

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest
Planning Commission

To be held Tuesday, April 25, 2023 at 5:30 p.m.

A. Roll Call

B. Approval of Minutes – February 21, 2023 Meeting

C. Consideration of Recommendation to Board of Commissioners

Chapter 153.043 – Maximum Roof Coverage

D. Consideration of Recommendation to Board of Commissioners

Chapter 153.048 – Impervious Surface Coverage

E. Consideration of Recommendation to Board of Commissioners

Chapter 153.071 – Recreational and Commercial Vehicle Storage

F. Tree Protection Ordinance and Landscape Plan Ordinance – Update and Discussion

G. Adjourn

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

Meeting ID: 830 1514 8121

Passcode: 226922

Planning Commission Meeting Minutes

February 21, 2023

5:30pm

Roll call was taken by Chairman Paul Zimmerman. Those in attendance are Chairman Paul Zimmerman, Mr. Michael Flynn (Via Zoom), Mr. Tony Saponaro, Mr. Ken Hornowski, Mr. Jonathan Kanipe, Town Manager, Town Attorney, Mr. Billy Clarke and Public Works Director, Harry Buckner were present.

Chairman Zimmerman started the meeting at 5:32pm.

Chairman Zimmerman asked for approval of the minutes from the January 24, 2023 meeting. Mr. Ken Hornowski moved to approve the minutes as amended. Mr. Tony Saponaro seconded the motion. The motion was unanimously approved.

Mr. Zimmerman discussed the Abandoned and Junked Vehicle Ordinance. The Planning Board revised the ordinance to the following:

CHAPTER 94: ABANDONED, JUNKED AND NUISANCE VEHICLES

Section

- 94.01 Intent
- 94.02 Definitions
- 94.03 Administration
- 94.04 Abandoned vehicle unlawful; removal authorized
- 94.05 Nuisance vehicle unlawful; removal authorized
- 94.06 Junked motor vehicle regulated
- 94.07 Removal of vehicles; pre-towing notice required; appeals
- 94.08 Exceptions to prior notice requirement
- 94.09 Removal of vehicles; post-towing notice requirements
- 94.10 Right to probable cause hearing before sale or final disposition of vehicle
- 94.11 Redemption of vehicle during proceedings
- 94.12 Sale and disposition of unclaimed vehicle
- 94.13 Conditions on removal of vehicles from private property
- 94.14 Protection against criminal or civil liability
- 94.15 Exceptions
- 94.16 Unlawful removal of impounded vehicle

§ 94.01 INTENT.

It shall be the intent of this chapter to promote and enhance the aesthetic appearance of the town; to protect property values in the town; and to enhance public safety. It is further the intent of this chapter to promote and enhance the attractiveness and safety of the town's residential streets by controlling and regulating abandoned, junked and nuisance vehicles.

§ 94.02 DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE. As authorized and defined in G.S. § 160A-303, an ABANDONED MOTOR VEHICLE is a motor vehicle which:

- (1) Is left upon a public street or highway in violation of a law or ordinance a;
- (2) Is left on a public street or highway for longer than two days;
- (3) Is left on property owned or operated by the town for longer than 24 hours; or
- (4) Is left on private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

AUTHORIZING OFFICIAL. Any code enforcement officer or police officer on duty that day or the Town Manager, respectively, is designated to authorize the removal of vehicles under the provisions of this chapter.

JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 160A-303.2, a vehicle that does not display a current license plate upon that vehicle and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move.

MOTOR VEHICLE OR VEHICLE. All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

NUISANCE VEHICLE. A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance and unlawful and including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- (5) One which has areas of confinement, such as trunks, hoods and the like, which cannot be operated from inside the area of confinement;
- (6) One so situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal, glass or other rigid materials; or
- (9) The creation of another similar condition(s) or circumstance(s) which exposes the public to safety or health hazards.

§ 94.03 ADMINISTRATION.

The Police Department and the Town Manager shall be responsible for the administration and enforcement of this chapter. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be “abandoned” on the public streets and highways within the town and on property owned by the town. The Town Manager or Town

Manager's designee shall be responsible for administering the removal and disposition of "nuisance" or "junked motor vehicles" located on private property. The town may, on a case-by-case basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town Police Department in enforcing other laws or in otherwise carrying out their duties.

§ 94.04 ABANDONED VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.

(A) Upon investigation, a proper authorizing official of the town may determine and declare that a vehicle is a health or safety hazard or an abandoned vehicle as defined above, and order the vehicle removed.

(B) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared an abandoned vehicle.

§ 94.05 NUISANCE VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.

(A) Upon investigation, a proper authorizing official of the town may determine and declare that a vehicle is a health or safety hazard or a nuisance vehicle as defined above, and order the vehicle removed.

(B) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

§ 94.06 JUNKED MOTOR VEHICLE REGULATED.

