

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest  
Planning Commission

To be held Tuesday, September 27, 2022 at 5:30 p.m.

***MEETING OPEN TO THE PUBLIC***

*Viewing Options via Zoom available at Bottom of Page*

- A. Roll Call for Attendance
  - B. Approval of Minutes – August 22, 2022 Meeting
  - C. General Ordinance Review – Discussion
  - D. Maximum Roof Coverage and Impervious Surface – Discussion
  - E. Tree Related Ordinances - Discussion
  - F. Adjourn
- 

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

Meeting ID: 830 1514 8121  
Passcode: 226922

## Planning Commission Meeting Minutes

August 23, 2022

5:30pm

Roll call was taken by Chairman Paul Zimmerman. Those in attendance are Chairman Paul Zimmerman, Ms. Dawn Grohs, Mr. Michael Flynn, Mr. Tony Saponaro, Mr. Ken Hornowski (via Zoom), Mr. Jonathan Kanipe, and Mr. Billy Clarke (via Zoom).

Mr. Zimmerman started the meeting at 5:30pm.

Mr. Zimmerman provided background on the memo he sent out regarding next steps for the Planning Commission after the approval of a ten-year plan, and specifically, looking at the existing ordinances for additional focus areas. The Planning Commission would like to hold a joint meeting with the Board of Adjustment to determine what they go through and understand the processes and issues they face, as they do an incredible amount of work.

Mr. Zimmerman went through the minutes from 2014-2019 to focus on common problems and how the Planning Commission can assist with clarifying the ordinances. Mr. Flynn verified the Planning Commission's role is to consider and report back and make recommendations. Mr. Clarke concurred and noted that the Board of Adjustment enforces ordinances. Mr. Clarke thought it would be a great idea to have both Boards meet. Mr. Zimmerman suggested having each Planning Commission member take a few ordinances and going over them to see if they need revising. Ms. Grohs would like to go back to the adopted Comprehensive Plan and look specifically at what was said, what the Town told them, and then determine what the issues are and how to address them.

Mr. Zimmerman discussed abandoned or junk vehicles. Mr. Zimmerman said it would be best to work with Chief Beddingfield and Mr. Kanipe on this matter. Mr. Clarke said this will be covered in the Town Ordinances, but the Planning Board can make a recommendation on this. It falls under the nuisance provision as well.

Mr. Saponaro asked questions about things being visible within the rear yard, and, specifically about regulations related to these structures.

EV charging stations were discussed and how and where to install the charging stations. Mr. Clarke suggested looking to see what other places do and where these charging stations are located.

Mr. Drew Stephens said these types of progressive items should be considered, but perhaps thinking about ways to include a design perspective and is a positive and forward-thinking idea. Specifically, Mr. Stephens believes it is a good idea to be flexible and think about how to install these outside of a garage.

Mr. Saponaro wants to find a way to bring these issues into compliance and determine what the best plan is to move forward with assigning the ordinances.

The issue of maximum roof coverage was discussed. Mr. Clarke reviewed prior discussions and making the case for roof coverage exceedance.

The tree ordinance was discussed. Mr. Saponaro asked questions regarding what needs to be replanted and replaced based on tree height and diameter. Mr. Buckner reviewed the tree protection process.

Ms. Martha Barnes discussed neighbors screening and final landscaping plans.

Mr. Zimmerman adjourned the meeting at 6:58 pm.

The next meeting is scheduled for Tuesday, September 27, 2022 at 5:30pm.

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Ms. Laura Jacobs, Town Clerk  
Town Clerk

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Mr. Paul Zimmerman  
Chair

**PLANNING COMMISSION  
STAFF MEMORANDUM**

September 27, 2022



**Agenda Item - C**

**General Ordinance Review – Discussion**

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**Background**

The Planning Commission met last month and identified several focus areas arising from the Town's Comprehensive Planning process. Members of the commission agreed to return this month after reviewing the approved Plan and discuss these potential focus areas as well as others outlined within the Plan. This agenda item is reserved for that discussion and review from Commission members.

Please note, two items are already on the agenda for discussion: maximum roof coverage and impervious surface coverage and ordinances related to the Town's tree protection and preservation program.

**PLANNING COMMISSION  
STAFF MEMORANDUM**

September 27, 2022



**Agenda Item - D**

**Maximum Roof Coverage and  
Impervious Surface Coverage Review – Discussion**

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**Background**

Planning Commission Chair Paul Zimmerman has reviewed the Town's existing maximum roof coverage and impervious surface coverage requirements. These sections are found in Chapter 153.043 and 153.048 of the Town's Zoning Ordinance, respectively. A copy of each ordinance is attached to this memorandum.

