

PROPOSED AGENDA

Meeting of the Town of Biltmore Forest
Planning Commission

To be held Tuesday, June 27, 2023 at 5:30 p.m.

- A. Roll Call
 - B. Approval of Minutes – April 25, 2023 Meeting
 - C. Consideration of Landscaping, Buffering, and Tree Protection Ordinance Changes
Chapters 153.034; 153.050-059; 153.060-070.
 - D. Adjourn
-

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

Meeting ID: 830 1514 8121
Passcode: 226922



PLANNING COMMISSION MEETING

STAFF MEMORANDUM

JUNE 27, 2023

AGENDA ITEM C

CONSIDERATION OF AMENDMENTS TO LANDSCAPING, BUFFERING, AND TREE PROTECTION ORDINANCES

CHAPTERS 153.034; 154.050-059; 153.060-070

Background

The Planning Commission reviewed potential amendments to the three above ordinances last month. The Commission requested staff and Planning Commission member Tony Saponaro to review the drafts during June and continue amending based on additional feedback. This included changes to the replacement charts as presented last month. Those changes, as well as additional draft changes, are included within this document.

Changes From Last Month

In addition to the above referenced corrections in the replacement tables, the following changes were made specifically within Chapter 153.050 (Tree Protection Ordinance).

1. The Tree of Preference notations in the tables were changed from having three asterisks to having a superscript "T" – this was done to better indicate a difference between the buffering requirements and the Tree of Preference requirements.
2. Exemptions were included for non-residential outdoor recreation activities, and a new definition was included within the Tree Protection Ordinance for specifically related to these specific categories. The exemption would only apply to the "outside setback area" which is the interior of each lot, and is in recognition of the unique needs of outdoor recreation areas.
3. Trees of Preference were designated as those trees with a trunk DBH of 24 inches or greater native to North Carolina as designated by the US Department of Agriculture Natural Resource Conservation Plants Database. Any tree with a trunk DBH of 36 inches or more is also designated a tree of preference.

To appropriately show these changes, staff created a comparison document that shows the full red-line and blue addition differences between the May document and this current draft. A clean copy of the Tree Protection Ordinance is also provided in draft form.

Rationale for Changes

1. This tree ordinance proposal addresses the very high importance the majority of Biltmore Forest residents (per 2021 survey) placed on larger, mature trees (as a forest in general) by preserving, replenishing and promoting a healthy, diverse and multilayered canopy.
2. This ordinance has been directly incorporated into the zoning code to not only avoid confusion but also to ensure its applicability and legality, as well as ensure future adjustments or amendments are deliberatively and publicly legislated. Any amendments to the Zoning Ordinance statutorily require a public hearing before consideration by the Board of Commissioners. The public's interest in tree protection, and desire to be involved in the process, is evidenced by the survey results. Due to this significant public interest, and the inherent impact of new construction and other land development activities on tree protection, the Zoning Ordinance is the appropriate place for the Town's Tree Protection Ordinance to reside.
3. The draft incorporates different compliance requirements for different land uses. For example, regulations for residential vs nonresidential allow not only more specific expectations depending on land use type, but also allow for better monitoring and administrative capabilities to ensure compliance. Additionally, companion amendments within the Town's landscaping ordinance (153.034) require more stringent review and approval requirements for additions to existing structures as well as all new construction on undeveloped lots. This will provide the Town more ability to review and approve landscaping plans, including tree removal, and lead to more fully developed plans by applicants.
4. The tree ordinance specifically targets the importance of preserving the trees and buffering vegetation along the roadways and lot perimeters as expressed in the existing (and original) Tree Protection Ordinance. The original ordinance specifically indicated that buffering between different land uses (residential versus non-residential) was important as well as buffering from the street. The new ordinance strengthens this original purpose through the enhanced replacement requirements noted "inside" the setback area.
5. By researching numerous other municipalities, we've been able to adapt best practices as well as avoid possible legal limitations. Highlighting native species and amounts of preferred trees for additional attention are just one example of this. This ordinance adapts these best practices for Biltmore Forest and our specific needs, including being one of (if not the only) local government in North Carolina to regulate tree removal on private property.

Attachments

1. Chapter 153.034 – Landscaping and Sedimentation Control Changes
2. Chapter 153.050-059 – New Tree Protection Ordinance language marked DRAFT
3. Chapter 153.050-059 – Comparison Document showing changes from last month to this month
4. Chapter 153.060-070 – Existing Buffering, Screening, and Landscape Ordinance with revisions to include all new construction activities, including residential, based on certain thresholds.