(A) Upon investigation, the Town Manager or Town Manager's designee may order the removal of a junked motor vehicle as defined in this chapter after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The findings shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance. The following, among other relevant factors, may be considered:

- (1) Protection of property values;
- (2) Protection of public health and safety;
- (3) Preservation of the character and integrity of the community; or

Provided, however, no vehicle that is used on a regular basis for business or personal use shall be removed or disposed of pursuant to this division (A).

(B) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(C) A vehicle wholly enclosed inside a garage, other building, and not visible to the public shall not be considered a junked vehicle for the purposes of this chapter.

§ 94.07 REMOVAL OF VEHICLES; PRE-TOWING NOTICE REQUIRED; APPEALS.

(A) Notice required. Except as set forth in § 94.08, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. Reasonable diligence shall include notification to the registered owner of the vehicle at his

or her last known address according to the latest registration certificate or certificate of title on file with the North Carolina Division of Motor Vehicles; notice to the owner of real property as recorded in the Buncombe County Registry; notice to the owner, lessee or occupant as contained in the records of the town. The person who mails the notice shall retain a written record to show the name and address to which mailed, and the date mailed. If the names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specific date (no sooner than two days after the notice is affixed). The notice shall state that the vehicle will be removed by the town on specified date, no sooner than two days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(B) Appeals. The registered owner or person entitled to possession of a vehicle which has been determined to be an abandoned vehicle on private property, nuisance vehicle or junked motor vehicle who has received a notice pursuant to division (A) of this section may appeal the determination. In the case of notice for removal of a junked motor vehicle where the determination has been made that the aesthetic benefits of removing the vehicle outweigh the burdens on the private property owner, in accordance with § 94.06(A), the registered owner or person entitled to possession of the junked motor vehicle may appeal that determination. Any appeal shall be made within ten days upon receipt of the notice for removal of the vehicle as provided in division (A) of this section. All appeals shall be made to the Town Board of Commissioners in writing. Appeals held pursuant to this section shall be conducted by the Town Board of Commissioners within 45 days after the receipt of a request for a hearing, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

§ 94.08 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.

The following vehicles may be removed without prior notice to the owner or person entitled to possession:

(A) Vehicles abandoned on the public streets. For vehicles left on the public streets and highways, the Police Department or Town Manager hereby determines that immediate removal of the vehicles may be warranted when they are:

- (1) Obstructing traffic;
- (2) Parking in violation of an ordinance prohibiting or restricting parking;
- (3) Parked in a no-stopping or standing zone;
- (4) Parked in loading zones;
- (5) Parked in violation of temporary parking restrictions imposed under any town ordinance.

(B) Nuisance vehicles and abandoned vehicles on private property. These vehicles may be removed without giving prior notice in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety, and welfare. By way of illustration and not limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in a location or manner posing a traffic hazard or vehicles causing damage to public or private property.

(C) Vehicles left on private property. A vehicle may be removed that has been left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours and the owner, occupant or lessee has complied with § 94.13, or in those circumstances where there is a finding of a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare.

§ 94.09 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

(A) Any abandoned, nuisance or junked vehicle which has been ordered removed may, as directed by the proper authorizing official of the town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform those services for the town. Whenever a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, the notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and

(5) The procedure the owner must follow to request a probable cause hearing on the removal.

(B) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in divisions (A)(1) through (5) of this section, shall also be mailed to the registered owner's last known address, unless the notice is waived in writing by the vehicle owner or his or her agent.

(C) If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours of the removal of the vehicle. Written notice by mail shall be deemed to have been given upon deposit in the US mail.

(D) Whenever an abandoned, nuisance or junked motor vehicle is removed and the vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts, including checking the vehicle identification number to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in divisions (A)(1) through (5) of this section.

§ 94.10 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in accordance with the provisions of G.S. Chapter 20, Article 7A, as amended.

§ 94.11 REDEMPTION OF VEHICLE DURING PROCEEDINGS.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of the fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this chapter.

§ 94.12 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.

Any abandoned, nuisance, or junked vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of the vehicle shall be carried out in accordance with G.S. Chapter 44A, Article 1.

§ 94.13 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.

Except as provided in § 94.06(A), as a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state laws. In no case will a vehicle be removed by the town from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Manager pursuant to § 94.06(A). The town shall require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage or sale thereof.

§ 94.14 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.

Any person who removes a vehicle pursuant to this chapter shall not be held liable for damages for the removal of the vehicle to the owner, lien holder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of the vehicle, or intentionally or negligently inflicts injury upon any person in the removal of the vehicle, may be held liable for damages.

§ 94.15 EXCEPTIONS.

