

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest  
Planning Commission

To be held Tuesday, January 24, 2023 at 5:30 p.m.

**\*\*\*CHANGE TO MEETING\*\*\***

***THE JANUARY 24, 2023 MEETING WILL BE HELD REMOTELY VIA ZOOM  
PLEASE ACCESS THE MEETING VIA THE LOG-IN INFORMATION BELOW***

- A. Roll Call
  - B. Approval of Minutes – November 29, 2022 Meeting
  - C. Abandoned and Junked Vehicle Ordinance – Discussion
  - D. Electric Vehicle Charging Station Ordinance – Discussion
  - E. Board of Adjustment Joint Meeting – Topics for Consideration
  - F. Tree Ordinance Update
  - G. Adjourn
- 

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

Meeting ID: 830 1514 8121  
Passcode: 226922

## Planning Commission Meeting Minutes

November 29, 2022

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, and Mr. Harry Buckner, Public Works Director were also present.

Chairman Zimmerman started the meeting at 5:30pm.

Chairman Zimmerman asked for approval of the minutes as amended from the October 25, 2022 meeting. Mr. Tony Saponaro moved to approve the minutes as amended. Mr. Ken Hornowski seconded the motion. The motion was unanimously approved.

Chairman Zimmerman went over the draft of the quick reference guide and asked if this draft could be presented to the Board of Commissioners for their approval. Mr. Hornowski suggested we add the quick reference guide to the back of the directory.

The draft of recreational and commercial vehicles was discussed which shows the minor changes in the ordinance. The draft ordinance of abandoned vehicles, EV charging station ordinance, impervious surface coverage ordinance, and maximum roof coverage draft ordinances were discussed.

## **DRAFT RECREATIONAL AND COMMERCIAL VEHICLE STORAGE ORDINANCE**

§153.071

(A) (1) Commercial vehicles and recreational vehicles, including, but not limited to: motor-powered recreational vehicles (motor homes and all-terrain vehicles of any kind), recreational trailers or campers, sailboats, motorboats and other watercraft and the trailers used to tow or transport any such boat or vehicle, and enclosed utility trailers – 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 any other type of open accessory structure.

(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 a certificate of zoning compliance from the Board of Adjustment

(Ord. passed 10-19-1983; Ord. passed 8-12-2013)

## **DRAFT ABANDONED CAR ORDINANCE - NEW**

§ ABANDONED CARS An abandoned car is considered to a car or truck that can be seen from the road that has not moved in three months AND which has either NO License Plate or a license plate with an expired tag. If a car is found to be abandoned, the homeowner shall be notified in writing that the car is considered abandoned. At that point, they have 30 days to get an appropriate State License tag. Additionally, they must drive the car to the Police station for an inspection to ensure that the car is roadworthy. (If it is NOT roadworthy because of old tires, engine or exhaust problems, etc., then all problems must be corrected). IF this is not done, then the Town will have the car towed, with the cost being passed onto the homeowner.

## **DRAFT EV CHARGING STATION ORDINANCE - NEW**

§ **EV CHARGING STATIONS.** We anticipate that the number of EV Charging Stations will significantly increase in future years. It is specified that, whenever possible, the Charging station shall be located inside the garage. For homes without garages, EV Charging stations shall be placed either:

1. On the side of the home closest to the driveway, or;
2. On a post, not in the front or side setbacks, that is not in the direct line of site from the road.

In ALL cases, the EV Charging Station shall be buffered with approved perennial, non-deciduous plantings such that the EV Charging Station itself cannot be seen from the street.

DRAFT IMPERVIOUS SURFACE COVERAGE ORDINANCE - RESIDENTIAL

§153.048

(A) (1) The 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 directed to the streets and adjacent properties.

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

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

(C) All structures exceeding the Maximum Impervious Surface 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 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 town streets.

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

## DRAFT MAXIMUM ROOF COVERAGE

### §153.043

(A) (1) (a) The MAXIMUM ROOF COVERAGE is defined as the total area under roof, of all primary and accessory structures and buildings, on the lot. This is measured from the outside edge of the gutter, if any, vertically to the ground.

(b) The maximum roof coverage assures the total size of buildings and structures is proportional to the size of the lot.

(2) The maximum roof coverage permitted is 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.

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

(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 LN (Acreage)**, where 'LN' is the natural logarithm mathematical function. This may be calculated using Excel, if needed.

Mr. Saponaro discussed the tree protection ordinance principles. Mr. Saponaro led the group in discussion regarding the establishment of focus areas for trees being the side and rear setbacks and the road frontage region. He discussed residential versus non-residential differences, and new construction versus existing construction. The percentage change in the size of a new home with a new addition should qualify it as needing to follow new construction ordinances versus simple tree removal ordinances was taken into consideration. The Board agreed a revised landscape plan should be submitted for tree removal.

Mr. Michael Heustis, superintendent of the golf course at the Biltmore Forest Country Club said they are working on catching up on dead, diseased, and dying trees.

Public Works Supervisor Mike Dale developed a recommended tree list stating name of trees, size, and habit which the Board went over.