DRAFT AMENDMENT TO EXISTING LAND DISTURBANCE
AND SEDIMENTATION CONTROL

§ 153.034 LANDSCAPING AND GRADING PLANS, LAND DISTURBANCE, AND
SEDIMENTATION CONTROL.

(A) ~~Land disturbance becoming landscaping~~ Plans Required. A landscaping and grading plan, as defined in the Town's Zoning Application process, are required for any or all of the following activities.

- (1) Any land-disturbing activity, such as grading projects or removal of natural vegetation, that involves the disturbance of 20% or more of the land area of any lot ~~shall submit a landscaping and grading plan for such activity to the Board of Adjustment for review and approval.~~ Prior to commencing such activity in a public service district, any land-disturbing activity, such as grading projects or removal of natural vegetation other than routine maintenance, shall be subject to approval by the Town Board of Adjustment regardless of the area to be disturbed.
- (2) Any residential construction activity that results in an addition of greater than five-hundred (500) square feet of roof coverage.
- (3) Any non-residential construction activity as defined in § 153.061 of the Town of Biltmore Forest Zoning Ordinance.

(B) All landscape and grading plans shall show compliance with the Town's Tree Protection and Preservation regulations as found in §153.050-153.059 and §153.061(C) for existing residential and non-residential tree maintenance and new construction activities, respectively.

(C) Maintain as natural open space areas. The intent of this requirement is to ensure that these areas are to be maintained as natural open space areas, and that any disturbance such as the building of roads, public utilities, and other such activities be designed and constructed so as to maintain the natural scenic character of these districts. A landscape plan shall be submitted and approved by the Board of Adjustment prior to any land-disturbing activity.

(D) Pre-construction conference and supervision.

- (1) Prior to the commencement of any pre-construction land-clearing or soil disturbance, a pre-construction conference will take place between a responsible representative of the Town and the applicant to review procedures for protection and management of all protected trees and other landscape elements identified in the approved landscape plan. The applicant will designate one or more persons responsible for ensuring the protection of new or existing landscaping elements to be preserved. The responsible person shall be present on site whenever activity is taking place that could damage or disturb such landscape elements, and will notify the Ordinance Administrator that such activity is taking place.
- (2) The applicant shall provide the following at least seven (7) days prior to the pre-construction conference:
 - a) Approved landscaping plan, showing all protected and unprotected trees to be removed, and all replacement trees to be planted.

- b) Chart showing the quantity of trees, scientific species name, and tree designation (protected, unprotected, or tree of preference) and replacement quantities required.
- c) Final grading plan showing tree preservation limits and limits of disturbance.
- d) The Town shall have developed sites inspected frequently to ensure work is conforming to the approved landscape plan and the applicable sections of this subchapter.
- e) Prior to the commencement of any pre-construction land-clearing or soil disturbance, the developer/contractor shall be required to sign a document agreeing to abide by the conditions stipulated in this subchapter. At the option of the Town, a compliance bond may be required.

(E) Compliance with G.S. § 113A-54. Where applicable, all proposed development projects or land-disturbing activities shall comply with G.S. § 113A-54, and Rules and Regulations for Erosion and Sediment Control as established by the State Sedimentation Control Commission, State Department of Natural Resources and Community Development.

~~(D) Landscaping plans. A specific landscaping plan prepared by an appropriate professional shall be submitted to the Board of Adjustment which shall detail all plantings or reforestation to take place as part of the land-disturbing activity.~~

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

Chapter 153.050 Tree Preservation

Tree Protection

153.050 Purpose

153.051 Definitions

153.052 Removal of protected trees

153.053 Applications for removal of more than ten (10) protected trees

153.054 Removal of unprotected trees

153.055 Enforcement

153.056 Drip line protection

153.057 Replacement of trees

153.058 Inspections, Appeals, Bond, and Penalty

TREE PROTECTION

§ 153.050 PURPOSE.

(A) In order to maintain the unique characteristics of the Town of Biltmore Forest as a residential neighborhood with a history beginning as part of the Vanderbilt Estate, it is necessary to preserve the traditional appearance of Biltmore Forest as a true forest. This is particularly true of trees along the roads and around the perimeter of lots. Reference is hereby made to § 153.034 of the Town Zoning Ordinance relating to removal of natural vegetation, which section is routinely involved when residences or other structures are placed on a lot.