Nothing in this chapter shall apply to any vehicle:

(A) Which is located in a bona fide "automobile graveyard" or "junkyard" as defined in G.S. §§ 136-143, et seq. and G.S. §§ 160A-303.1 and 160A-303.2;

(B) Which is in an enclosed building;

(C) Which is on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or

(D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

§ 94.16 UNLAWFUL REMOVAL OF IMPOUNDED VEHICLE.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the town any vehicle which has been impounded pursuant to the provisions of this chapter unless and until all towing and impoundment fees which are due, or bond in lieu of the fees, have been paid.

A motion was made by Mr. Ken Hornowski to pass this revised Ordinance to have the Board of Commissioners review it. The motion was seconded by Mr. Tony Saponaro and unanimously approved.

Next, the EV Charging Station Ordinance was also revised by the Planning Board which includes the following:

Existing Ordinance

§ 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)

Proposed Change

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

(A) 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 or constructed screening. Constructed screening shall be subject to approval by the Board of Adjustment. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

(B) Electric vehicle (EV) charging stations are hereby included as a utility structure for the purposes of this chapter. The Town recommends that EV charging stations be installed inside a garage and out of the public view. However, when this is not possible, the following requirements shall apply.

- 1) The EV charging station shall not be located within a front, side, or rear yard setback.
- 2) The EV charging station shall be screened from the public road and adjacent properties per requirements in section (A) above. The only exception to this requirement is that screening is not required in a location inhibiting the ability to charge the vehicle per the manufacturer's recommendation.
 - a. A site plan shall be provided to the Town prior to installation indicating the location, species, and planting timeline for screening. This site plan shall also include applicable setback lines for the appropriate zoning district and the distance of the proposed EV charging station to each property line.
- 3) Upon approval from the Town regarding the placement of the EV charging station, the property owner must obtain building inspections approval from Buncombe County for installation. The applicant shall provide all appropriate documentation submitted to Buncombe County, and subsequent approvals, to the Town once permitted.

A motion was made by Mr. Paul Zimmerman to send this Ordinance for approval to the Board of Commissioners and that it is also consistent with the Comprehensive Plan. Mr. Tony Saponaro seconded the plan and was unanimously approved.

Mr. Zimmerman said there will be a joint meeting between the Board of Adjustment and the Planning Commission which will be held on Monday, March 6th at 4:00pm. The purpose of this meeting is to gather feedback from the Board of Adjustment members on the Town's Zoning Ordinance. This meeting will be open to the public.

Mr. Kanipe and Mr. Mike Dale are continuing to review the plans related to replacement guidelines and species of trees. Mr. Kanipe will most likely have this ready for the Board of Commissioners meeting in March.

Mr. Kanipe said he has received twenty applications for the newly created Town Planner position. There are many well qualified candidates for this position, and he will begin the interview and assessment process within the next few weeks.

Finally, Mr. Kanipe said he has received seven applications for the various advisory boards and will be working with the Board of Commissioners to make this appointment. There will likely be an interview process for this. Mr. Michael Flynn discussed his intent to resign from the Planning Board at the end of June 2023.

Chairman Zimmerman adjourned the meeting at 6:24 pm.

The next meeting is scheduled for Tuesday, April 25th at 5:30pm.

Ms. Laura Jacobs, Town Clerk
Town Clerk

Mr. Paul Zimmerman,
Chair



PLANNING COMMISSION MEETING

STAFF MEMORANDUM

APRIL 25, 2023

AGENDA ITEM C

CONSIDERATION OF RECOMMENDATION TO BOARD OF COMMISSIONERS

Chapter 153.043 – Maximum Roof Coverage Requirements

Background

The Town's Maximum Roof Coverage ordinance was identified for review and potential amendments. The Planning Commission has discussed this item previously and Chair Paul Zimmerman provided potential amendments and requested feedback at the Commission meeting in November 2022. The draft ordinance attached to this memorandum reflects those changes as discussed in November 2022.

Consideration of Recommendation to Board of Commissioners

This ordinance amendment, if recommended for approval and approved by the Board of Commissioners, would replace the existing Chapter 153.043 in the Zoning Ordinance. An amendment to the Zoning Ordinance requires a formal recommendation to the Board of Commissioners. The Planning Commission must also submit a statement to the Board that this recommended amendment is consistent with the Town's Comprehensive Plan.

A public hearing must be held prior to any formal consideration by the Board of Commissioners. This public hearing is likely to occur at the June 2023 meeting if the Planning Commission recommends approval of this amendment.

POTENTIAL AMENDMENT TO ORDINANCE

§ 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. This is measured from the outside edge of the gutter, if any, vertically to the ground.

(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:

The below table can also be used by simply rounding up or down to the nearest lot acreage. For lots larger than 5.5 acres or for exact MRC allowances for lots falling between points in the below table, the below equation shall be used as the definitive allowance.