Mr. Flynn said there were a few odds and ends that stated Asheville versus Biltmore Forest in some of the wording of the quick reference guide.

Mr. Zimmerman asked if comments could be submitted on the draft ordinances by next week. The Board agreed.

Chairman Zimmerman adjourned the meeting at 7:06 pm.

The next meeting is scheduled for Tuesday, January 24, 2023 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**

JANUARY 24, 2023



**Agenda Item - C**

**Abandoned and Junked Vehicle Ordinances - Discussion**

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Background

The Planning Commission has discussed the need for a formal “Abandoned and Junked Vehicle” ordinance previously. The Town does not currently have an ordinance that is *specific* to these areas. In prior years, concerns or violations related to these types of vehicles were handled through the Town’s more general “nuisance” ordinances.

As we have reviewed the consideration of crafting an ordinance for this purpose, it seemed appropriate to review other local abandoned and junk vehicle ordinances as well as the state law that governs a municipality’s ability to enforce these regulations. Chair Zimmerman has also provided a memo, attached, related to the purpose behind this discussion and some photo examples within the Town.

Discussion

As you review the other local government ordinances, state law, and Mr. Zimmerman’s memorandum, please feel free to bring any questions you may have for Tuesday’s meeting. The Town Attorney will need to determine where in the Town’s Code of Ordinances (i.e. zoning or municipal code) an ordinance such as this should be placed.

Attachments

1. City of Asheville Abandoned and Junked Vehicle Ordinance
2. Buncombe County Abandoned and Junked Vehicle Ordinance
3. NCGS 160A-303.2
4. Memorandum from Chair Zimmerman

## ARTICLE II. ABANDONED OR JUNKED MOTOR VEHICLES<sup>2</sup>

Notes

<sup>2</sup> *Editor's note(s)*—

Ord. No. 2373, § 1, adopted June 10, 1997, repealed Art. II, §§ 10-26—10-42, which pertained to abandoned, nuisance or junked motor vehicles. Said section also enacted provisions designated as a new Art. II to read as herein set out in §§ 10-26—10-43. See the Code Comparative Table.

### Sec. 10-26. Title.

This article shall be entitled "abandoned or junked motor vehicles."

(Ord. No. 2373, § 1, 6-10-97)

### Sec. 10-27. Administration.

(a) *Responsibilities of city departments.* The chief of police and the planning and development director for the city shall be responsible for the overall administration and enforcement of this article. The chief of police shall be responsible for administering the removal and disposition of vehicles determined to be "abandoned" on the public streets and highways within the city and on property owned or operated by the city and shall further be authorized to designate such vehicles as abandoned vehicles as described herein. The chief of police shall further be responsible for administering the removal and disposition of vehicles designated as abandoned motor vehicles on private property, junked motor vehicles and aesthetic junked motor vehicles. The planning and development director shall be responsible for designating a motor vehicle as an abandoned motor vehicle located on private property, a junked motor vehicle, or an aesthetic junked motor vehicle as defined in this article.

(b) *Right to contract.* The city may contract with private tow truck operators or towing businesses, to remove, store, and dispose of abandoned, junked and aesthetic junked motor vehicles in compliance with this article and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or power of officers of the city's police department and fire department in enforcing other laws or in otherwise carrying out their duties.

(c) *Right to inspect on private property.* Duly authorized officials of the city shall have the right, upon presentation of proper credentials and identification, to enter any premises within the jurisdiction of this article during daylight hours to determine if any vehicle violates the provisions of this article and post said vehicle with a notice as authorized herein.

(Ord. No. 2373, § 1, 6-10-97)

### Sec. 10-28. Definitions.

For purposes of this chapter, certain words and terms are defined as herein indicated:

*Abandoned motor vehicle:* An abandoned motor vehicle is one that:

- (1) Has been left upon a public street or highway in violation of a law or ordinance prohibiting parking; or
- (2) Is left on a public street or highway for longer than seven days; or
- (3) Is left on property owned or operated by the city 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.

*Aesthetic junked motor vehicle:* As defined in N. C. Gen. Stat. sec. 160A-303.2, a motor vehicle on public or private property that does not display a current license plate 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; or
- (3) Is more than five years old and appears to be worth less than \$100.00.

*Authorizing official:* The chief of police or the planning and development director or their respective designee.

*City:* City of Asheville, North Carolina.

*Junked motor vehicle:* As defined in N. C. Gen. Stat. sec. 160A-303, the term junked motor vehicle is a vehicle that is an abandoned motor vehicle that also:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and worth less than \$100.00; or



- (4) Does not display a current license plate.