(B) Preservation and appropriate replacement of trees is the intent of this subchapter. This subchapter shall apply to all properties within the Town of Biltmore Forest except as noted in part C below. The Town is focused on maintaining the current health of the forest and increasing species diversity, with a primary goal to 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. Trees provide buffer and a natural canopy, and are a hallmark of the Town requiring protection. Damage to and removal of trees requires regulation and control.

(C) Exceptions. This subchapter does not apply to properties owned, leased, or controlled by the Town of Biltmore Forest. This subchapter does not apply to properties that perform forestry activity on forestland taxed on the basis of its present-use value as forestland under Article 12, Chapter 105, of the N.C. General Statutes. Once an active forestry management plan is no longer in place, the exception for the property will be removed. Property owners with an active forestry management plan shall provide a copy of this plan to the Town of Biltmore Forest each calendar year by January 31.

Outdoor recreation activities, as defined below, are exempt only from the “outside setback area” portions of the replacement requirements of this ordinance. This is due to the Town’s recognition

that outdoor recreation areas, whether public or private entities, are inherently different operationally than tree replacement requirements for non-outdoor recreation areas. Notification shall be provided to the Town prior to removal of any tree in this exempt area.

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

§ 153.051 DEFINITIONS.

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

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

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 a half feet from the ground (DBH-diameter at breast height) that is in sound, healthy condition.

RECOMMENDED PLANTING LIST (RPL). A list developed and updated by the Town Arborist that includes preferred species based on the tree being removed and acceptable replacement locations. For all replanting requirements, a minimum of fifty (50) percent of the total replacement trees must come from the RPL with twenty-five (25) percent of the total replacement trees being those species identified as trees of preference, as defined below. The replanting list is updated every six (6) months and is available for distribution from the Town.

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

SETBACKS. For the purposes of this chapter, setback refers to the minimum yard setback requirement found in § 153.007 “DIMENSIONAL REQUIREMENTS” of the Town Zoning Ordinance. “INSIDE SETBACK AREA” is the length found from the street or property line, and “OUTSIDE SETBACK AREA” is the remainder of the property area.

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

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

- (B) Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of twenty-four (24) inches or more.

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

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

(2013 Code, § 19-2) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without first filing an application for removal, receiving approval from the appropriate regulatory review body for the removal, and paying any applicable fee. Any protected trees removed shall be replaced as outlined in § 153.058 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 subchapter, he or she may refuse to approve such removal, or permit the removal of a lesser number of protected trees. Further, in his or her discretion, the 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 (5) business days of the decision.

(2013 Code, § 19-3) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN (10) PROTECTED TREES.

An application to remove more than ten (10) protected trees in twelve (12) successive months shall be made to the appropriate regulatory review authority as shown below. A fee for this application, as set forth annually in the adopted Schedule of Fees, shall be paid along with the application.

Table 1 - Residential Tree Replacement Requirements

| Protected Trees Requested for Removal | Regulatory Review Body |
|---------------------------------------|-------------------------|
| 1-10 Trees | Ordinance Administrator |
| 11-30 Trees | Board of Adjustment |
| 31+ Trees | Board of Commissioners |

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

§ 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 § 153.058 below.

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

§ 153.055 ENFORCEMENT.

Any unauthorized removal, cutting, or damage to protected or unprotected 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 153.038 below.

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

§ 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. There shall be no soil disturbance within the drip line of trees on adjacent properties without prior written approval from the Town and adjacent property owner.

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

§ 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 | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | Qty | Size | Qty | Size | Qty | Size | Qty | Size |
| 6"-12" | 1 | 2" | N/A | N/A | N/A | N/A | N/A | N/A |
| 13"-18" | 1 | 2" | 1 | 2" | 1 | 2" | N/A | N/A |
| 19"-36" | 1* | 3" | 1 | 2" | 1 | 2" | N/A | N/A |
| 36"+ ^T | 1** | 3" | 1* | 3" | 2 | 2" | 1 | 2" |

* must include a minimum of 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

^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 | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | 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 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

^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 (1) 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 their 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 fifty (50) percent of the total replacement trees shall come from the RPL with a minimum of twenty-five (25) percent of total replacement trees coming from the Trees of Preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

(D) 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 eight (8) feet in height at the time of planting.

(E) 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 amendment 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. For non-residential lots, if replanting inside a setback area 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.

