

TOWN OF BILTMORE FOREST
PLANNING COMMISSION

AGENDA

Tuesday, July 28, 2026

4:00 p.m.

Biltmore Forest Town Hall

1. Welcome – Chair Saponaro
2. Approval of Minutes – April 8, 2026
3. Zoning Map Amendment – Discussion
4. Tree Preservation Ordinances – Discussion
5. Adjourn

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

Meeting ID: 830 1514 8121
Passcode: 226922

Planning Commission Meeting Minutes for April 8, 2026

Chairman Saponaro called the meeting to order on Wednesday, April 8th, 2026 at 4:03pm.

Those members in attendance are: Chairman Tony Saponaro, Ms. Angela Newnam, Mr. Jonathan Gach, Dr. Ken Hornowski, Town Manager, Mr. Jonathan Kanipe, and Town Attorney, Mr. Billy Clarke.

Chairman Saponaro noted that he had circulated a brief memo prior to the meeting identifying two points of clarification he wished to address before approving the November 10, 2025 minutes.

First clarification — Mechanical Equipment and Quiet Hours: Chairman Saponaro expressed concern that, as written, the minutes could be interpreted to allow mechanical equipment use (leaf blowers, chainsaws, etc.) by residents until 9:59 PM, immediately before the 10:00 PM quiet hour. He argued this was not a desirable outcome and suggested an earlier cutoff, around 8:00–8:30 PM, for mechanical equipment specifically. Other board members pushed back, arguing that further subdividing residential noise into subcategories would add unnecessary complexity, that residents retain their own judgment, and that a balance must be struck between requiring property upkeep and restricting the hours in which that upkeep can occur. The majority favored leaving the quiet hours at 10:00 PM to 7:00 AM as written, without a separate mechanical equipment restriction. Chairman Saponaro deferred to the group, noting that if the provision proved problematic in practice, the Board of Commissioners could amend the ordinance at any future meeting. The quiet hours of 10:00 PM to 7:00 AM were confirmed, with the existing exception for pre-approved special events noted.

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additional restrictions on residents, while the existing prohibition on commercial construction activity on state holidays would remain as proposed.

Third clarification — Language on Page 5: Chairman Saponaro proposed replacing the phrase "protect the town" in the final bullet point of the minutes with neutral language more accurately reflecting the Board's intent. After brief discussion, the group agreed to replace the phrase with "manage future development," which was seen as a more balanced and accurate characterization.

Ms. Angela Newnam made a motion to approve the minutes from November 10, 2025. Mr. Jonathan Gach seconded the motion and the minutes were unanimously approved.

Lighting Ordinance Discussion and Proposed Recommendations

The Board reviewed the proposed lighting ordinance language. Discussion focused on Section E-1, which stated that up to two lights are permitted in the front yard of a residential lot. The Board noted that this provision as written was ambiguous, as many homes have more than two lights along their front façade, and the intent appeared to be specifically about lights near the driveway entry or road frontage (e.g., column lights), not lights mounted on the structure itself.

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Setback Delineation for Non-Residential Uses and Proposed Recommendations

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A motion to recommend adoption of the proposed Zoning Text amendment(s) to the Board of Commissioners, and further that the proposed Zoning Ordinance amendment is consistent with the Town of Biltmore Forest Comprehensive Plan, was made by Chair Saponaro and seconded by Ms. Newnam. The motion carried unanimously (4–0).

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A motion recommending approval of the proposed town code ordinance amendments—covering noise, construction activity and property maintenance hours, nuisance conditions, and unsafe/unfit structures—to the Board of Commissioners was made by Mr. Jonathan Gach and seconded by Dr. Ken Hornowski. The motion was approved unanimously.

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A broader discussion followed regarding potential long-term planning initiatives, including small area plans for specific neighborhoods such as the early-built sections of Buena Vista and White Oak that do not conform to current setback standards,

historic district designation, form-based code concepts, and the regulation of house teardowns and replacement structures. These items were acknowledged as longer-term projects.