Mr. Zimmerman has prepared information related to these ordinances, attached to this memorandum, which will be explained and discussed at the Commission's meeting on Tuesday.

**Attachments**

1. Ch. 153.043 – Maximum Roof Coverage (Zoning Ordinance)
2. Ch. 153.048 – Impervious Surface Coverage (Zoning Ordinance)
3. Information from Mr. Paul Zimmerman for Discussion

**§ 153.043 MAXIMUM ROOF COVERAGE.**

(A) (1) (a) The **MAXIMUM ROOF COVERAGE** is defined as the total area(s) under roof of all structures (including detached garages and other accessory structures) on the lot.

(b) The maximum roof coverage standard assures that the size of structures is proportional to the lot size.

(2) The standards for the maximum roof coverage permitted are as follows:

<b>Lot Size</b>	<b>Max Roof Coverage</b>
Up to 0.5 acres	2,874 square feet
Up to 0.75 acres	3,520 square feet
Up to 1 acres	4,682 square feet
Up to 1.2 acres	5,060 square feet
Up to 1.5 acres	5,500 square feet
Up to 2 acres	6,100 square feet
Up to 2.5 acres	6,700 square feet
Up to 3 acres	7,500 square feet
Up to 3.5 acres	8,200 square feet
Up to 4 acres	8,700 square feet
Up to 4.5 acres	8,900 square feet
Up to 5 acres	9,100 square feet
Up to 5.5 acres	9,300 square feet
Up to 6 acres	9,647 square feet

(B) (1) Lots exceeding 6 acres in size: Multiply the lot size by 43,560; multiply this number by 3.25% (0.0325); provided, that the result is less than 9,647, structures on the lot may have maximum roof coverage of 9,647 square feet.

(2) If the result is greater than 9,647, structures on the lot may have maximum roof coverage equal to the result produced by the multiplication.

(C) All structures exceeding the maximum roof coverage for the lot on which they are located shall require approval of a variance by the Board of Adjustment in accordance with the procedures and standards set forth in § 153.110(D).

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

**§ 153.048 IMPERVIOUS SURFACE COVERAGE.**

(A) (1) A maximum percentage of a residential lot that can be devoted to impervious surfaces, as defined in §153.004, is established to assure that the character of the town is preserved and to control stormwater and runoff being directed to streets and adjacent properties.

(2) The percentage of residential lots that can be devoted to impervious surfaces shall be as set forth below.

<b>Lot Size</b>	<b>Impervious Surface</b>	<b>Sample Calculations 43,560 Square Feet - 1 Acre</b>
Up to 1 acre	27.5% x lot area	E.g., 0.85 acre x 43,560 x 27.5%= 10,182 square feet
Over 1 acre to 3 acres	11,979 square feet or 25% x lot area	11,979 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 1.75-acre x 43,560 x 25% = 19,058 square feet
Over 3 acres to 6 acres	32,670 square feet or 20% x lot area	32,670 square feet (The maximum from the previous grade) or the product of the lot size calculation. E.g., 4.5-acres x 43,560 x 20% = 39,204 square feet

(B) Lots on which new construction and/or development activity would cause the amount of impervious surface on the lot to exceed the percentages set forth above shall proceed with the proposed construction and/or development activity only if a variance for the increased impervious surface coverage is granted by the Board of Adjustment in accordance with the procedures set forth in § 153.110(D).

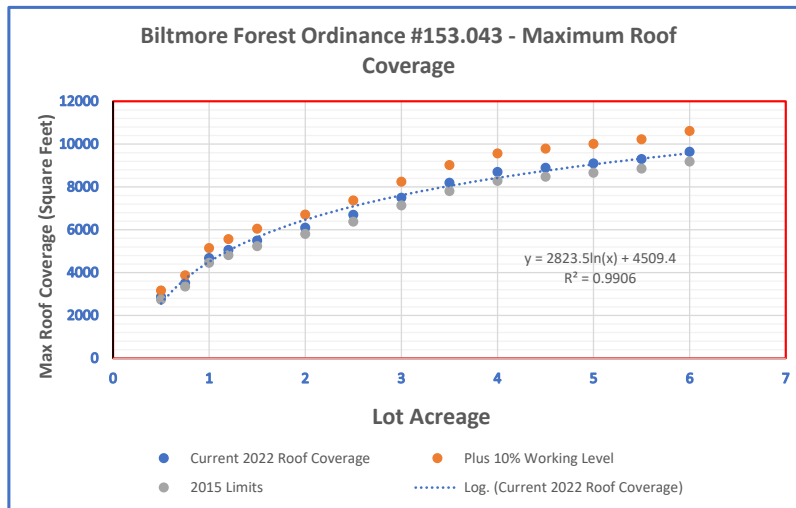
(C) The Board of Adjustment reserves the right to limit impervious surface coverage to prevent the unreasonable diversion of stormwater or surface water onto another property or properties or to the town streets.