(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.

((2013 Code, § 19-7) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

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

(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 of the Town of Biltmore Forest Zoning Ordinance.

DRAFT

Chapter 153.050 Tree Preservation

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

- (B) ~~A~~ Any tree native to North Carolina per the United States Department of Agriculture Natural Resource Conservation Service Plants Database with a trunk DBH of twenty-four (24) inches or more ~~in the case of the following species:~~

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

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

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

(2013 Code, § 19-2) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 153.052 REMOVAL OF PROTECTED TREES.

(A) No person shall remove or in any way damage any protected tree on a property without first filing an application for removal, receiving approval from the ~~Ordinance Administrator for the removal, and paying any applicable fee. The Ordinance Administrator may allow the removal of up to three protected trees on the perimeter of a property or lot within the front, side, or rear yard setbacks, as such setbacks are defined in the Town's Zoning Ordinance. Within the remaining central portion of a property or lot, and the portion on which structures or improvements may be located, the Ordinance Administrator, may allow up to ten (10) protected trees to be removed.~~ appropriate regulatory review body for the removal, and paying any applicable fee. Any protected trees removed shall be replaced as outlined in § 153.058 below.

(B) If the Ordinance Administrator concludes ~~that~~ the removal of the number of protected trees requested would be undesirable, and not within the letter or intent of this subchapter, he or she may refuse to approve such removal, or permit the removal of a lesser number of protected trees. Further, in his or her discretion, the 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 (5) business days of the decision.

(2013 Code, § 19-3) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

§ 153.053 APPLICATIONS FOR REMOVAL OF MORE THAN TEN (10) PROTECTED TREES.

—An application to remove more than ten (10) protected trees in twelve (12) successive months shall be made to the appropriate regulatory review ~~and approval~~ authority as shown below. A fee for this application, as set forth annually in the adopted Schedule of Fees, shall be paid along with the application.

Table 1 - Residential Tree Replacement Requirements

| Protected Trees Requested for Removal | Regulatory Approval Review Body |
|---------------------------------------|--|
| 1-10 Trees | Ordinance Administrator |
| 11-30 Trees | Board of Adjustment |
| 31+ Trees | Board of Commissioners |

~~(B)~~

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

§ 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 § 153.058 below.

(Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021) ~~§ 153.055 ENFORCEMENT.~~

~~—~~ § 153.055 ENFORCEMENT.

Any unauthorized removal, cutting, or damage to protected or unprotected 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 153.038 below.

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

§ 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. There shall be no soil disturbance within the drip line of trees on adjacent properties without prior written approval from the Town and adjacent property owner.

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

§ 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 | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | Qty | Size | Qty | Size | Qty | Size | Qty | Size |
| 6"-12" | 1 | 2" | x | x | 1 | 2" | x | x |
| 13"-18" | 1 | 2" | 1 | 2" | 1 | 3" | x | x |
| 19"-36" | 1* | 3" | 1 | 2" | 2 | 2" | x | x |
| 36"+*** | 1** | 4" | 1* | 3" | 2 | 3" | 1 | 3" |

* must include a minimum of 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

*** 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 | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | 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"+*** | 2** | 4" | 1* | 3" | 1 | 4" | 1 | 3" |

* must include a minimum of 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

*** If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

Table 2 - Residential Tree Replacement Requirements

| SIZE OF TREE REMOVED (DBH) | INSIDE SETBACK AREA | | | | OUTSIDE SETBACK AREA | | | |
|----------------------------|---------------------|------|--------------|------|----------------------|------|--------------|------|
| | PROTECTED | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | Qty | Size | Qty | Size | Qty | Size | Qty | Size |
| 6"-12" | 1 | 2" | N/A | N/A | N/A | N/A | N/A | N/A |
| 13"-18" | 1 | 2" | 1 | 2" | 1 | 2" | N/A | N/A |
| 19"-36" | 1* | 3" | 1 | 2" | 1 | 2" | N/A | N/A |
| 36"+ ^T | 1** | 3" | 1* | 3" | 2 | 2" | 1 | 2" |

* must include a minimum of 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

^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 | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | 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 3 screening/buffering trees

** must include a minimum of 5 screening/buffering trees

^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 (1) 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 their 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 fifty (50) percent of the total replacement trees shall come from the RPL with a minimum of twenty-five (25) percent of total replacement trees coming from the Trees of Preference (TOP) list. Variation from these requirements must be granted by the Ordinance Administrator prior to approval and planting.