<u>Lot Size (Acres)</u>	<u>Max Roof Coverage</u>	<u>Lot Size (Acres)</u>	<u>Max Roof Coverage</u>	<u>Lot Size (acres)</u>	<u>Max Roof Coverage</u>
<u>0.3</u>	<u>1110</u>	<u>1.4</u>	<u>5459</u>	<u>3.0</u>	<u>7611</u>
<u>0.4</u>	<u>1922</u>	<u>1.5</u>	<u>5654</u>	<u>3.25</u>	<u>7837</u>
<u>0.5</u>	<u>2552</u>	<u>1.6</u>	<u>5836</u>	<u>3.5</u>	<u>8047</u>
<u>0.6</u>	<u>3067</u>	<u>1.7</u>	<u>6008</u>	<u>3.75</u>	<u>8241</u>
<u>0.7</u>	<u>3502</u>	<u>1.8</u>	<u>6169</u>	<u>4.0</u>	<u>8424</u>
<u>0.8</u>	<u>3879</u>	<u>1.9</u>	<u>6322</u>	<u>4.25</u>	<u>8595</u>
<u>0.9</u>	<u>4212</u>	<u>2.0</u>	<u>6467</u>	<u>4.5</u>	<u>8756</u>
<u>1.0</u>	<u>4509</u>	<u>2.2</u>	<u>6736</u>	<u>4.75</u>	<u>8921</u>
<u>1.1</u>	<u>4779</u>	<u>2.4</u>	<u>6981</u>	<u>5.0</u>	<u>9054</u>
<u>1.2</u>	<u>5024</u>	<u>2.6</u>	<u>7207</u>	<u>5.25</u>	<u>9191</u>
<u>1.3</u>	<u>5250</u>	<u>2.8</u>	<u>7417</u>	<u>5.5</u>	<u>9325</u>

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

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).

(D) The equation which may also be used to calculate MRC is: $MRC = 2823.5 \text{ LN}(\text{Acreage})$, where 'LN' is the natural logarithm mathematical function. This may be calculated using Excel, if needed.

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



**PLANNING COMMISSION MEETING
STAFF MEMORANDUM**

APRIL 25, 2023

**AGENDA ITEM D
CONSIDERATION OF RECOMMENDATION TO BOARD OF COMMISSIONERS**

Chapter 153.048 – Impervious Surface Coverage

Background

The Town's Impervious Surface Coverage ordinance was identified for review and potential amendments at the same time as the maximum roof coverage ordinance. Chair Paul Zimmerman provided potential amendments and requested feedback at from the Commission in November 2022. The draft ordinance showing redline deletions and blue line additions is attached to this memorandum and reflects those changes discussed in November 2022.

Consideration of Recommendation to Board of Commissioners

This ordinance amendment, if recommended for approval and approved by the Board of Commissioners, would replace the existing Chapter 153.048 in the Zoning Ordinance. An amendment to the Zoning Ordinance requires a formal recommendation to the Board of Commissioners. The Planning Commission must also submit a statement to the Board that this recommended amendment is consistent with the Town's Comprehensive Plan.

A public hearing must be held prior to any formal consideration by the Board of Commissioners. This public hearing is likely to occur at the June 2023 meeting if the Planning Commission recommends approval of this amendment.

POTENTIAL AMENDMENT TO ORDINANCE

§ 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 maximum impervious coverage is proportional to the lot size. The maximum area permitted is as follows:

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

<u>Lot Size (Acres)</u>	<u>Max Impervious Surface</u>	<u>Lot Size (Acres)</u>	<u>Max Impervious Surface</u>	<u>Lot Size (acres)</u>	<u>Max Impervious Surface</u>
<u>0.3</u>	<u>3600</u>	<u>1.4</u>	<u>17175</u>	<u>3.0</u>	<u>23892</u>
<u>0.4</u>	<u>6135</u>	<u>1.5</u>	<u>17783</u>	<u>3.25</u>	<u>24597</u>
<u>0.5</u>	<u>8102</u>	<u>1.6</u>	<u>18352</u>	<u>3.5</u>	<u>25250</u>
<u>0.6</u>	<u>9708</u>	<u>1.7</u>	<u>18886</u>	<u>3.75</u>	<u>25858</u>
<u>0.7</u>	<u>11067</u>	<u>1.8</u>	<u>19390</u>	<u>4.0</u>	<u>26427</u>
<u>0.8</u>	<u>12244</u>	<u>1.9</u>	<u>19866</u>	<u>4.25</u>	<u>26961</u>
<u>0.9</u>	<u>13282</u>	<u>2.0</u>	<u>20318</u>	<u>4.5</u>	<u>27465</u>
<u>1.0</u>	<u>14310</u>	<u>2.2</u>	<u>21158</u>	<u>4.75</u>	<u>27941</u>
<u>1.1</u>	<u>15050</u>	<u>2.4</u>	<u>21925</u>	<u>5.0</u>	<u>28393</u>
<u>1.2</u>	<u>15817</u>	<u>2.6</u>	<u>22630</u>	<u>5.25</u>	<u>29233</u>
<u>1.3</u>	<u>16522</u>	<u>2.8</u>	<u>23284</u>	<u>5.5</u>	<u>29625</u>