*Motor vehicle or vehicle:* All machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-29. Abandoned vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.
- (b) Upon investigation, the proper authorizing officials as defined herein may determine that a vehicle is an abandoned vehicle pursuant to the provisions set forth in this article and order the vehicle removed.
- (c) Once a motor vehicle has been designated as an abandoned motor vehicle on the public streets and highways within the city and on property owned or operated by the city, such designation shall be a valid determination for a 12-month period and shall require no additional notice beyond the initial notice to cause its immediate removal.
- (d) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(Ord. No. 2373, § 1, 6-10-97; Ord. No. 4910, § 2, 11-9-21)

**Sec. 10-30. Junked motor vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle to leave or allow the vehicle to remain on the property after it has been declared a junked motor vehicle by the proper authorizing official as set forth in this article. Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.
- (b) Upon investigation, the planning and development director may determine and declare that a motor vehicle is junked. If the planning and development director determines that the vehicle is junked, the planning and development director may then determine that the vehicle is a health or safety hazard and order the vehicle removed if one or more of the following conditions apply:

- (1) A breeding ground or harbor for mosquitoes, insects, snakes, rats or other pests, or being used for storage in a manner which may attract such pests; or
- (2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- (3) A point of collection of pools or ponds of water; or
- (4) A point of concentration or source of leaking of concentrated gasoline, oil or other flammable or explosive materials; or
- (5) So situated or located that there is a danger of it falling or turning over; or
- (6) One which is a source of danger for children through entrapment in areas of confinement that cannot be opened from the inside, or from exposed surfaces of metal, glass or other jagged materials; or
- (7) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.

(Ord. No. 2373, § 1, 6-10-97; Ord. No. 4910, § 2, 11-9-21)

**Sec. 10-31. Aesthetic junked motor vehicle regulated; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to the possession of an aesthetic junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which an aesthetic junked vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed. Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.
- (b) Upon investigation, the planning and development director may order the removal of an aesthetic junked motor vehicle as defined herein after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss to the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant facts may be considered:

- (1) Protection of property values;
- (2) Promotion of tourism and other economic developments opportunities;
- (3) Indirect protection of public health and safety which may be indicated when one or more of the following conditions exist:
  - a. A breeding ground or harbor for mosquitoes, insects, snakes, rats or other pests, or being used for storage in a manner which may attract such pests; or

- b. A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
  - c. A point of collection of pools or ponds of water; or
  - d. A point of concentration or source of leaking of concentrated gasoline, oil or other flammable or explosive materials; or
  - e. So situated or located that there is a danger of it falling or turning over; or
  - f. One which is a source of danger for children through entrapment in areas of confinement that cannot be opened from the inside, or from exposed surfaces of metal, glass or other jagged materials; or
- (4) Preservation of the character and integrity of the community; and
  - (5) Promotion of the comfort, happiness and emotional stability of area residents.

(Ord. No. 2373, § 1, 6-10-97; Ord. No. 4910, § 2, 11-9-21)

**Sec. 10-32. Removal of abandoned, junked or aesthetic junked motor vehicle; pre-towing notice requirements.**

- (a) Except as set forth in section 10-33 below, an abandoned, junked or aesthetic junked motor vehicle which is to be removed shall be towed only, after notice to the registered owner or person entitled to possession of the vehicle.
- (b) Notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice stating that the vehicle will be removed by the city on a specified date, no sooner than seven days after the notice is affixed, unless the vehicle is moved by the owner or legal possessor prior to that time. In the case of an aesthetic junked motor vehicle, pre-towing notice shall be effectuated in the same manner as for abandoned or junked motor vehicles, except the notice shall further advise the registered owner or person entitled to possession of the right to a pre-towing hearing as described hereinafter in section 10-36 of this article.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-33. Exceptions to prior notice requirement.**

Prior notice need not be given to remove an abandoned or junked motor vehicle if the police chief or the planning and development director determine there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the police chief or the planning and development director in the appropriate daily records. Circumstances justifying the removal of such vehicles without prior notice includes:

- (1) *Vehicles abandoned on the streets:* For vehicles left on the public streets and highways, the city council hereby determines that immediate removal of such vehicles may be warranted when they are:
  - a. Obstructing traffic; or
  - b. Left upon a street or highway in violation of a law or ordinance prohibiting parking; or
  - c. Parked in a no stopping or standing zone; or
  - d. Parked in loading zones; or
  - e. Parked in bus zones.
- (2) *Other abandoned or junked motor vehicles:* With respect to abandoned or junked motor vehicles left on city-owned property other than the streets or highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the police chief or the planning and development director make written findings that a special need exists for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles that represent an imminent threat to life or property.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-34. Removal of vehicles; post-towing notice requirements.**

- (a) Except as set forth herein, any abandoned, junked or aesthetic junked motor vehicle which has been removed may, as directed by the police chief, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the city. Whenever such a vehicle is removed, the police chief shall immediately notify the last known registered owner of the vehicle of the following:
  - (1) A description of the vehicle; and
  - (2) The place where the vehicle is stored; and
  - (3) The violation with which the owner is charged, if any, or the reason(s) for removal; and

(4) The procedure the owner must follow to have the vehicle returned to him; and

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

(b) The authorizing official as set forth herein shall, if feasible, 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 subsections (1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his agent.