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

Acres	Current 2022 Roof Coverage	Plus 10% Working Level	2015 Limits
0.5	2874	3161.4	2737
0.75	3520	3872	3352
1	4682	5150.2	4459
1.2	5060	5566	4819
1.5	5500	6050	5238
2	6100	6710	5810
2.5	6700	7370	6381
3	7500	8250	7143
3.5	8200	9020	7810
4	8700	9570	8286
4.5	8900	9790	8476
5	9100	10010	8667
5.5	9300	10230	8857
6	9647	10611.7	9188

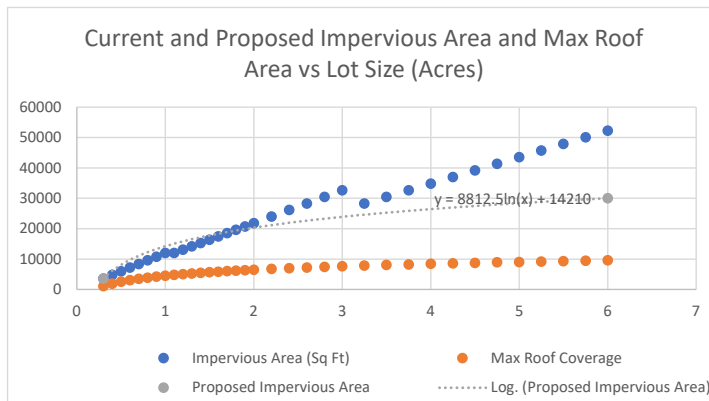
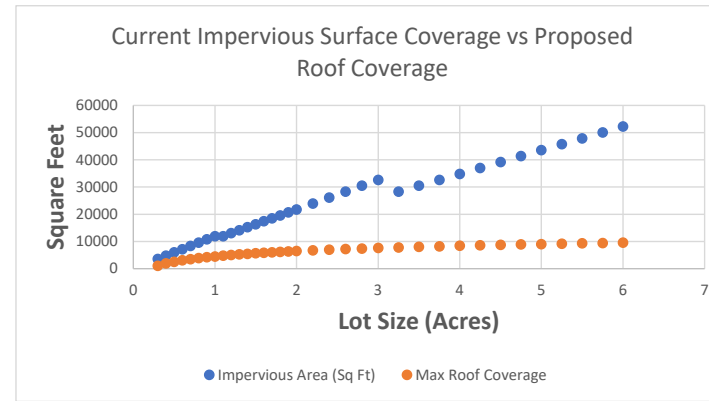
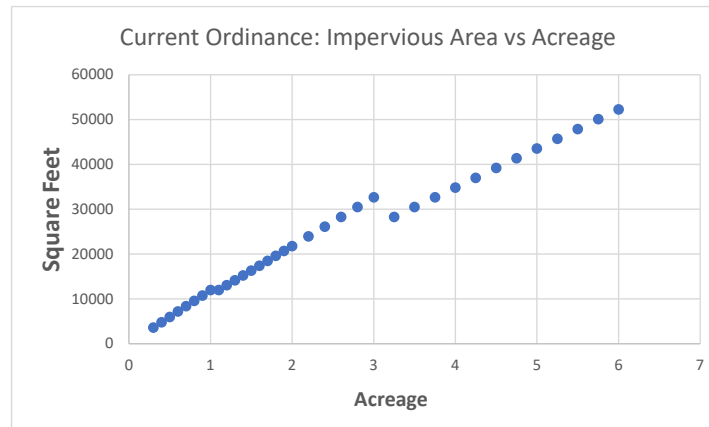
Equation from Graph above:  
acreage      roof area

0.3	1110
0.4	1922
0.5	2552
0.6	3067
0.7	3502
0.8	3879
0.9	4212
1	4509
1.1	4779
1.2	5024
1.3	5250
1.4	5459
1.5	5654
1.6	5836
1.7	6008
1.8	6169
1.9	6322
2	6467
2.2	6736
2.4	6981
2.6	7207
2.8	7417
3	7611
3.25	7837
3.5	8047
3.75	8241
4	8424
4.25	8595
4.5	8756
4.77	8921
5	9054
5.25	9191
5.5	9323
5.75	9448
6	9568