<u>Lot Size</u>	<u>Impervious Surface</u>	<u>Sample Calculations 43,560-Square Feet - 1 Acre</u>
<u>Up to 1 acre</u>	<u>27.5% x lot area</u>	<u>E.g., 0.85-acre x 43,560 x 27.5% = 10,182 square feet</u>
<u>Over 1 acre to 3 acres</u>	<u>11,979-square feet or 25% x lot area</u>	<u>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</u>
<u>Over 3 acres to 6 acres</u>	<u>32,670-square feet or 20% x lot area</u>	<u>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</u>

(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.

(E) The equation which may also be used to calculate Maximum Impervious Coverage (MIC) is: $MIC = 8812.5 \ln(\text{Acreage})$, where 'LN' is the natural logarithm mathematical function. This may be calculated using Excel, if necessary

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



**PLANNING COMMISSION MEETING
STAFF MEMORANDUM**

APRIL 25, 2023

**AGENDA ITEM E
CONSIDERATION OF RECOMMENDATION TO BOARD OF COMMISSIONERS**

Chapter 153.071 – Recreational and Commercial Vehicle Storage

Background

The Town's existing recreational and commercial vehicle storage ordinance was also identified for review and potential amendments at the meeting in November 2022. The draft ordinance showing redline deletions and blue line additions is attached to this memorandum and reflects those changes discussed previously.

Consideration of Recommendation to Board of Commissioners

This ordinance amendment, if recommended for approval and approved by the Board of Commissioners, would replace the existing Chapter 153.071 in the Zoning Ordinance. An amendment to the Zoning Ordinance requires a formal recommendation to the Board of Commissioners. The Planning Commission must also submit a statement to the Board that this recommended amendment is consistent with the Town's Comprehensive Plan.

A public hearing must be held prior to any formal consideration by the Board of Commissioners. This public hearing is likely to occur at the June 2023 meeting if the Planning Commission recommends approval of this amendment.

POTENTIAL AMENDMENTS TO ORDINANCE

§ 153.071 RECREATIONAL AND COMMERCIAL VEHICLE STORAGE.

(A) (1) Commercial vehicles and recreational vehicles, including, but not limited to, motor-powered recreational vehicles ([motor homes and unregistered all-terrain vehicles of any kind](#)), recreational trailers, campers, boats ([including sailboats and motorboats](#)) and other water craft, [enclosed utility trailers](#), 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)



PLANNING COMMISSION MEETING

STAFF MEMORANDUM

APRIL 25, 2023

AGENDA ITEM F

TREE PROTECTION ORDINANCE AND LANDSCAPE PLAN ORDINANCE

Update and Discussion

Background

Town staff and Planning Commission member Tony Saponaro have been working on revisions to the Town's existing Tree Protection Ordinance for several months. This review arose from the Town's Comprehensive Planning process and the goal of having more desirable species being replanted within the Town. This reforestation with diversified and native species will lead to a healthier and more resilient forest, as well as preserving the aesthetic beauty already existing with the Town.

Existing Tree Protection Ordinance - Update

Town staff and Mr. Saponaro have taken considerable time to construct an ordinance that is workable and achieves the above goal. The attached revisions include several new components:

1. New definitions that more accurately reflect the Town's existing tree review process and include new categories for removal.
2. Separate definitions for residential and non-residential uses, and subsequently, new charts that differentiate replacement amounts within these categories.
3. Charts that differentiate replacement categories between areas inside and outside of setbacks.

The ordinance also includes a reference to the Town's Recommended Planting List (RPL) which will be updated at least bi-annually to reflect best practices. This RPL will focus on native species, preferred species, and ensuring that a polyculture is created within the Town's forest.

New Construction Landscaping Requirements – including Tree Removal and Replacement

As we revised the existing ordinance, staff observed that two distinct activities are being addressed within the ordinance.

1. Existing, developed properties requesting tree removal under what would truly be considered property “maintenance”. These are the typical, day-to-day requests we get for removing 1-2 trees and are usually due to concerns over health and safety (i.e. they are unprotected trees). From a neighbor perspective, these are not typically adversarial and/or questioned by neighbors.
2. Undeveloped lots being cleared for a new home and/or a new addition often require extensive tree removal. These qualify as “new activities” and encompass nearly all the removal complaints and phone calls received by the Town. While an ordinance should not be based on complaints, it is evident the bulk of feedback and concern that residents typically express is a result of new construction activity.

