ORDINANCE 2020-02

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.

If the Town Manager concludes that the removal of the number of Protected Trees requested would be undesirable, and not within the letter or intent of this Ordinance, he 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 may require that the applicant provide a survey showing the location, size and type of Protected Trees on a property, including common scientific names. The 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 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 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 Town Manager to the Board of Adjustment within five (5) days of the Town Manager's decision.

Section 93.33. Applications for Removal of Protected Trees in Excess of Ten (10)

An application for a permit to remove more than ten (10) Protected Trees on a property must be presented directly to the Board of Adjustment. A fee of $50.00 shall accompany the application.

An application for the removal of thirty (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 thirty (30) or more Protected Tees 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.

Section 93.34. Removal of Unprotected Trees.

An Unprotected Tree~~-~~ may be removed by the property owner after notifying the Town Manager of the plans to remove said tree(s) and receiving approval to do so from the Town Manager or Town Arborist.

The 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 said 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.

Any Unprotected Trees removed shall be replaced as defined 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~~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

Any replacement tree shall be in the ground within six~~eighteen~~ (~~18~~6) months of removal of the original tree~~s~~. The Town Manager, or Board of Adjustment may, for good cause shown, and in their sole discretion, extend this period for up to six (6) months.

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.

The minimum size for replacement is two (2) inches diameter (measured from one foot above ground level) for a large-maturing deciduous tree and one and one-half inch diameter for a small-maturing deciduous tree, or eight (8) feet in height for evergreens. Additionally, the replanted trees shall meet the plant specifications of the Town Zoning Ordinance in Section 153.070.

Depending on the ~~extenuating circumstances related to~~ proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Town Manager or by the Board of Adjustment (in the case of an appeal from the Town) or the Town Manager may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive.

~~(a)~~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 93.38 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 paragraph (a) shall apply only to properties within the Town in excess of ~~2~~5 acres.

Section 93.39. Inspections

All Protected Trees designated to remain, pursuant to a tree survey, plus any replacement trees, shall be inspected by the Town Manager or his designee six months~~one year~~ following any construction and/or replacement trees, to ensure the trees are in a healthy condition. The Town Manager can require replacement or replanting of replacement trees.

Section 93.40. Appeals

Any person aggrieved by a decision made under this Ordinance by the Town Manager or his designee may file, within five days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the

Board of Adjustment shall ~~be subject~~be ~~to~~subject to review by the Board of Commissioners.

Section 93.41. Penalties and Enforcement

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.