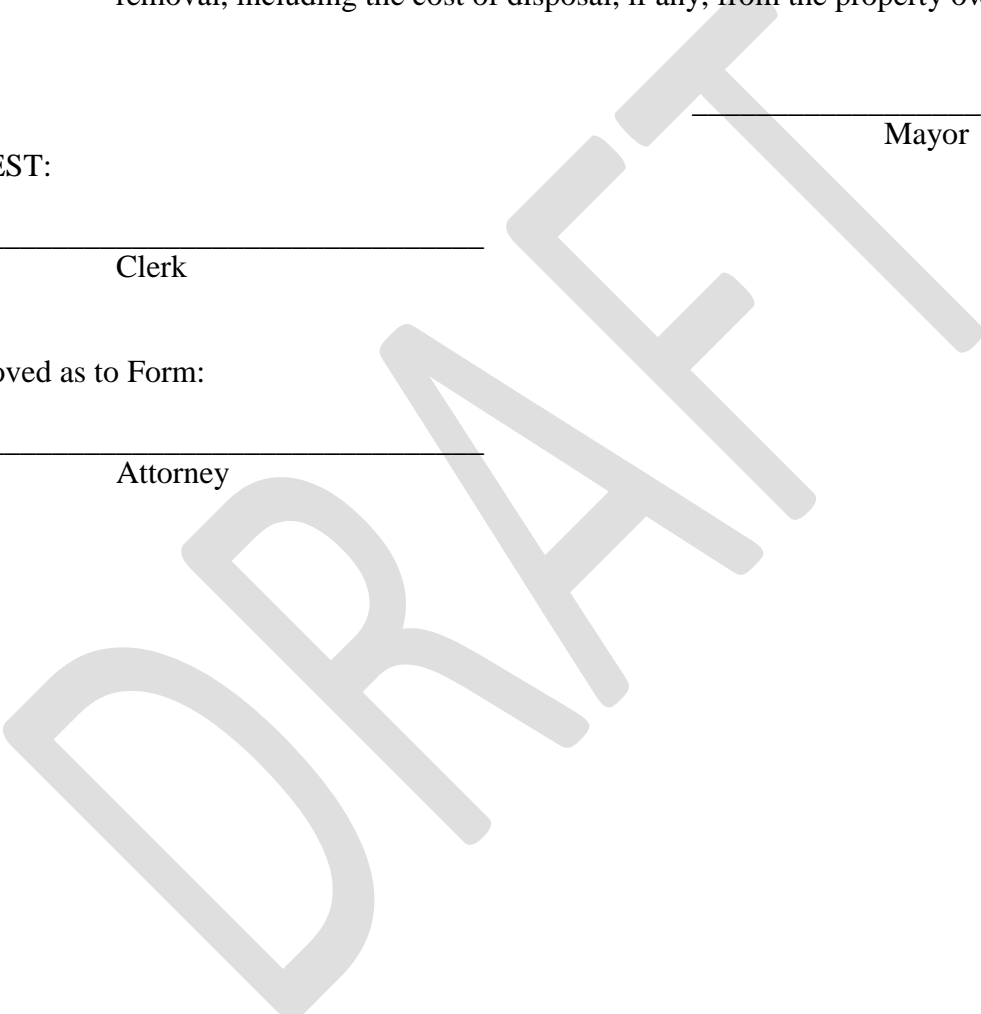
\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Attorney



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Fran G. Cogburn, Mayor-Pro Tem  
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Jonathan B. Kanipe,  
Town Manager

NOTICE  
PLANNING COMMISSION MEETING  
TOWN OF BILTMORE FOREST

The Town Planning Commission will hold a meeting on Monday, April 1, 2019 at 4:00 P.M. regarding amendments to the Town Zoning Ordinance. The Planning Commission will consider these amendments and discuss providing a recommendation to the Town Board of Commissioners.

The public is invited to view or request a copy of the proposed changes to the Zoning Ordinance at the Biltmore Forest Town Hall, or alternatively can review the full draft amendment on the Town's website at the following link: <http://www.biltmoreforest.org/planning-board>

The proposed changes are related to Sections of the Town's Zoning Ordinance related to accessory structures and land disturbing activity.

The public is invited to attend.

Jonathan B. Kanipe  
Town Clerk

POSTED AT TOWN HALL: March 28, 2019