As a result of the observation above, staff recommends utilizing the existing tree ordinance and any revisions to cover Activity 1 above and then re-work the buffering, landscaping, and screening section to cover all new construction activities including for single-family residences. The current landscaping, buffering, and screening ordinance (which is attached) is currently applicable to non-residential properties. An amendment in this ordinance to include new residential construction (including significant additions) would allow the Town to establish greater enforcement over approved landscape plans and allow neighbors to understand more fully what is expected when a plan is approved.

Specifically related to tree protection and removal, the requirements for the final landscaping plan would include specific numbers, species, and locations of those removed and required replantings. The final landscape plan would be part of the zoning approval and any deviation from that plan – including not fulfilling the replanting requirements or removing additional trees – would require a revised plan and subsequent plan approval. In this scenario, Chart 3 (as shown in the draft tree ordinance attached) would be relocated to this revised section of the Zoning Ordinance.

Feedback Requested

Staff requests feedback from the Planning Commission regarding this potential separation of the Tree Protection Ordinance prior to moving forward. This is by no means a method to slow down this process, but rather, to assure the Town is fully accomplishing the goals identified. By separating the two sections, as noted above, these goals can be accomplished and presented more fully next month.

Chapter 153.050 Tree Preservation

~~CHAPTER 93: TOWN BEAUTIFICATION~~

Section

~~General Provisions~~

- ~~—93.01 Protection of parkways~~
- ~~—93.02 Policy regarding signs~~
- ~~—93.03 Signs and posters generally~~
- ~~—93.04 Definitions~~
- ~~—93.05 Signs and posters; requirements~~

~~Parks and Recreation~~

- ~~—93.15 Destruction, injury to park property~~
- ~~—93.16 Riding motorized vehicles in park areas~~

Tree Protection

- ~~—153.0530~~ Purpose
- ~~—93.31~~153.051 ~~Identification~~Definitions
- ~~—93.32~~153.052 Removal of protected trees
- ~~—93.33~~153.053 Applications for removal of more than ten (10) protected trees ~~in excess of ten~~
- ~~—93.34~~153.054 Removal of unprotected trees
- ~~—93.35~~153.055 Pre-construction conference and supervision
- ~~—93.36~~153.056 Enforcement
- ~~—93.37~~153.057 Drip line protection
- ~~—93.38~~153.058 Replacement of trees
- ~~—93.39~~153.059 Inspections, Appeals, Bond, and Penalty
- ~~—93.40 Appeals~~
- ~~—93.41 Bond~~

- ~~—93.99 Penalty~~

(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 and appropriate replacement 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~~ as noted in part C below. The Town is focused on maintaining the current health of the forest and increasing species diversity, with a primary goal to more quickly replace hardwood trees, other native trees, and trees of preference. 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 Ttown. Trees provide buffer and a natural canopy, and are a hallmark of the ~~town~~ Town requiring protection. Damage to and removal of trees requires regulation and control.

(C) Exceptions. This subchapter does not apply to properties owned, leased, or controlled by the Town of Biltmore Forest. This subchapter does not apply to properties that have a State of North Carolina approved and active forestry management plan. Once an active forestry management plan is no longer in place, the exception for the property will be removed. Property owners with an active forestry management plan shall provide a copy of this plan to the Town of Biltmore Forest each calendar year by January 31.

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

§ ~~93.34~~153.051 IDENTIFICATION DEFINITIONS.

~~—(A)—~~**NON-RESIDENTIAL USES.** For the purposes of this chapter, non-residential uses may include specific uses found throughout the Town that do not encompass single-family or multi-family residential dwellings. These uses may exist within a residential zoning district, but by actual use, are not residential in nature. Examples of these uses may include, but are not limited to, public or private schools; country, athletic, and social clubs; medical or dental offices and campuses.

ORDINANCE ADMINISTRATOR. For the purposes of this chapter, the ordinance administrator charged with administration, inspection, review, and enforcement is the Town Manager or his/her designee.

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

RECOMMENDED PLANTING LIST (RPL). A list developed and updated by the Town Arborist that includes preferred species based on the tree being removed and acceptable replacement locations. For all replanting requirements, a minimum of sixty-five (65) percent of the total replacement trees must come from the RPL with twenty-five (25) percent of the total replacement trees being those species identified as trees of preference, as defined below. The replanting list is updated every six (6) months and is available for distribution from the Town.

RESIDENTIAL USES. For the purposes of this chapter, residential uses include single-family, owner-occupied detached dwelling units found within the R-1, R-2, and R-3 zoning districts. This definition includes attached multi-family residential units found within the R-1, R-2, and R-3 zoning districts.

TREES OF PREFERENCE (TOP). Trees that warrant additional attention and regulation due to being a preferred native species or having distinctive height and/or diameter. Trees of preference include any healthy, living tree and includes the following:

(A) Has a trunk diameter at breast height (DBH) of thirty-six (36) inches or more;

(B) A trunk DBH of twenty-four (24) inches or more in the case of the following species:

SPECIFIC SPECIES TO BE ADDED HERE PRIOR TO FINAL CONSIDERATION BY PLANNING COMMISSION

UNREGULATED TREE. A tree that is less than six (6) inches in diameter, regardless of height or species, is to be unregulated and not subject to the provisions of this chapter.