Acreage	Impervious Area (Sq Ft)	Max Roof Coverage	Proposed Impervious Area
0.3	3594	1110	3600
0.4	4792	1922	
0.5	5990	2552	
0.6	7187	3067	
0.7	8385	3502	
0.8	9583	3879	
0.9	10781	4212	
1	11979	4509	
1.1	11979	4779	
1.2	13068	5024	
1.3	14157	5250	
1.4	15246	5459	
1.5	16335	5654	
1.6	17424	5836	
1.7	18513	6008	
1.8	19602	6169	
1.9	20691	6322	
2	21780	6467	
2.2	23958	6736	
2.4	26136	6981	
2.6	28314	7207	
2.8	30492	7417	
3	32670	7611	
3.25	28314	7837	
3.5	30492	8047	
3.75	32670	8241	
4	34848	8424	
4.25	37026	8595	
4.5	39204	8756	
4.75	41382	8921	
5	43560	9054	
5.25	45738	9191	
5.5	47916	9323	
5.75	50094	9448	
6	52272	9568	30000



# PLANNING COMMISSION STAFF MEMORANDUM

September 27, 2022



## Agenda Item - E

### Tree Related Ordinances Review Existing Ordinance and Discussion

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#### **Background**

One focus area discussed last month was the Town's existing Tree Protection Ordinance. The current Tree Protection Ordinance is housed with the Town Code and is not governed by the Zoning Ordinance. However, there are sections of the Town's Zoning Ordinance that include significant regulations related to landscaping, buffering, and tree planting requirements.

#### **Information Requested**

The members of the Planning Commission requested information related to the Town's existing ordinance and its relationship with the Zoning Ordinance. A copy of the existing Tree Protection Ordinance and zoning ordinances that deal with trees, landscaping, or buffering are all attached to this memorandum.

#### **Additional Information**

In addition to the above information, a copy of a PowerPoint presentation from the Great North Carolina Tree Conference is attached for review. Mr. Mike Dale, Town Public Services Supervisor, attended this conference on behalf of the Town. Mr. Dale is also a registered landscape architect who has significant experience in arboriculture, horticulture, and landscape design. Mr. Dale found the presentation on current trends in tree protection ordinances enlightening and shared with me.

This information may prove useful to the Planning Commission as you review the Town's existing ordinances and make considerations regarding any potential recommendations to the Board of Commissioners.

#### **Attachments**

1. Ch. 93 – Tree Protection Ordinance (Town Code)
2. Ch. 153.060-071 – Buffering, Screening, & Landscaping (Zoning Ordinance)
3. Trends in Tree Protection Ordinances – from Great N.C. Tree Conference

## TREE PROTECTION

### § 93.30 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 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. 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.

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

### § 93.31 IDENTIFICATION.

(A) 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 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 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 § 93.38 below.

(B) 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 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 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 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 APPLICATIONS FOR REMOVAL OF PROTECTED TREES IN EXCESS OF TEN.

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

(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 REMOVAL OF UNPROTECTED TREES.

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

(B) 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 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 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 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.

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

**§ 93.37 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. Landscape plans, to the extent feasible, shall protect this area around the tree.

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

**§ 93.38 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:

<i>Minimum size of existing tree</i>	<i>Replacement of protected tree</i>	<i>Replacement of unprotected tree</i>
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) Any replacement tree shall be in the ground within six months of removal of the original tree. The Town Manager or Board of Adjustment may, for good cause shown, and in their sole discretion, extend this period for up to six months.

(C) 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.

(D) The minimum size for replacement is two 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 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 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.

(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 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 or her designee six months 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.

(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 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 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)

### **§ 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.

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

### **§ 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.

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

## BUFFERS, SCREENING, AND LANDSCAPE

### § 153.060 PURPOSE AND INTENT.

(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) 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 with this section:
  - (a) New nonresidential development, including special uses; and
  - (b) 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) *Landscape and grading plan required.* Applicants are advised to meet with 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 shall be reviewed and approved by the Board of Adjustment prior to any grading.

(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 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)

#### **§ 153.071 RECREATIONAL AND COMMERCIAL VEHICLE STORAGE.**

(A) (1) Commercial vehicles and recreational vehicles, including, but not limited to, motor-powered recreational vehicles, recreational trailers, campers, boats and other water craft and the trailers used to tow or transport any such boat or vehicle, shall not be parked or stored outside on any lot or tract of land.