(D) See the above charts for the minimum replacement ~~size~~^{size} for all deciduous trees. Evergreen trees that are planted as replacement trees shall be a minimum of eight (8) feet in height at the time of planting.

(E) 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 amendment is meant solely ~~as a means~~ to allow for maintenance of existing residential lots where the canopy is thick and growing new trees would be impractical and/or difficult. This allowance is not intended for new residential construction. For non-residential lots, if replanting inside a setback area 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.

(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.

((2013 Code, § 19-7) (Ord. passed - - ; Ord. 2019-02, passed 9-17-2019; Ord. 2021-01, passed 1-12-2021)

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

(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 of the Town of Biltmore Forest Zoning Ordinance.

BUFFERS, SCREENING, AND LANDSCAPING REQUIREMENTS~~E~~

§ 153.060 PURPOSE AND INTENT.

~~(A)~~ ~~(A)~~—The town has an abundant and diverse tree and vegetative cover that is essential to the aesthetic value of the town and provides numerous ecological and economic benefits.

(B) Landscape requirements for new construction and substantial additions are set forth below, in order to:

(1) Encourage the preservation of existing trees and vegetation on undeveloped residential lots and ensure the reforestation of the lot when tree removal is required for any construction activities.

(2) Ensure landscape plans presented to the Town include considerations for native species, reforestation, environmental protection, and effective stormwater management.

~~(C)~~ ~~B~~ The landscape and buffering standards set forth below require buffers and landscaping between dissimilar land uses, along public rights-of-way, and within parking lots, in order to:

(1) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;

(2) Protect and improve the visual quality of the town and minimize the negative impacts of development such as noise, dust, litter, glare of lights, traffic, heat, overcrowding, odor, and views of unsightly parking lots, utilities, and mechanical systems and buildings;

(3) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;

(4) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and to preserve the character and value of property and to provide a sense of privacy; and

(5) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of the town while allowing flexibility to promote well-designed and creative landscape plantings.

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

§ 153.061 GENERAL INFORMATION.

(A) Applicability.

(1) Buffer strip plantings, street trees, and parking lot trees and shrubs are required for developments within the town limits.

(2) The following developments ~~shall bring the entire site into full compliance~~ are required to be in full compliance with this section:

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

(b) Non-residential Renovations ~~renovations~~ with a total cost exceeding 50% of the assessed value of the building, ~~excluding single-family dwellings~~, according to the county tax records.

(3) New parking spaces or lots are not required to comply with the provisions of this section.

~~(B)~~ (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 ~~by the Board of Adjustment~~ prior to any grading.

(C) Tree Replacement Requirements.

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

Table 1 - New Construction Tree Replacement Requirements

| SIZE OF TREE REMOVED (DBH) | INSIDE SETBACK AREA | | | | OUTSIDE SETBACK AREA | | | |
|----------------------------|---------------------|------|--------------|------|----------------------|------|--------------|------|
| | PROTECTED | | UN-PROTECTED | | PROTECTED | | UN-PROTECTED | |
| | Qty | Size | Qty | Size | Qty | Size | Qty | Size |
| 6"-12" | 1 | 2" | 1 | 2" | 1 | 2" | N/A | N/A |
| 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 3 screening/buffering trees
 ** must include a minimum of 5 screening/buffering trees
^T If removed trees include identified trees of preference (TOP) species, replanting requirements will follow 36"+ DBH requirements

(C) Alternative compliance.

(1) The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Board of Adjustment, in consultation with the

Design Review Board, may alter the requirements of this section as long as the existing or added landscape features of the development site comply with the intent of this chapter.

(2) Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

(a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements;

(b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood; or

(c) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the intent of the ordinance, and exhibits superior design quality.

(4) The property owner must submit a plan of the area for which alternative compliance is requested to the Town Manager 14 days prior to the meeting of the Design Review Board at which the request will be considered. The site plan shall show existing site features and any additional material the property owner will plant or construct to meet the intent of the buffer, street tree, and parking lot tree requirements.

(5) In addition, the applicant must submit a written statement explaining and justifying the need for alternative compliance. The Design Review Board shall make a recommendation of approval, approval with conditions, or denial within ten working days of reviewing the request for alternative compliance. The Design Review Board's recommendation shall then be considered by the Board of Adjustment. Alternative compliance shall be limited to the specific project being reviewed and shall not establish a precedent for acceptance in other cases.