UNPROTECTED TREE. A tree that is six inches or more in diameter at a height of four and a half feet from the ground, and is dead, produces no foliage during normal growing seasons, or a tree that is diseased or damaged to the extent that it is structurally compromised and poses a safety hazard, or a tree that, for any other reason, poses a safety hazard. Safety hazard concerns are evaluated by the Town Arborist in accordance with best management practices developed by the International Society of Arboriculture (ISA).

~~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~~153.052 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~~Ordinance Administrator for the removal, and paying any applicable fee. The ~~Town Manager, in his or her discretion,~~Ordinance Administrator 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~~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~~Ordinance Administrator, may allow up to ten (10) protected trees to be removed. Any protected trees removed shall be replaced as outlined in § ~~93.38~~153.058 below.

(B) If the ~~Town Manager~~Ordinance Administrator 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~~Ordinance Administrator 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 Ordinance Administrator~~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 Ordinance Administrator~~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 Ordinance Administrator~~Town Manager~~ to the Board of Adjustment within five (5) business 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~~153.053 APPLICATIONS FOR REMOVAL OF ~~PROTECTED TREES IN EXCESS OF TEN. MORE THAN TEN (10) PROTECTED TREES.~~

(A) 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. A fee for this application, as set forth annually in the adopted Schedule of Fees, shall be paid along with this application.~~

(B) An application for the removal of thirty (30) ~~30~~ or more protected trees on a property must be submitted to the Board of Commissioners for review and approval. A fee for this application, as set forth annually in the adopted Schedule of Fees, shall be paid along with this application. ~~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 a case-by-case basis. The cumulative removal of thirty (30) or more protected trees from a single property in one year ~~twelve-month period~~ 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~~153.054 REMOVAL OF UNPROTECTED TREES.

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

(B) The Ordinance Administrator~~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 Ttown before final approval is given. The Ttown 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~~153.058 below.

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

NOTE: THE FOLLOWING SECTION IS BEING CONSIDERED FOR REMOVAL TO BUFFERING AND LANDSCAPING SECTION FOR NEW CONSTRUCTION.

§ ~~93.35~~153.055 PRE-CONSTRUCTION CONFERENCE AND SUPERVISION.

~~(A)~~ (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 Ttown and the applicant to review procedures for protection and management of all protected trees and other landscape elements identified in the ~~approved~~ final 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~~ Ordinance Administrator that such activity is taking place.

(B) The applicant shall provide the following at least seven (7) days prior to the pre-construction conference:

- 1) Final landscaping plan, showing all protected and unprotected trees to be removed, and all replacement trees to be planted.
- 2) Chart showing the quantity of trees, scientific species name, and tree designation (protected, unprotected, or tree of preference) and replacement quantities required.
- 3) Final grading plan showing tree preservation limits and limits of disturbance.

~~(C)~~ (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.

~~(D)~~ (E) 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~~ 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~~153.056 ENFORCEMENT.

If aAny unauthorized removal, cutting, or damage to protected or unprotected ~~may result in the Ordinance Administrator trees takes place~~ placing, the ~~Town Manager may issue~~ a stop-work order on any activity on the property. This order ~~which~~ shall remain in effect until all corrections are made

to bring the property into compliance with this chapter, up to and including a final landscaping plan showing the full tree replacement as required by 153.038 below.

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

§ ~~93.37~~153.057 DRIP LINE PROTECTION.

_____The health of protected trees requires the prevention of soil disturbance within the drip line of the trees. Covering this area with pavement or other materials, including excess soil, can affect the health of the tree. Final Landscape landscape plans, to the extent feasible, shall protect this area around the tree and denote tree save areas on the plan. There shall be no soil disturbance within the drip line of trees on adjacent properties without prior written approval from the Town and adjacent property owner.

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

§ ~~93.38~~153.058 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:~~The replacement of protected and unprotected trees and trees of preference shall be established in accordance with the following requirements:

Table 1 - Residential Tree Replacement Requirements

SIZE OF TREE REMOVED (DBH)	INSIDE SETBACK AREA						OUTSIDE SETBACK AREA					
	TREE OF PREFERENCE		PROTECTED		UN-PROTECTED		TREE OF PREFERENCE		PROTECTED		UN-PROTECTED	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	N/A	N/A	2	2"	1	2"	N/A	N/A	1	2"	1	2"
13"-18"	N/A	N/A	3	2"	1	2"	N/A	N/A	2	2"	2	2"
19"-30"	4	4"	4	3"	2	3"	3	4"	3	3"	3	2"
30"+	5	4"	5	3"	3	3"	3	4"	3	4"	3	3"