(2) Further, nor shall any such vehicle be parked or stored in or under an open garage/carport or in or under any other type of open accessory structure/building.

(3) However, such vehicles may be parked or stored in an enclosed accessory structure/building (said accessory structure/building is to comply with all size and height requirements of this chapter) or in an enclosed garage such that the vehicle is not visible.

(B) Exceptions to this rule would be those residents who have already received certificate of zoning compliance from the Board of Adjustment.

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

# Trends in Tree Protection Ordinances



2022 GREAT NC  
TREE CONFERENCE



# OVERVIEW

- Legal Framework for Tree Protection
- Terminology
- Retention Spectrum
- Clear Cutting (on development sites)
- Mitigation Measures
- Enforcement



**21** Codes Completed  
**29** Years of Experience

CodeWright  
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CodeWright Planners, LLC, is a planning and zoning consultancy founded in Durham, NC in 2014. Chad Meadows serves as Principal and sole employee. CodeWright prepares development codes, plans, and studies solely for local government clients across the Southeast. We are passionate about creating beautiful, effective documents that meet our client's needs and exceed their expectations.

# Legal Framework

- This presentation is focused on government regulations that require tree protection or retention on private land as part of proposed or existing development



# Legal Framework for Tree Ordinances in NC


- North Carolina is a Dillon's Rule State
- This means that all authority that a local government has is given to them by the State government
- Whether or not a local government has the authority to adopt a tree protection ordinance is a matter of some dispute among legal scholars

or·di·nance  (ôr'dn-əns)

*n.*

1. An authoritative command or order.
2. A custom or practice established by long usage.
3. A Christian rite, especially the Eucharist.
4. A statute or regulation, especially one enacted by a municipal government.

[Middle English *ordinaunce*, from Old French *ordenance*, from Medieval Latin *ordinantia*, from Latin *ordināns*, *ordinant-*, present participle of *ordināre*, *to ordain*, from *ōrdō*, *ōrdin-*, *order*; see [ar-](#) in [Indo-European roots](#).]

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# Legal Framework for Tree Ordinances – 2 Views

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## NARROW CONSTRUCTION VIEW

- Local governments have only the powers expressly granted to them by the State
- Local governments must have special authorization from the General Assembly to require tree retention

## BROAD CONSTRUCTION VIEW

- Local governments have broad police power to protect the public health, safety, and general welfare
- Local governments do not require additional special authorization to require tree retention



# Legal Framework for Tree Ordinances – Local Authority

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There are 35 local governments with recognized special authorization from the NC General Assembly to have a tree ordinance:

Wilson, Greenville (1977) Greensboro (1979)  
Asheville, Raleigh, Pine Knoll Shores (1985)  
Southport, New Hanover County (1987)  
Chapel Hill, Wrightsville Beach (1989)  
Highlands (1991)  
Charlotte, Kinston, Apex, Cary, Garner, Morrisville (2000)  
Durham, Knightdale, Fuquay-Varina, Spencer (2001)  
Rutherfordton, Wake County, Mount Airy, Rockingham,  
Smithfield, Statesville (2003)  
Cornelius, Davidson, Huntersville, Nags Head (2005)  
Clayton, Reidsville, Matthews (2006)

...but there are  
many, many  
others with tree  
ordinances who  
do not have any  
special  
authorization

# Terminology Matters

It is important to remember that there are numerous different laws and distinctions in place with respect to trees and tree protection