Mr. Kanipe noted that a joint meeting with the Board of Commissioners and Board of Adjustment may be warranted in the future, given the productive working relationship among the three bodies, and suggested that the upcoming work on zoning districts would help define the scope of any such meeting.

Adjoining Fence Setback Discussion

Mr. Kanipe noted that fence-related issues, including a prior comment from a community member regarding fencing, are expected to come up as part of the broader zoning review work. No formal discussion or action was taken on this item at this meeting.

The Board agreed to schedule the next meeting for **Tuesday, July 21, 2026 at 4:00 PM.**

Chairman Saponaro adjourned the meeting at 5:21pm.

PLANNING COMMISSION MEETING

JULY 28, 2026

**AGENDA ITEM - 3****ZONING MAP AMENDMENTS - DISCUSSION**

BACKGROUND

This agenda item asks the Planning Commission to begin a focused discussion about whether the Town's zoning map should better distinguish between established residential areas, existing non-residential properties, and limited residential areas with unique historic or location-based conditions. The intent is not to expand development rights, but to improve clarity, reduce unnecessary variance requests, and ensure the zoning map more accurately reflects existing conditions.

In February, I discussed a potential Planning Commission review of how non-residential properties are classified on the Town's zoning map. At that time, the focus was not on amending existing residential zoning districts or expanding allowable land uses. The purpose was to improve clarity and alignment between zoning classifications and actual land use.

Several properties within the Town are clearly non-residential in nature, including the country club, Town offices and facilities, and Carolina Day, but are currently zoned within single-family residential districts (R-1 and R-2). These uses are lawful and well established, but their zoning classification does not accurately reflect their function or purpose. My initial review focused only on those areas. Since then, I have also identified portions of existing residential districts that may benefit from a similar "real world" lens, either through a specific new zoning district or an overlay district designation.

CURRENT ZONING MAP CONCERNS

The current zoning approach creates confusion for residents, complicates enforcement and interpretation, and creates long-term policy risks when residential zoning districts function as placeholders for institutional or civic uses.

Unlike similar jurisdictions, the Town has not created separate zoning districts for established non-residential uses. Communities such as Highlands, Blowing Rock, Pinehurst, and others have addressed this issue by creating limited, purpose-specific districts that acknowledge existing non-residential uses without opening the door to

broader commercial development. These districts are narrowly tailored, map-applied, and designed to recognize what a property is, not what it might become in the future.

In addition to the non-residential zoning issue, there are also limited residential areas where the zoning map may not reflect existing development patterns. These areas present a different concern: the goal is not to change the Town's residential character, but to consider whether the current zoning standards create unnecessary nonconformities for long-established homes.

RESIDENTIAL DISTRICT ADJUSTMENTS

Our true residential districts – R-1, R-2, and R-3 – encompass all of the Town's residential properties. Homes exist within those zones, however, that were constructed at the Town's inception and when no zoning district (or setback requirements) were in place. Therefore, those properties and the houses on them are often non-conforming or require variance approval to construct anything or make improvements on their property. Despite being currently placed in the R-2 zone, these lots are significantly smaller and possess shallower setbacks than modern R-2 rules allow. A new zoning district for these properties could establish custom development standards (e.g., 30-foot front setbacks instead of 50-foot; reduced lot dimensions) that legalize the existing footprints and instantly relieve the Board of Adjustment from non-controversial building addition variances. Further, this may allow property maintenance and improvements on these properties that respect the historic nature of these homes while understanding they exist nearly a century after their construction.

POTENTIAL RESIDENTIAL OVERLAY DISTRICTS

Overlay districts allow the Town to provide certain uses within areas in a zoning district without amending the entirety of the district itself. An example of this would be allowing fences in front yard of residential homes that are on Hendersonville Road or on the back side of properties that abut non-residential, forested uses that are either public property (such as the Blue Ridge Parkway) or along the Biltmore Estate property line where wildlife migrations are significant. These simple overlay districts would recognize the unique nature of these areas and simply allow for fencing by right under certain circumstances. For the homes on Hendersonville Road, this includes allowances for front-yard screening structures, such as fences or walls, and expanded driveway designs to eliminate the hazardous requirement of vehicles backing out onto an active multi-lane highway.