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

§ 153.062 EXISTING VEGETATION.

(A) Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, and mitigate the impacts of development on the community. It is recommended that groups of trees be preserved, as well as individual trees. Existing trees and shrubs designated for preservation may be credited towards required buffer trees, street trees, and parking lot trees.

(B) As required in § ~~93.32~~153.052, no person shall remove or in any way damage any protected trees without first filing an application for the removal and receiving a permit from the Town Manager. This requirement is applicable to both residential and non-residential uses within the town.

(C) Special attention shall be given to protected trees located within 20 feet of the of the rear or side property line of property meeting the definition of an incompatible land use.

(1) Credits and other incentives to preserve vegetation within non-residential land use.

(a) Vegetation located in the buffer strip. One existing evergreen shrub over four feet high located in the buffer strip may be credited for two new shrubs, also on a case-by-case basis by the Board of Adjustment.

(b) Vegetation located elsewhere on the property.

1. Trees designated for preservation may be credited at the rate of the following.

2-inch to 6-inch caliper tree = 1 tree

7-inch to 12-inch caliper tree = 2 trees

13-inch to 18-inch caliper tree = 3 trees

19-inch to 24-inch caliper tree = 4 trees

25-inch and greater = 5 trees

2. One existing shrub over four feet high may be credited for two new shrubs. In order to receive credit, vegetation designated for preservation shall be in good health and condition. Trees and shrubs designated to be preserved shall be indicated on the landscape and grading plan, as well as all protective barriers. If a tree or shrub designated for preservation dies within five years of the project's completion, it must be replaced with the total number of trees or shrubs which were credited to the existing tree or shrub.

(2) Protection of existing trees and shrubs during construction.

(a) 1. No grading or other land-disturbing activity shall occur on a site with existing trees or shrubs which are designated to be preserved in order to meet the landscaping requirements until the landscape and grading plan has been approved by the Board of Adjustment and protective barriers are installed by the developer and approved by the Zoning Administrator. Trees designated for preservation which are counted toward the landscape and buffering requirements shall be protected by barriers, while trees designated for preservation which do not count toward the landscape and buffering requirements are encouraged to be protected by barriers. The diameter of the trees designated for preservation and the location of protective barriers shall be shown on the landscape and grading and site plans with the dimensions between the tree trunk and barrier indicated.

2. Protective barriers shall be placed around the root protection zone of trees designated for preservation that are within 50 feet of any grading or construction activity. Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub. All protective barriers shall be maintained throughout the building construction process.

(b) 1. All contractors shall be made aware of the areas designated for protection.

2. No disturbance shall occur within the protective barriers, including:

a. Grading;

b. Filling, unless an aeration system which is certified by a registered landscape architect, certified arborist, or state cooperative extension specialist is installed to protect the tree from suffocation;

c. Temporary or permanent parking;

d. Storage of debris or materials, including topsoil;

e. Disposal of hazardous wastes or concrete washout; and

f. Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

3. If any area within the root protection zone will be disturbed for any reason, a registered landscape architect, certified arborist, or state cooperative extension specialist shall recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

4. The developer shall coordinate with the utility companies early in the design process to resolve potential conflicts about the placement of utilities and buffer and screening requirements in § 153.063(B)(5). The Zoning Administrator shall approve the placement of the utilities either outside of the root protection zone or tunneled at least two feet directly below the tree roots to minimize root damage.

5. If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the drip line area.

(c) Tree protection zone signs shall be installed on the tree protection barriers visible on all sides of the protection area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language: “TREE PROTECTION ZONE, KEEP OUT” or “TREE SAVE AREA, KEEP OUT”.

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

§ 153.063 BUFFER STRIP AND SCREEN REQUIREMENTS.

(A) Certain land uses are defined in this chapter as being an incompatible land use when developed adjacent to other less intensive land uses. A buffer strip can serve to lessen adverse impacts when development occurs.

(B) The installation of the applicable buffer strip shall be the responsibility of the owner of the developing land use. Buffer strips shall be located on the property of the developing land use between the property line and any vehicular use areas, buildings, storage, service areas, or other area of activity. The buffer strip shall extend along the entire rear and/or side property line which abuts an incompatible land use, up to any required street tree planting strip.

(1) Use of buffer strips. Required buffers shall not be disturbed for any reason except for approved driveway openings and other passive or accessory uses compatible with the general

separation of land uses and; provided, that the total number of required plantings are still met. Approval from the Town Manager is required prior to initiating any disturbance of the buffer.