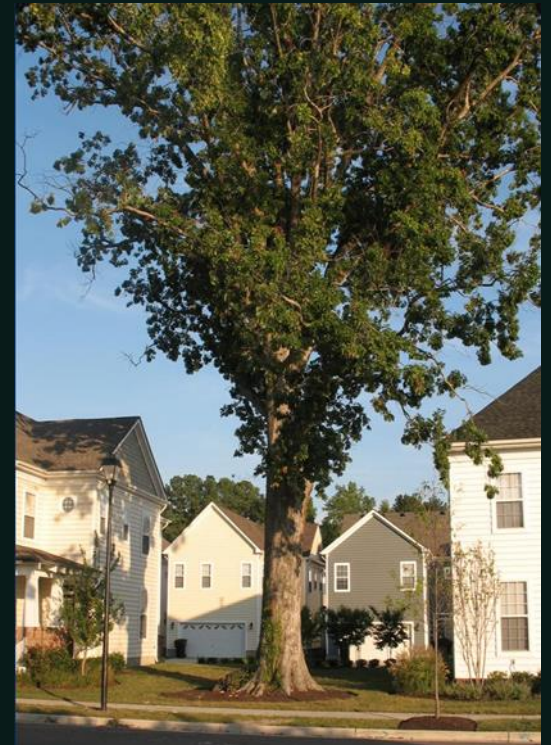
Required  
Landscaping



Tree Protection  
During Construction



Tree Retention in  
Unbuildable Areas



Tree Retention in  
Buildable Areas

# Terminology Matters

## PROTECTION



Standards to keep retained and newly-planted trees safe during construction

## RETENTION

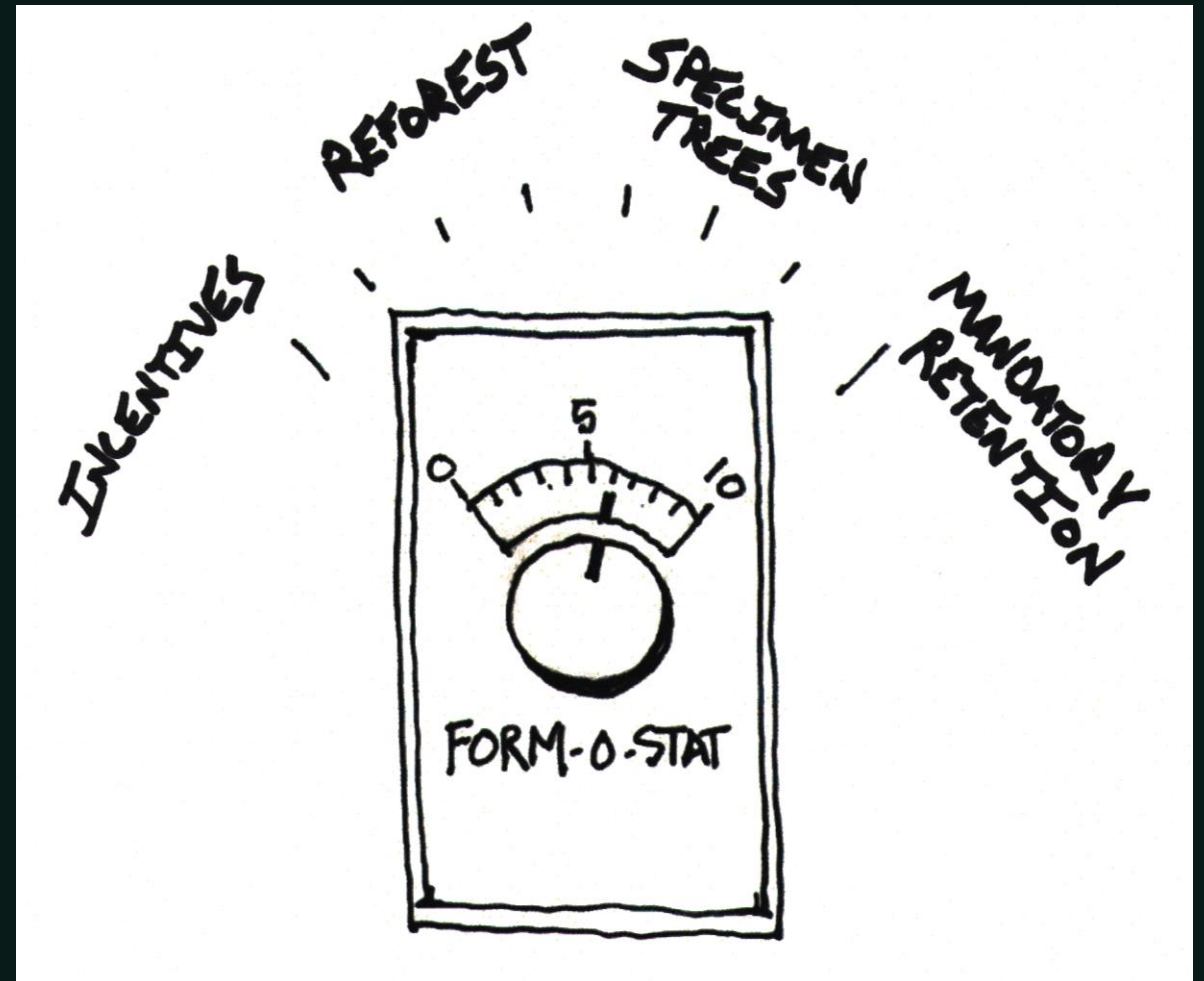


Standards to retain existing trees after construction

# Spectrum of Approaches to Tree Retention

There is a continuum of approaches to tree retention that range in expense, difficulty, and effectiveness