(c) If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in North Carolina, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(d) Whenever a motor vehicle is towed under the provisions of this article, and such vehicle has neither a valid registration nor registration plates, the police chief shall make reasonable efforts including checking the vehicle identification number to determine the last known registered owner of the vehicle. Provided, however, the provisions of this section shall not apply to aesthetic junked motor vehicles for which the owner has exercised the right to appeal prior to the towing of the vehicle in accordance with section 10-36 of this article.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-35. Prerequisites to removal of abandoned or junked vehicles on private property.**

(a) In the case of abandoned or junked motor vehicles left on private property without the consent of the owner, occupant or lessee, the vehicle may be removed by the city only after the following conditions are met:

(1) The owner, occupant or lessee of the real property upon which the vehicle is located submit to the city a written request that the vehicle be removed, which written request shall contain a certification that the vehicle has remained on said property without consent in excess of seven days.

(2) The owner, occupant or lessee pay any required pre-towing fees or charges at the time of removal.

(3) The owner, occupant or lessee agree to indemnify the city against any loss, expense (including attorney fees) or liability incurred because of the removal, storage or sale thereof.

(b) This section shall apply only in those instances when an abandoned or junked vehicle remains on private property without the consent of the owner, occupant or lessee of the real property.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-36. Right to pre-towing hearing.**

With respect to aesthetic junked motor vehicles, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is an aesthetic junked motor vehicle, such appeal shall be made to the chairperson of the towing appeals committee as hereinafter defined, in writing, within seven days of the posting of the notice required in section 10-32 of this article. Further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided. Written appeals may be hand delivered to the assistant city manager's secretary in Room 202 located on the second floor of the city building and having the written appeal stamped with a notice of receipt, with a copy of the receipt provided to the appealing party. Notice may also be mailed to the chairperson at the following address:

City of Asheville City Manager's Office Towing Appeals Committee Chairperson Post Office Box 7148 Asheville, North Carolina 28802

The date of postmark shall be utilized in determining the timeliness of the appeal. The chairperson of the towing appeals committee shall notify the owner or the person entitled to possession and the planning and development director of the time and place of the hearing, which shall be held within seven days of receipt of the written appeal. The issues before the committee are: (1) whether the vehicle in question is an aesthetic junked motor vehicle and (2) if the vehicle is an aesthetic junked motor vehicle, is removal warranted under the provisions of the ordinance. The committee shall render a written decision within three days after hearing the case. The committee's written decision shall order the planning and development director to proceed with the removal of the vehicle or return the vehicle to the owner or person entitled to possession. Any aggrieved party may appeal the committee's written decision to the Buncombe County District Court within ten days of the date of the written decision. In the absence of a timely appeal, the committee's decision is final and the authorizing official may proceed to carry out the provisions of this article.

(Ord. No. 2373, § 1, 6-10-97)

**Sec. 10-37. Towing appeals committee.**

There is hereby created a three-member towing appeals committee for the City of Asheville. The committee shall consist of the assistant city manager and two other city department directors appointed from time to time by the city manager, whose department has had no prior contact or involvement in the matter appealed to the committee. The assistant city manager shall serve as the chairperson of the committee and have overall responsibility for the proper functioning of the committee, the committee's jurisdiction shall be limited to hearing appeals from the planning and development director that a vehicle is an aesthetic junked motor vehicle.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-38. Right to probable cause hearing; post-towing.**

When a vehicle is removed pursuant to the provisions of this article and for which there has been no appeal for a pre-towing hearing, 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 writing with the Buncombe County Small Claims Magistrate within seven days of the date shown on the notice required in section 10-34 of this article. The magistrate shall set the hearing within 72 hours of receipt of the request and shall otherwise proceed in accordance with N. C. Gen. Stat. sec. 20-219.11. The only issue at this hearing is whether probable cause existed for the towing. If the magistrate finds probable cause did exist, the tower's lien continues. If no probable cause is found, the tower's lien is extinguished. Any aggrieved party may appeal the magistrate's decision to the appropriate Buncombe County Court within ten days of the date of the decision.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-39. 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 such fees and charges to the tow truck operator or the towing business having custody of the vehicle. If no probable cause is found as set forth in section 10-38 above, then the owner shall be entitled to a full refund of any funds paid by the owner to the tow truck operator or the towing business. Upon regaining possession of such vehicle, the owner or person entitled to possession of such vehicle shall not allow or engage in further violation of this article.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-40. Sale and disposition of unclaimed vehicle.**

Any abandoned, junked or aesthetic junked motor vehicle which is not claimed by the owner or other party entitled to possession may be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in accordance with Article 1 of Chapter 44A of the North Carolina General Statutes.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-41. Protection against criminal or civil liability.**

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, junked or aesthetic junked motor vehicle, for disposing of such vehicle as provided in this article and by North Carolina law.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-42. Exceptions.**

- (a) Nothing in this chapter pertaining to abandoned or junked motor vehicles shall apply to any motor vehicle that:
  - (1) Is located in an enclosed building; or
  - (2) 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
  - (3) Is in an appropriate storage place or depository maintained in a lawful place and manner in the city.
- (b) Nothing in this chapter pertaining to aesthetic junked motor vehicles shall apply to any motor vehicle that:
  - (1) Is located in a bona fide automobile graveyard or junkyard as defined in N. C. Gen. Stat. sec. 136-43; or
  - (2) Is used on a regular basis for business or personal use.