(2) Placement of buffer plantings. The exact placement of the required plants shall be the decision of the developer or designer, but shall be reviewed by the Town Manager and approved by the Board of Adjustment. Plants shall be placed in a manner to serve as an effective screen year-round when viewed from any area accessible to the public or from adjacent properties. Trees or shrubs should be planted at least five feet away from the property line to ensure maintenance access and to avoid encroaching upon neighboring property.

(3) Composition of buffer plantings. A buffer consisting of two staggered rows of evergreen shrubs or sheared evergreen trees, planted 48 inches apart (as measured from the central stem) in a 20-foot wide strip shall be installed to screen the nonresidential use from neighboring residential properties. The trees or shrubs shall be between four and five feet high at time of planting. During times of extended dry weather, the applicant may petition the Board of Adjustment to reduce the required size of vegetation to be planted in order to better ensure its survival. It is suggested that a mixture of two to three shrubs selected from the recommended species list be planted to encourage healthier plants.

(4) Coordination with stormwater drainage provisions. If the buffer strip is to be used as part of the area for required stormwater runoff absorption as outlined in Ch. 52, then the shrubs and trees within the buffer shall be water tolerant.

(5) Coordination with utility easements. In circumstances when the property to be developed is adjacent to a utility easement, the buffer requirement of division (C) above maybe altered to be only ten feet wide at the discretion of the Board of Adjustment, based on the factors of space, feasibility, and other considerations which may make it difficult to provide a 20-foot buffer.

(6) Additional buffering. The Board of Adjustment has the authority to require that a wall or fence be constructed next to property used for residential purposes when the Board determines that the buffer strip alone does not provide adequate buffering. The fence or wall shall be constructed in a durable fashion of wood, stone, masonry materials, or other materials if deemed appropriate and shall be built of material compatible with the principal building. When concrete block is utilized, it shall be finished with stucco on both sides. The materials and design shall be approved by the Board of Adjustment on a case-by-case basis. The finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this section. Shrubs shall be planted on the applicant's side of the property at the rate of 25 per 100 linear feet; their placing and arrangement shall be the decision of the applicant.

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

§ 153.064 PARKING LOT LANDSCAPING REQUIREMENTS.

Trees and shrubs are required in and around parking lots with more than five spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, help absorb runoff, reduce glare from parking lots, and to help filter exhaust from vehicles.

(A) There shall be a continuously-maintained growing strip planted with grass or similar low-growing vegetation, measured from the back of the curb and extending ten feet perpendicular to the road. The purpose of this growing strip is to provide a clear line of sight for motorists, pedestrians, and cyclists entering and leaving commercial properties.

(B) (1) Where parking areas with more than five spaces adjoin a public right-of-way, a landscaped planting strip ten feet wide shall be established and continuously maintained between the growing strip and parking area(s).

(2) Street trees shall be planted within the landscaped planting strip in accordance with § 153.066 and parking areas within 50 feet of the right-of-way shall have a visually modifying screen or barrier that meets one of these standards:

(a) Evergreen shrubs shall be planted 36 inches apart as measured from the center and attain a height of at least 48 inches within four years of installation;

(b) There shall be a fence or wall three feet high constructed of the same material as the principal building; or

(c) There is an earthen berm at least two feet high, with a minimum crown width of two feet and a width to height ratio of no greater than 2:1; shrubs shall be planted on top of the berm that will attain a height of at least 36 inches within four years of installation and shall be planted 36 inches apart.

(3) No screen is required at parking lot entrances or exits, and no screen shall obstruct vision within 50 feet of an entrance, exit, or intersection. The landscaped planting strip shall be covered with living material, including groundcover and/or shrubs, except for mulched areas directly around the trees, so that no soil is exposed.

(C) (1) (a) Parking areas with more than five spaces shall have at least one large-maturing deciduous tree for every three parking spaces, with some appropriate clustering of trees permitted, and six-foot by 18-foot projecting landscaped islands generally between ten and 12 parking spaces.

(b) Whenever possible, interior parking spaces should have a continuous planter strip six feet wide between rows of parking.

(2) Where appropriate, provisions shall be made to ensure that adequate pedestrian paths are provided throughout the landscaped areas. In all cases, at least one large maturing deciduous tree shall be provided for a parking lot regardless of the number of spaces provided. No parking space shall be located more than 50 feet from the trunk of a large-maturing deciduous tree. When calculating the number of trees required, the applicant shall round up to the nearest whole number.