EXISTING NON-RESIDENTIAL PROPERTIES

The following are illustrative examples of how such districts could be named and defined. These are not draft ordinance language, but conceptual frameworks to support further discussion:

Civic / Government District

Intended to recognize properties owned or operated by the Town or other governmental entities and used for public administration, services, or civic purposes.

Institutional District

Intended for educational or cultural institutions, such as private schools, that serve the community but are not residential in character.

Recreational/Club District

Intended to recognize membership-based recreational facilities, such as a country club or golf course, that are neither residential nor commercial in nature.

NEXT STEPS

The above naming conventions and definitions are for illustrative purposes and to show *how* these changes may look. The important takeaways are that any potential changes should be guided by the following principles:

- No expansion of permitted uses or development intensity
- Map-applied, limited-scope districts only or overlay districts where necessary
- Clear acknowledgment of actual, established land use
- Preservation of the Town's residential character

This is not a small or quick project. Effective and good government policy requires this discussion at the outset and then to gather public feedback and receive discussion on these potential changes. The Planning Commission's role is to provide recommendations to the Board of Commissioners on revisions or amendments and the Board then makes the final decision after a public hearing. It is imperative, therefore, to have ample opportunity for the public to express thoughts regarding these potential changes.

To assist with your thoughts, attachments are included that detail the existing Zoning Districts and their definitions. Please let me know if you have additional questions.

ATTACHMENT

- (1) Ch. 153.005 – Zoning Map Districts and Definitions

(A) *Use districts.* For the purpose of this chapter, the town is hereby divided into the following use districts:

- (1) R-1 Residential District;
- (2) R-2 Residential District;
- (3) R-3 Residential District;
- (4) R-4 Residential District;
- (5) R-5 Residential District; and
- (6) P-S Public Service District.

(B) *Establishment of district boundaries.* The boundaries of these districts are hereby established as shown on the official zoning map of the town.

(C) *Establishment of zoning map.* A zoning map, entitled the "Official Zoning Map of the Town of Biltmore Forest," depicts all approved use districts and their respective boundaries. Such map is hereby made a part of this chapter and shall be maintained by the Town Zoning Administrator and updated to reflect changes and amendments to this zoning ordinance. This map shall be available for inspection by interested persons during normal business hours of the Town Zoning Administrator. It shall be the duty of the Town Zoning Administrator to maintain the map and post any changes thereto as they may be made.

(D) *Rules governing district boundaries.* Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, or other bodies of water, shall be construed to follow such lines;

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines;

(3) Boundaries indicated as approximately following town limit lines shall be construed as following such town limit lines;

(4) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefor as indicated on the zoning map. If no distance is given on the map, such dimension shall be determined by the use of the scale shown on said zoning map; and

(5) Where physical features existing on the ground are at variance with those shown on the official zoning map, or in other circumstances not covered by divisions (D)(1) through (D)(4) above, the Board of Adjustment shall interpret the district boundaries.

(E) *Statement of district intents.*

(1) *R-1 Residential District.*

(a) The R-1 Residential District encompasses most of the town's developed residential areas and contains residential structures of historical and architectural significance in a most unique residential environment. The intent of the R-1 District is to preserve and enhance the character of existing neighborhoods and generally to provide a pleasant living environment. These neighborhoods consist of single-family owner occupied detached dwelling units placed on relatively large lots with considerable open spaces between structures, thus creating a low-density residential environment.

(b) Nonresidential uses, including home occupations, have been limited in this District as a means of maintaining the character of these neighborhoods. Likewise, dimensional requirements pertaining to lot size, building setbacks, yard requirements, and height limitations have been established to promote the general welfare and preservation of the community.