(Ord. No. 2373, § 1, 6-10-97)

### **Sec. 10-43. Unlawful removal of impounded vehicle.**

- (a) It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the city any vehicle which has been impounded pursuant to the provisions of this article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.
- (b) Violation of this section shall be a misdemeanor and shall be punishable as provided in N.C. Gen. Stat. § 14-4.

(Ord. No. 2373, § 1, 6-10-97; Ord. No. 4910, § 2, 11-9-21)

### **Secs. 10-44—10-55. Reserved.**

## **ARTICLE VI. JUNKED AND ABANDONED VEHICLES<sup>1</sup>**

### **Sec. 26-276. Authority and purpose.**

This article is enacted pursuant to the powers granted to Buncombe County by G.S. §§ 153A-121, 153A-132, and 153A-132.2. The purpose of this article is to protect the health, safety, natural scenic beauty, and property values of the county from potential adverse effects caused by the proliferation and improper disposal of junked motor vehicles.

(Ord. No. 98-4-3, Art. I, 4-14-98)

### **Sec. 26-277. Jurisdiction.**

This article shall be in effect in all unincorporated portions of the county, except areas within the extra-territorial jurisdiction of municipalities; and in any municipality which chooses to adopt this article.

(Ord. No. 98-4-3, Art. II, 4-14-98)

### **Sec. 26-278. Administration.**

The county director of planning and development or designee is responsible for the administration and enforcement of the provisions of this article.

(Ord. No. 98-4-3, Art. III, 4-14-98; Ord. No. 21-05-06 , § 1(Exh. A), 5-4-21)

State law reference(s)—*Authority to prohibit the abandonment of motor vehicles, N.C.G.S. § 153A-132.*

### **Sec. 26-279. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned vehicle* means a vehicle that is left:

- (1) Upon a public street or highway in violation of a law or ordinance prohibiting parking; or
- (2) On a public street or highway for longer than seven days; or

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<sup>1</sup>Editor's note(s)—Ord. No. 98-4-3, Arts. I—X, adopted Apr. 14, 1998, amended Art. VI in its entirety to read as herein set out. Former Art. VI, §§ 26-276—26-284, pertained to similar subject matter and derived from Ord. No. 17955, §§ 1—9, adopted July 17, 1984, and Ord. No. 18050, § 1, adopted Dec. 4, 1984.

Cross reference(s)—Solid waste management, ch. 62; traffic and vehicles, ch. 74.

State law reference(s)—*Authority to regulate, restrain or prohibit the abandonment of junk automobiles on public grounds and private property, G.S. §§ 153A-132, 153A-132.2.*

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- (3) On property owned or operated by the county for longer than 24 hours; or
  - (4) On private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

State law reference(s)—Similar definition, G.S. § 153A-132(b).

*Junked motor vehicle* means a vehicle that does not lawfully display a current North Carolina license plate and:

- (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.

State law reference(s)—Similar definition, G.S. § 153A-132(a).

*Motor vehicle* or *vehicle* means all machines designed or intended to travel over land (or water) by self-propulsion or while attached to any self-propelled vehicle.

*Nuisance vehicle* means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground, nest 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;
- (5) One which has areas of confinement which cannot be opened or operated from the inside of the area of confinement, such as trunks, hoods, etc.;
- (6) So situated or located that there is a danger of it falling, dislodging or turning over;
- (7) One which is a point of collection of refuse, trash, garbage, food waste, animal waste, or any other rotten or decaying matter of any kind;
- (8) One which has parts which are jagged or contain sharp edges of metal, plastic or glass; or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the board of county commissioners.

*Vector* means any organism that carries disease-causing micro-organisms from one host to another (e.g. rats, mosquitoes, etc.).

(Ord. No. 98-4-3, Art. IV, 4-14-98; Ord. No. 02-07-01, § 1, 7-9-02)

### **Sec. 26-280. Abandoned vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle and 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.
- (b) Upon investigation, the director of planning and development or designee may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(Ord. No. 98-4-3, Art. V, 4-14-98; Ord. No. 21-05-06 , § 1(Exh. A), 5-4-21)

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**Sec. 26-281. Nuisance vehicle unlawful; removal authorized.**

- (a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle and for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave, allow or suffer the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (b) Upon investigation, the director of planning and development or designee may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, as defined herein, and order the vehicle removed. Notice of the determinations made by the director of planning and development or designee may be combined with any other notices required under this article and provided to the registered owner or person entitled to possession of the motor vehicle and/or the owner, lessee or occupant of the real property by first class mail, except in situations where a name and address cannot be ascertained notice may be given by affixation on the windshield or some other conspicuous place on the vehicle.