Each community likely has a different preference or comfort level



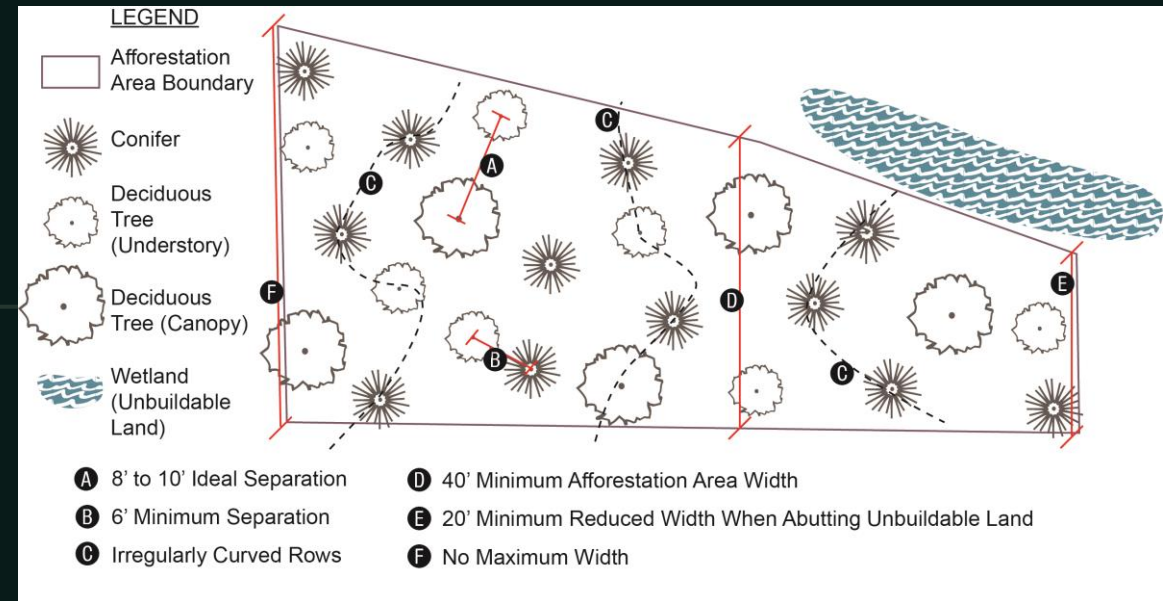
# Incentive-Based Approach



- The “easiest” approach
- Retention of existing trees is Voluntary, at the will of the developer or landowner
- Provides something “in trade” for retaining existing trees, like relief from landscaping or open space requirements
- Often consists of accelerated credit towards landscaping or open space requirements  
(1” of retained tree DBH = 2” of credit towards required tree DBH)
- Tends to result in tree retention only in areas where trees can serve a screening function
- Rarely results in optimal tree retention in terms of species, diversity, or locations
- Can be successfully paired with other tree retention standards

# Reforestation Approach

- Practical - Allows some or all existing trees to be removed from a site
- Mandates that new trees will be planted following construction and maintained in perpetuity
- Often takes the form of a “reforestation area” occupying a minimum percentage of a site
- Typically establishes a tree density requirement
- Takes many years to establish a mature canopy, but helps encourage functional habitat areas
- Preventing subsequent encroachment into reforestation areas is challenging



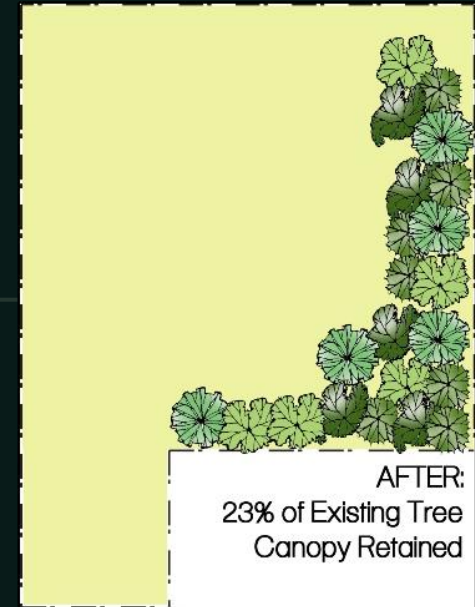
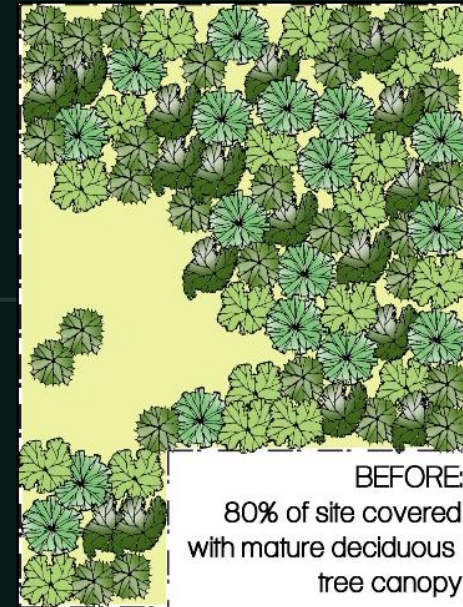
# Specimen/Heritage Tree Conservation Approach