(c) Future construction and alteration of existing structures should be oriented at maintaining and enhancing the existing character of the residential neighborhoods. Therefore, structures should be compatible in materials, height, siting, color, texture, scale, and proportion to the other structures in the neighborhood. The R-1 District also contains undeveloped areas to provide locations for future single-family subdivisions.

(d) Consistent with, and to protect the existing character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(2) *R-2 Residential District.*

(a) The R-2 Residential District is established to protect and maintain existing neighborhoods, which are characterized by single-family residences with smaller lots, and thus greater residential densities than found in the R-1 District.

(b) As in the R-1, nonresidential uses, including home occupations, have been limited in this District as a means of assuring a pleasant residential atmosphere.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(3) *R-3 Residential District.*

(a) The R-3 Residential District is intended to provide locations that will accommodate future residential growth south of the Blue Ridge Parkway. This District is intended to provide locations for future subdivisions and for planned unit residential developments as special uses when design plans show that such developments will be compatible with the surrounding development and available public services.

(b) This District is primarily a low-density residential district; however, to accommodate contemporary design and building practices, it includes residential planned unit developments as a conditional use at a maximum density of eight dwelling units per acre. Nonresidential uses, including home occupations, will also be limited in the R-3 District in order to maintain the same quiet and pleasant living environment as found in the R-1 and R-2 Districts.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(4) *R-4 Residential District.*

(a) The R-4 Residential District provides areas for residential uses, and for special uses professional offices and commercial services. Urban sprawl, strip commercial development, and congestion will be discouraged by promoting good design and clustered development. These areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid traffic congestion and safety hazards.

(b) Land uses in this District, other than single-family detached dwelling units, will require a special use permit as a means of assuring and promoting safety and good design. The integrity of residential uses in this zone will be preserved by requiring a 20-foot wide buffer strip between residential and nonresidential uses.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(5) *R-5 Residential District.*

(a) The medium-density district is established as a district where both residential and business uses are accommodated. In addition, a wide range of community facilities and services are also available. It is intended that nonresidential uses, including business uses, shall be compatible with and exist in harmony with the community in which they are located and that adequate standards will be maintained pertaining to the public health, safety, and welfare.

(b) In addition, these areas should provide sufficient space for ample off-street parking and well designed entrances and exits to avoid congestion and safety hazards. Most land use in this District will require a special use permit as a means of assuring and promoting safety and good design.

(c) Consistent with and to protect and preserve the character of the neighborhoods in this District, home stays and short term rentals are not allowed.

(6) *P-S Public Service District.*

(a) This District is designed to provide for open green spaces, including forestation and other natural vegetation throughout the jurisdiction.

(b) It is to be used to protect the ambiance of the community by providing a series of natural buffers between residential and nonresidential development.

(c) No structures or buildings shall be allowed on properties in the District except structures and buildings associated with a public park or recreational area or structures and buildings owned and operated by the town and used for a public purpose.

(Ord. passed 10-19-1983; Ord. passed 6-8-2021; Ord. 2025-05, passed 10-14-2025)

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A broader discussion followed regarding potential long-term planning initiatives, including small area plans for specific neighborhoods such as the early-built sections of Buena Vista and White Oak that do not conform to current setback standards,

historic district designation, form-based code concepts, and the regulation of house teardowns and replacement structures. These items were acknowledged as longer-term projects.

Mr. Kanipe noted that a joint meeting with the Board of Commissioners and Board of Adjustment may be warranted in the future, given the productive working relationship among the three bodies, and suggested that the upcoming work on zoning districts would help define the scope of any such meeting.

Adjoining Fence Setback Discussion

Mr. Kanipe noted that fence-related issues, including a prior comment from a community member regarding fencing, are expected to come up as part of the broader zoning review work. No formal discussion or action was taken on this item at this meeting.

The Board agreed to schedule the next meeting for **Tuesday, July 21, 2026 at 4:00 PM.**

Chairman Saponaro adjourned the meeting at 5:21pm.