(Ord. No. 98-4-3, Art. VI, 4-14-98; Ord. No. 21-05-06 , § 1(Exh. A), 5-4-21)

**Sec. 26-282. Junked motor vehicle regulated; removal authorized.**

- (a) With the permission of the owner, lessee or occupant of the real property, up to two junked motor vehicles can be located, placed or stored on the property, but only upon strict compliance with the following requirements:
  - (1) The vehicle(s) cannot be dismantled or in parts.
  - (2) The vehicle(s) must be entirely concealed from view from a public street and from adjacent premises. A canvas, cloth or polyethylene covering shall be deemed acceptable. Tattered, torn coverings or coverings in a state of disrepair shall not be an acceptable covering.
  - (3) Vehicle(s) must not be located closer than ten feet from the adjacent property lines or road.

The director of planning and development or designee has the authority to determine whether a permitted junked motor vehicle complies with this section.

- (b) All other junked vehicles shall be kept in a garage or building structure that provides a complete enclosure so that they cannot be seen from a public street or from adjacent property. For purposes of this section, a garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations. A carport shall not be treated as an acceptable garage or enclosure under this section.
- (c) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle to place, store, leave or allow it to remain on any property in violation of this article or to allow it to remain on any property after the vehicle has been ordered removed from that property.
- (d) It shall be unlawful 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 in violation of this article or after the vehicle has been ordered removed.

(Ord. No. 98-4-3, Art. VII, 4-14-98; Ord. No. 21-05-06 , § 1(Exh. A), 5-4-21)

**Sec. 26-283. Enforcement provisions.**

- (a) The director of planning and development or designee shall enforce this article. He may call upon other agencies as necessary to assist in enforcement of this article.

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- (b) In addition, whenever the director of planning and development or designee receives a complaint alleging a violation of this article, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.
- (c) The owner, tenant, or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this article may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.
- (d) The following procedure shall apply upon discovery of a violation:
- (1) If the director of planning and development or designee finds that any provision of this article is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days or months within which the violation shall be corrected.
  - (2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this article or pose a danger to the public health, safety, or welfare, the director of planning and development or designee may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in this section.
- (e) Penalties and remedies for violations shall be as follows:
- (1) A violation of this article shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. 14-3(3) and G.S. 14-4.
  - (2) Each day that any violation continues after final notification by the director of planning and development or designee that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this section.
  - (3) In addition to the foregoing enforcement provisions, this article may be enforced by any remedy provided in G.S. 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. 153A-123(e).

(Ord. No. 98-4-3, Art. VIII, 4-14-98; Ord. No. 21-05-06 , § 1(Exh. A), 5-4-21)

### **Sec. 26-284. Exceptions.**

Nothing in this article shall apply to any vehicle which is located at a place of business maintained and operated primarily for the purpose of making repairs to motor vehicles or retail sales of items routinely used in motor vehicles, in an enclosed building, 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 used in the operation of a bona-fide farm.

This article shall not apply to any vehicle or vehicles which meet both of the following two provisions:

- (1) The vehicle or vehicles cannot be seen from a public street or road; and
- (2) The vehicle or vehicles cannot be seen from any property adjacent to the property on which said vehicle or vehicles are located.

(Ord. No. 98-4-3, Art. IX, 4-14-98)

State law reference(s)—Similar provisions, G.S. § 153A-132(h).



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**Sec. 26-285. Changes in state law.**

Should G.S. § 153A-132 and G.S. § 153A-132.2 or any other section of the General Statutes of North Carolina incorporated herein by reference or otherwise referred to herein be changed or amended, or should such statutes require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this article shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

(Ord. No. 98-4-3, Art. X, 4-14-98)

**Secs. 26-286—26-300. Reserved.**

**§ 160A-303.2. Regulation of abandonment of junked motor vehicles.**

(a) A municipality may by ordinance regulate, restrain or prohibit the abandonment of junked motor vehicles on public grounds and on private property within the municipality's ordinance-making jurisdiction upon a finding that such regulation, restraint or prohibition is necessary and desirable to promote or enhance community, neighborhood or area appearance, and may enforce any such ordinance by removing or disposing of junked motor vehicles subject to the ordinance according to the procedures prescribed in this section. The authority granted by this section shall be supplemental to any other authority conferred upon municipalities. Nothing in this section shall be construed to authorize a municipality to require the removal or disposal of a motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard" as defined in G.S. 136-143.

For purposes of this section, the term "junked motor vehicle" means a vehicle that does not display a current license plate 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; or
- (3) Is more than five years old and appears to be worth less than one hundred dollars (\$100.00) or is more than five years old and appears to be worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section.
- (4) Repealed by Session Laws 2009-97, s. 2, effective October 1, 2009.

(a1) Any junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the council or a duly authorized city official or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding 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) Promotion of tourism and other economic development opportunities;
- (3) Indirect protection of public health and safety;
- (4) Preservation of the character and integrity of the community; and
- (5) Promotion of the comfort, happiness, and emotional stability of area residents.

(a2) The city may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof. When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-219.11(a) and (b).

(a3) Hearing Procedure. – Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a prior hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

- (1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.

- (2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
- a. Provide by contract or ordinance for a schedule of reasonable towing fees,
  - b. Provide a procedure for a prompt fair hearing to contest the towing,
  - c. Provide for an appeal to district court from that hearing,
  - d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
  - e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it.