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- First “step” along the continuum that bars removal of some trees
- Includes standards identifying threshold tree size and/or species to retain
- Retains the oldest and most majestic trees, but the oldest trees are the ones closest to death
- Protection from nearby development activity be extraordinarily expensive and often inadequate – the tree dies anyway
- Depends upon a robust mitigation system for replacement of trees that prevent use of the site or that die shortly after development
- Most effective on large, low intensity sites where disturbance is limited

# Mandatory Retention Approach(es)

- As part of a subdivision of land
- As part of new construction in a development
- On existing lots





# Mandatory Retention Approach

(new subdivision or construction)

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- Requires an applicant to retain a minimum amount of tree cover on a site
- Typically uses a sliding scale approach where the fewer the existing trees you have on site, the more of them you have to retain
- Can allow for identification and retention of the “best” trees to save  
(subject to codified criteria on what “best” means)
- Most effective approaches do not require expensive whole-site tree surveys
- Tree retention or save areas should be located outside of designated construction areas  
(tree save areas should not be within buildable subdivision lots)
- Must recognize the development potential of the tree retention area impacts in terms of total density yields, impervious surfaces, and lot dimensional requirements  
(work to avoid making the retention area a “liability” in terms of development potential)

# Mandatory Retention Approach

(on existing lots)

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- Requirements that landowners (often single-family homeowners) retain existing trees on their established homesites
- Very popular with residents...also the pinnacle of expense and difficulty in terms of enforcement
- Necessary to specify wide range of conditions when trees can be removed without penalty (emergency, disease, danger to structures, etc.)
- Avoid this approach whenever possible

# Blended Approaches

- It is quite common to use a blended approach of incentives to encourage more robust landscaping, conservation of specimen trees in remote areas, retention in areas where it is practical, and reforestation in areas where retention isn't
- Every additional aspect of tree protection comes with an enforcement cost



# Clearcutting (on development sites)

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- Removal of “all or substantially all” existing trees on a piece of land intended for use as a development site
- North Carolina General Statutes 160D-921 allows  
Local governments may delay approval of building permits, site plans, or subdivisions for 3 years on land subject to clear cutting in advance of a development application  
The delay may be for 5 years in cases where the government can demonstrate the removal was “willful”
- The local government must have standards in place that limit tree removal prior to the clear cutting

# Clearcutting (of existing landscaping or retained trees)

- Often referred to as “sever pruning”
- The pruning, cutting, or damaging of the natural form of a tree such that 25% or more of the tree’s crown is removed or if 1/3 of the overall circumference of the tree canopy is removed or exposed by pruning cuts
- This requires replacement of damaged vegetation and can often include fines as well



# Mitigation for Tree Removal

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- Replacement

Often applied at a 1:1 ratio (DBH, count, basal area) for natural death

Can be applied at an accelerated amount (2:1) for willful removal – this can often require off-site replanting allowances

- Payment

Many local governments operate a “tree bank” where mitigation can take the form of payment into an account used to provide trees on public lands

- Guarantees

Most effective ordinance require the violator to post a performance guarantee in addition to replanting that runs for a 2-3 year period to ensure the new trees live

# Elements of an Effective Tree Ordinance

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- FINDINGS/PURPOSE  
Why save trees?
- APPLICABILITY  
Define what type of trees/sizes are protected
- PROCEDURE  
How are development proposals reviewed?
- STANDARDS  
What are the minimum requirements?
- INCENTIVES  
Reasons to save more trees than the minimum?
- PROTECTION  
Protect before and during construction
- MITIGATION  
What happens when removal is unavoidable?
- ENFORCEMENT  
What happens when trees aren't protected?



QUESTIONS?

[chad@codewrightplanners.com](mailto:chad@codewrightplanners.com)