PLANNING COMMISSION MEETING

JULY 28, 2026

**AGENDA ITEM - 4****TREE PRESERVATION ORDINANCE - DISCUSSION****BACKGROUND**

Planning Commission member Angela Newnam has spearheaded reviewing the Town's existing tree preservation ordinances relative to the devastating impacts of Hurricane Helene. Ms. Newnam will have discussion topics for the Commission at the meeting Tuesday. For your benefit and review ahead of the meeting, I have included a copy of the existing Tree Preservation Ordinance as re-written and adopted in 2023.

ATTACHMENT

- (1) Ch. 153.050 through 153.061 – Tree Preservation Ordinance

§ 153.050 PURPOSE.

(A) In order to maintain the unique characteristics of the town as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve 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. Trees provide buffer and a natural canopy, and are a hallmark of the town requiring protection. The town is focused on maintaining the current health of the forest and increasing species diversity, with a primary goal to replace hardwood trees, other native trees, and trees of preference more quickly. Trees provide shade, cooling, noise and wind reduction, prevent soil erosion, produce oxygen, filter dust, and absorb carbon dioxide. Trees also provide natural habitat and aesthetic enhancement in the town.

(B) Preservation and appropriate replacement of trees is the intent of this chapter. This chapter shall apply to all properties within the town except as noted in division (C) below.

(C) This chapter does not apply to properties owned, leased, or controlled by the town. This chapter does not apply to properties that perform forestry activity on forestland taxed on the basis of its present-use value as forestland under G.S. Article 12, Chapter 105. 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 current copy of this plan to the town each calendar year by January 31.

(D) This subchapter applies to residential and non-residential tree removal that does not involve construction activity. Refer to § 153.034 for landscaping plan requirements and § 153.061 for tree removal and replacement guidelines related to all construction activity.

(Ord. 2023-06, passed 10-9-2023)

§ 153.051 DEFINITIONS.

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

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 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 or her designee.

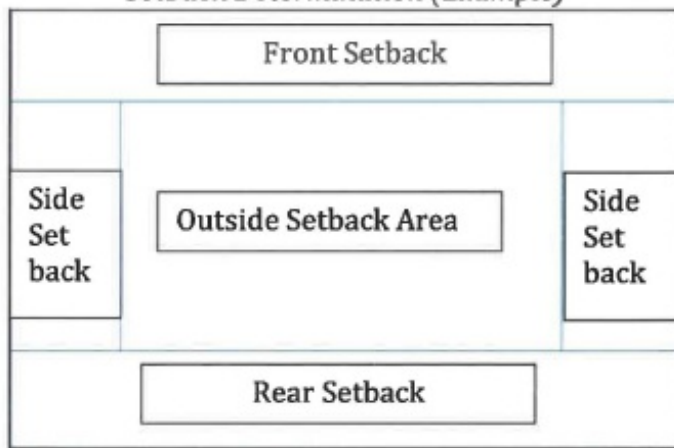
OUTDOOR RECREATION ACTIVITIES. Leisure-time activities, usually of a formal nature and often performed with others, requiring equipment, and taking place at prescribed non-residential places, sites, or fields. Active recreational uses and supporting services include swimming, tennis, golf, baseball and other field sports, track, and playground activities.

PROTECTED TREE. A protected tree is any tree six inches or more in diameter at a height of four and one-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 50% of the total replacement trees must come from the **RPL** with 25% of the total replacement trees being those species identified as trees of preference, as defined below. A minimum of one tree scheduled for replacement shall come from the tree of preference (TOP) list as defined below. The replanting list may be updated periodically and is available on the town's website.

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

SETBACKS. The minimum yard setback requirement found in §153.007. **INSIDE SETBACK AREA** is the length found from the street or property line, and **OUTSIDE SETBACK AREA** is the remainder of the property area. An example of setback locations are shown below.

Setback Determination (Example)

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 with the following characteristics.