(a4) Any person who removes a vehicle pursuant to this section shall not be held liable for damages for the removal of the vehicle to the owner, lienholder 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 such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

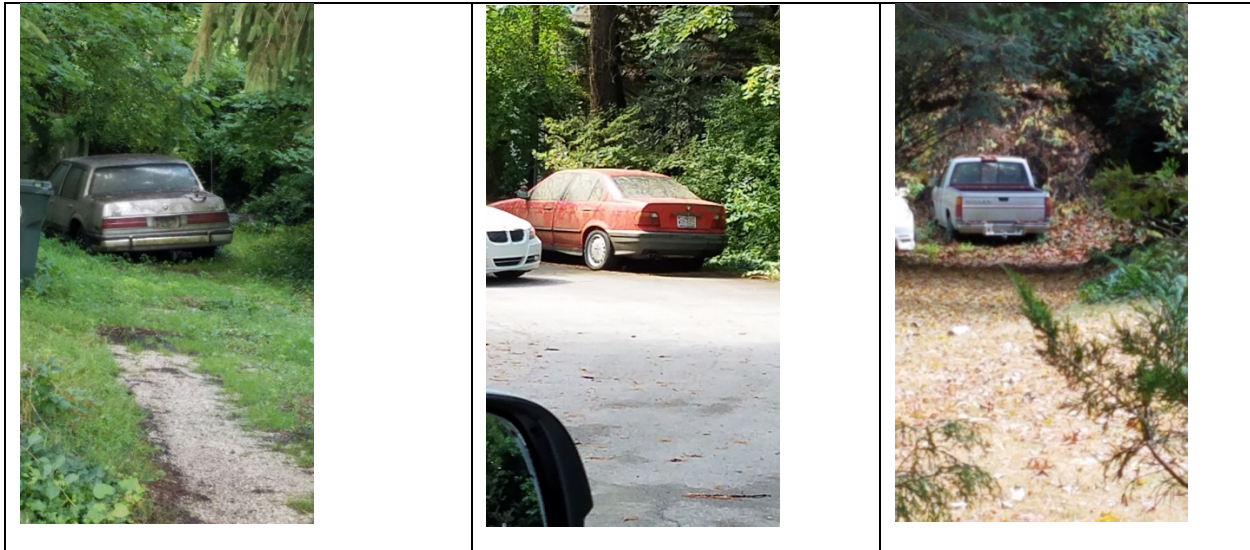
(b) Any ordinance adopted pursuant to this section shall include a prohibition against removing or disposing of any motor vehicle that is used on a regular basis for business or personal use. (1983, c. 841, s. 2; 1985, c. 737, s. 2; 1987, c. 42, s. 2; c. 451, s. 2; 1989, c. 3; c. 743, s. 2; 2005-10, ss. 2, 3; 2006-15, s. 3; 2006-166, s. 2; 2006-171, s. 1; 2007-208, s. 2; 2007-505, s. 3; 2009-97, s. 2.)

**DRAFT ABANDONED CAR ORDINANCE - NEW**

§ ABANDONED CARS An abandoned car is considered to a car or truck that can be seen from the road that has not moved in three months AND which has either NO License Plate or a license plate with an expired tag. If a car is found to be abandoned, the homeowner shall be notified in writing that the car is considered abandoned. At that point, they have 30 days to get an appropriate State License tag. Additionally, they must drive the car to the Police station for an inspection to ensure that the car is roadworthy. (If it is NOT roadworthy because of old tires, engine or exhaust problems, etc., then all problems must be corrected). IF this is not done, then the Town will have the car towed, with the cost being passed onto the homeowner.

Why is this needed?

There are currently 4 abandoned cars in Biltmore Forest that are visible from the street. Here are three examples: (note the truck has NO plate!)



**PLANNING COMMISSION  
STAFF MEMORANDUM**

JANUARY 24, 2023



**Agenda Item - D**

**Electric Vehicle Charging Station Ordinance - Discussion**

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Background

The Planning Commission has also reviewed potential for an electric vehicle (EV) charging station ordinance that would regulate placement and/or buffering requirements when the station is outside of a garage. Chair Zimmerman has attached a memorandum for this discussion as well.

Additional Review

A cursory review of other local government ordinances did not reveal any specific ordinances related to EV charging stations or their placement. These types of utility structures would typically fall into a gray area within the Town's existing ordinances. The inclusion of EV charging stations within the existing accessory structure ordinance is certainly possible, but we typically do not regulate placement of structures related to utility service (i.e. generators, water RPZ devices, HVAC units) but simply request they be buffered.