Table 2 - Non-Residential Tree Replacement Requirements

SIZE OF TREE REMOVED (DBH)	INSIDE SETBACK AREA						OUTSIDE SETBACK AREA					
	TREE OF PREFERENCE		PROTECTED		UN-PROTECTED		TREE OF PREFERENCE		PROTECTED		UN-PROTECTED	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	N/A	N/A	1	2"	1	2"	N/A	N/A	N/A	N/A	N/A	N/A
13"-18"	N/A	N/A	2	2"	1	2"	N/A	N/A	1	2"	N/A	N/A
19"-30"	3	4"	3	3"	2	2"	2	3"	1	3"	1	2"
30"+	3	4"	3	4"	2	3"	2	4"	3	4"	1	2"

NOTE: THE FOLLOWING SECTION IS BEING CONSIDERED FOR REMOVAL TO BUFFERING AND LANDSCAPING SECTION FOR NEW CONSTRUCTION.

Table 3 - New Construction Tree Replacement Requirements

SIZE OF TREE REMOVED (DBH)	INSIDE SETBACK AREA						OUTSIDE SETBACK AREA					
	TREE OF PREFERENCE		PROTECTED		UN-PROTECTED		TREE OF PREFERENCE		PROTECTED		UN-PROTECTED	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
13"-18"	N/A	N/A	2	2"	1	2"	N/A	N/A	1	2"	N/A	N/A
19"-30"	3	4"	3	3"	2	2"	2	3"	1	3"	1	2"
30"+	3	4"	3	4"	2	3"	2	4"	3	4"	1	2"

Minimum size of existing tree	Replacement of protected tree	Replacement of unprotected 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

-

—(B) A replacement tree shall be in the ground up to one (1) year prior to the removal of any tree in order to count toward replacement. ~~Any~~ Replacement trees planted after existing tree removal shall be in the ground within six months of removal of the original tree. The ~~Town Manager or Board of Adjustment~~ Ordinance Administrator may, for good cause shown, and in their sole discretion, extend this period for ~~up to an additional~~ six months.

—(C) The Town's Recommended Planting List (RPL) shall be utilized by applicants when determining what species of trees are to be replanted. 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. A minimum of sixty-five (65) percent of the total replacement trees shall come from the RPL with a minimum of twenty-five (25) percent of total replacement trees coming from the Trees of Preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

—(D) The minimum size for replacement ~~for all deciduous trees is two inches diameter~~ noted on the above charts for each use and the location of each existing tree being removed (measured from one foot above ground level). Evergreen trees that are planted as replacement trees shall be a minimum of eight (8) feet in height at the time of planting. ~~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~~ Ordinance Administrator ~~or by the Board of Adjustment (in the case of an appeal from to the town~~Town) or the ~~Town Manager~~ Ordinance Administrator may authorize the replanting or replacement of trees in a location or locations where such replacement trees are more likely to survive. For existing residential lots where mature canopies remain after tree removal, replacement requirements may be amended regarding location and species to provide the best opportunity for healthy growth. This replacement requirement amendment is meant solely as a means to allow for maintenance of existing residential lots where the canopy is thick and growing new trees would be impractical and/or difficult. This allowance is not intended for new residential construction.

(F) The Town encourages a diversity of species during replanting, with a focus on replenishing hardwood trees within the forest. However, to provide appropriate screening and buffering, particularly among non-residential uses, trees that have a lower canopy (height) at maturity are also encouraged for inclusion in a replanting plan. This combination will ensure the canopy is varied in both height and species.

(G) Replacement trees shall not be planted within the Town's right-of-way or in an area to obstruct the view of traffic.

~~(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~~153.059 INSPECTIONS, APPEALS, BOND, AND PENALTY.

(A) —All protected trees designated to remain, pursuant to a tree survey, plus any replacement trees shall be inspected by the ~~Town Manager or his or her designee~~Ordinance Administrator six months following any construction ~~and/or replacement trees,~~ to ensure the trees are in a healthy condition. The ~~Town Manager~~Ordinance Administrator ~~can~~may require replacement or replanting of replacement trees if the appropriate replacement trees are not in place during this review:

~~(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~~Ordinance Administrator may file, within five (5) days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be subject to review by the Board of Commissioners.

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

(B)

§ ~~93.41~~ BOND.

(C) —At the option of the Ttown, a bond or other type of guarantee can be required of the property owner and/ or applicant when initiating new constructionsubmitting a tree removal application, to ensure ~~that all replanting requirements permits and agreements~~ are met; to the satisfaction of the ~~town~~Town.

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

Any violation of this chapter shall be subject to the penalty provisions found in §153.999 of the Town of Biltmore Forest Zoning Ordinance. § ~~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.~~

(D) ~~(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 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)