- (1) Has a trunk diameter at breast height (DBH) of 36 inches or more;
- (2) Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of 30 inches or more.

UNPROTECTED TREE. A tree that is six inches or more in diameter at a height of four and one-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).

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

(Ord. 2023-06, passed 10-9-2023)

§ 153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without receiving approval from the appropriate regulatory review body for the removal and paying any applicable fee. Any protected trees removed shall be replaced as outlined in § 153.057 below.

(B) If the Ordinance Administrator concludes the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this chapter, 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 Ordinance Administrator may require that the applicant provide a tree survey showing the location, size, and type of protected trees on a property, including common scientific names. The tree 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 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, 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 to the Board of Adjustment within five business days of the decision.

(Ord. 2023-06, passed 10-9-2023)

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN PROTECTED TREES.

An application to remove more than ten protected trees in 12 successive months shall be made to the appropriate regulatory review authority as shown below. A fee for this application shall be paid along with the application.

Table 1 - Regulatory Review Body Requirements

Protected Trees Requested for Removal	Regulatory Review Body
1-10 trees	Ordinance Administrator
11-30 trees	Board of Adjustment

(Ord. 2023-06, passed 10-9-2023)

§ 153.054 REMOVAL OF UNPROTECTED TREES.

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

(B) The Ordinance Administrator may require the property owner to retain a certified arborist to render an opinion as to the health and structural integrity of the tree(s) in question and report the findings, in writing, to the town before final approval is given. The town reserves the right to consult with its own tree specialist to confirm the health and condition of any tree(s) prior to removal.

(C) Any unprotected trees removed shall be replaced as defined in §153.057 below.

(Ord. 2023-06, passed 10-9-2023)

§ 153.055 ENFORCEMENT.

Any unauthorized removal, cutting, or damage to protected or unprotected tree(s) may result in the Ordinance Administrator placing a stop-work order on any activity on the property. This order 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 § 153.057 below.

(Ord. 2023-06, passed 10-9-2023)

§ 153.056 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 plans shall protect this area around the tree and denote tree save areas on the plan.

(Ord. 2023-06, passed 10-9-2023)

§ 153.057 REPLACEMENT OF TREES.

(A) The replacement of protected and unprotected trees and trees of preference shall be established in accordance with the following requirements.

Table 2 - Residential Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
Table 2 - Residential Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	x	x	x	x	x	x
13"-18"	1	2"	1	2"	1	2"	x	x
19"-36"	1*	3"	1	2"	1	2"	x	x
36"+ ^T	1**	3"	1*	3"	2	2"	1	2"
* Must include a minimum of three screening/buffering trees as defined in RPL								
** Must include a minimum of five screening/buffering trees as defined in RPL								
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements								

Table 3 - Non-Residential Tree Replacement Requirements

Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	x	x	x	x	x	x
13"-18"	2	2"	x	x	1	2"	x	x
19"-36"	2*	3"	1	2"	1	3"	x	x
36"+ ^T	2**	4"	1*	3"	1	4"	1	3"
* Must include a minimum of three screening/buffering trees as defined in RPL ** Must include a minimum of five screening/buffering trees as defined in RPL ^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements								

(B) A replacement tree may be planted up to one year prior to the removal of any tree in order to count toward replacement. Replacement trees planted after existing tree removal shall be in the ground within six months of removal of the original tree. The Ordinance Administrator may, for good cause shown, and in his or her sole discretion, extend this period for 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. A minimum of 50% of the total replacement trees shall come from the RPL with a minimum of 25% of total replacement trees coming from the trees of preference (TOP) list. A minimum of one tree scheduled for replacement shall come from the tree of preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

(D) See the above charts for the minimum replacement size for all deciduous trees. Evergreen trees that are planted as replacement trees shall be a minimum of six feet in height at the time of planting.

(E) (1) Depending on the proximity of other trees and/or structures, lesser quantities of replacement trees may be authorized by the Ordinance Administrator or by the Board of Adjustment (in the case of an appeal to the town) or the 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 discretion is meant solely 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.