Attachments

1. Memorandum from Chair Zimmerman

## DRAFT EV CHARGING STATION ORDINANCE - NEW

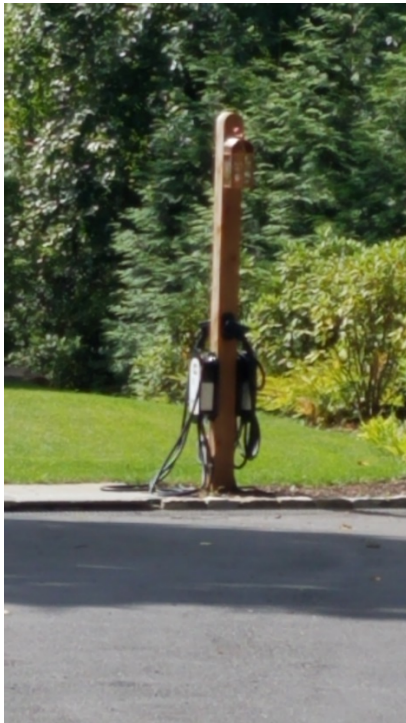
§ **EV CHARGING STATIONS.** We anticipate that the number of EV Charging Stations will significantly increase in future years. It is specified that, whenever possible, the Charging station shall be located inside the garage. For homes without garages, EV Charging stations shall be placed either:

1. On the side of the home closest to the driveway, or:
2. On a post, not in the front or side setbacks, that is not in the direct line of site from the road.

In ALL cases, the EV Charging Station shall be buffered with approved perennial, non-deciduous plantings such that the EV Charging Station itself cannot be seen from the street.

Why is this needed?

We are beginning to see EV Charging Stations installed, visible from the street, and unbuffered.



**PLANNING COMMISSION  
STAFF MEMORANDUM**

JANUARY 24, 2023



**Agenda Item - E**

**Board of Adjustment and Planning Commission Joint  
Meeting – Topics for Discussion**

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Background

Chair Zimmerman has spoken with the Board of Adjustment regarding a joint meeting to gather their feedback and input on Town Zoning Ordinances. We will establish a date for this meeting within the next several days. As we move toward this, Chair Zimmerman has provided a memorandum outlining the purpose of the meeting and some potential focus items. Please review and provide additional items and feedback at Tuesday's meeting.

Attachments

1. Memorandum from Chair Zimmerman regarding Joint Meeting

## Joint Meeting of the Biltmore Forest Planning Commission and the Biltmore Forest Board of Adjustment.

**Purpose:** The purpose of the meeting is to discuss whether or not there are any ordinances that should be clarified, relaxed, or tightened in order to: 1. Better serve the residents of Biltmore Forest and 2. Eliminate confusion when residents bring forward requests for Conditional Use or Variances. The Board of Adjustment has to interpret Ordinances almost every month and therefore has first-hand knowledge of any issues that arise. The Planning Commission has responsibility for proposing new Ordinances, but does not have the first-hand working experience. This is a friendly meeting to identify mutually needed changes to ordinances.

**Background:** A review of 145 Board of Adjustment cases between 2014 and 2019 was undertaken. (These numbers add up to more than 100% because a request for a fence that was in a setback would be counted twice) Of these:

32% were requests for a Variance.

24% were for a front wall/terrace/or deck

19% were for a Gate or fence

8% were for a Deer Fence, specifically

6% were for a Play Structure

22% were for a Building/Porch, etc

3% were for a Roof Size issue

6% were for an Impervious Area

### **The following are some of the areas the Planning Commission would like to discuss:**

1. The requirement for FINAL landscape and grading plans prior to BOA approval. (Otherwise there is no way to judge whether or not the landscaping was done as approved)
2. A revised Tree Ordinance with a more specific requirement to plant canopy trees.
3. The requirement for the resident installing a fence to be responsible for buffering between the fence and the neighbor's property. The responsibility for requiring buffering should not be on the shoulders of the neighbor.
4. Clarify the need to keep the Road Setback clear of vegetation and structures (so that walkers can set off the road as necessary)
5. Rewrite the Impervious Area Ordinance to make it in line with the Roof Area Ordinance. (Right now, there are 3 groupings with a fixed percent allowed in each grouping. Because of this, a 3-acre lot can have LESS impervious area than a 2.9-acre lot. A 5-acre lot can have 20%-[1-acre] as impervious – which seems like it is excessive. It is suggested that a smooth curve be developed, similar to the Roofing are ordinance in design, with Impervious area maxxing out at about 2/3 acre. (TBD)).
6. Should separate buildings connected by a heated hallway be considered as one building?
7. Add Pools and Tennis Courts as accessory structures.
8. New Ordinance for EV Charging Stations
9. Are there some items that could be accomplished without a BOA review? Does a low stone wall next to a driveway, not going into any setbacks, need BOA approval? How about a Play structure in the middle of a back yard that cannot be seen by neighbors?



**PLANNING COMMISSION  
STAFF MEMORANDUM**

JANUARY 24, 2023



**Agenda Item - F**

**Tree Ordinance Update**

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Background

During the last meeting, Commission member Tony Saponaro led discussion regarding potential changes to the Town's Tree Protection Ordinance. This discussion included suggestions from other Planning Commission members and staff. Mr. Saponaro has worked over the past month to develop some verbiage related to these changes. Staff, Mr. Saponaro, and Mr. Zimmerman met last week to review these potential changes and determine the best method for incorporating these into the ordinance. The Town Attorney, Billy Clarke, is reviewing these suggestions as well. It is anticipated that a draft of this ordinance revision will be provided to the Commission at the next meeting.