(2) For non-residential lots, if replanting inside the setback results in an adverse condition to town roads, other public property, other private property, or results in an undue hardship for an outdoor recreation activity, a variance application may be filed with the Board of Adjustment to replant the appropriate number of trees in a different location.

(3) Non-residential properties that include an outdoor recreation activity as a primary purpose, as defined above, are provided a tree removal allowance not to exceed net 50 trees outside the setback of the property in a calendar year. Net removal is defined as the number of protected trees removed minus the number of trees re-planted on the property where the outdoor recreation activity occurs. Prior to removal of trees pursuant to this section, the property owner should submit to the Ordinance Administrator notice of the tree(s) to be removed. For purposes of this net removal allowance, a property owner needs only to submit to the Ordinance Administrator documentation of any protected trees removed and any trees replanted as a record of same for each calendar year. Unprotected trees outside the setback of a non-residential property with an outdoor recreation activity as a primary purpose may be removed without replacement, provided that notice is given to the Ordinance Administrator regarding the necessity for removal.

(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.

(Ord. 2023-06, passed 10-9-2023)

§ 153.058 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 Ordinance Administrator six months following any construction to ensure the trees are in a healthy condition. The Ordinance Administrator may require replacement or replanting of replacement trees if the appropriate replacement trees are not in place during this review.

(B) Any person aggrieved by a decision made under this subchapter by the Ordinance Administrator may file, within five

days after the date of such decision, a petition to have such decision reviewed and acted upon by the Board of Adjustment. The decision of the Board of Adjustment shall be subject to review by the Board of Commissioners.

(C) At the option of the town, a bond or other type of guarantee can be required of the property owner and/or applicant when submitting a tree removal application to ensure all replanting requirements are met to the satisfaction of the town.

(D) Any violation of this chapter shall be subject to the penalty provisions found in §153.999.

(Ord. 2023-06, passed 10-9-2023)

§ 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) (a) The following developments are required to be in full compliance with this section.

(b) New residential development, including additions, exceeding more than 500 square feet of roof coverage, and all nonresidential development, including special uses; and

(3) New parking spaces or lots shall comply with the provisions of §153.064.

(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 meeting town requirements shall be reviewed and approved prior to any grading.

(C) *Tree replacement requirements.* The following tree replacement requirements are in place for all developments as defined in division (A)(2).

Table 1 - New Construction Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
Table 1 - New Construction Tree Replacement Requirements								
Size of tree removed (DBH)	Inside setback area				Outside setback area			
	Protected		Unprotected		Protected		Unprotected	
	Qty	Size	Qty	Size	Qty	Size	Qty	Size
6"-12"	1	2"	1	2"	1	2"	x	x
13"-18"	2	2"	1	2"	2	2"	1	2"
19"-36"	2*	3"	2	2"	2	3"	2	2"
36"+ ^T	2**	4"	2*	3"	2	4"	2	3"
* Must include a minimum of three screening/buffering trees as defined in RPL								
** Must include a minimum of five screening/buffering trees as defined in RPL								
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements								

(D) *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.

(3) 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.

(4) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. Upon recommendation from the Design Review Board following their review, alternative compliance plan 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. 2023-07, passed 10-9-2023)

§ 153.062 EXISTING VEGETATION IN R-4 OR R-5 ZONES.

(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 at the discretion of the Ordinance Administrator as described below.

(B) As required in § 153.052, no person shall remove or in any way damage any protected trees without first filing an application for the removal and receiving approval from the town. 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.

Two-inch to six-inch caliper tree = one tree

Seven-inch to 12-inch caliper tree = two trees

Thirteen-inch to 18-inch caliper tree = three trees

Nineteen-inch to 24-inch caliper tree = four trees

Twenty-five-inch and greater = five 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 within six months from removal of the dead trees or shrubs.

(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. 2023-07, passed 10-9-2023)