(D) All landscaped areas shall be bordered by a concrete curb that is at least six inches above the pavement and six inches wide or a granite curb that is at least six inches above the pavement and four inches wide.

(E) To increase the parking lot landscaped area, a maximum of two feet of the parking stall depth may be landscaped with low-growth, hearty materials in lieu of asphalt, allowing a bumper overhang while maintaining the required parking dimensions.

(F) When more than the required number of parking spaces is provided, the applicant shall provide two times the required number of trees for the spaces provided above the ordinance requirement.

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

§ 153.065 SCREENING OF DUMPSTERS, LOADING DOCKS, OUTDOOR STORAGE AREAS, AND UTILITY STRUCTURES.

(A) All dumpsters, loading docks, outdoor storage areas, or utility structures visible from a public street or adjacent property line shall be screened unless already screened by an intervening building or buffer strip. Landscaping shall not interfere with the access and operation of any such structure or facility. Trash and storage areas shall be well-maintained, including prompt repair and replacement of damaged gates, fences, and plants.

(B) Openings of trash enclosures shall be oriented away from public view or screened with sturdy gates wide enough to allow easy access for trash collection, where practical. The consolidation of trash areas between businesses and the use of modern disposal techniques is encouraged. All dumpsters shall be located a minimum of 50 feet from a residential dwelling. All unenclosed outdoor storage areas greater than 25 square feet shall also be screened from adjacent properties and streets.

(C) Screen types include:

(1) A continuous hedge of evergreen shrubs planted in a five-foot strip spaced a maximum of 36 inches apart; and

(2) A wall or fence six feet high, with the finished side of the fence or wall facing the abutting property or street. Fences longer than 25 linear feet shall be landscaped with trees and/or shrubs planted in a minimum five-foot planting area, except around access areas, spaced no farther than eight feet apart in order to screen at least 50% of the fence or wall.

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

§ 153.066 STREET TREES.

(A) (1) Street trees are required for all developments meeting the applicability requirements of § 153.061(A). Street trees shall be required at the rate of one large-maturing tree (over 35 feet in height) for every 40 linear feet of property abutting a street.

(2) In the event that overhead utility lines are present, then one small-maturing tree (less than 35 feet in height) may be planted for every 30 feet of property abutting a street.

(3) This does not imply that trees must be spaced exactly 30 or 40 feet apart.

(4) The exact placement of the required tree or trees may be established with input from the reviewing boards in order to fit in with sign placement and other building issues.

(B) Trees shall be planted within a landscaped planting strip adjacent to the growing strip as outlined in § 153.064(A) and also according to regulations from the State Department of Transportation.

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

§ 153.067 CERTIFICATION OF COMPLETION.

(A) Landscaping shall be installed and inspected prior to receiving a certificate of completion. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant materials. If the season or weather conditions prohibit planting the materials, the developer may provide an irrevocable letter of credit, or other financial surety in an amount equal to 110% of the cost of installing the required landscaping to guarantee the completion of the required planting.

(B) Upon approval of the financial surety, the certificate of completion shall be issued. The financial surety shall be canceled and/or returned upon completion.

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

§ 153.068 MAINTENANCE.

(A) The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Failure to maintain or replace dead, damaged, or diseased material or to repair a broken fence or wall shall constitute a zoning violation and shall be subject to the penalty provisions in § 153.999 if not replaced within 30 days of notification.

(B) If an act of God or other catastrophic event occurs which destroys a large quantity of vegetation, the owner or lessee shall have 120 days to replant. Replaced plant material shall be in compliance with the minimum size, spacing, and quantity standards of the ordinance requirements in effect at the time of project approval.

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

§ 153.069 RESIDENTIAL SCREENING OF UTILITY STRUCTURES.

It is required that all new utility structures, whether they are part of a new dwelling or are being added to an existing dwelling, located out of doors, including, but not limited to, heat pumps, air conditioning units (with the exception of window units), and generators shall be screened on all sides except the side closest to the dwelling. The screening shall consist of evergreen shrubs planted a maximum of 36 inches apart, with a height of 18 to 24 inches at time of planting. The shrubs may be planted three feet away from the utility structures so they do not interfere with proper functioning.

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

§ 153.070 PLANT SPECIFICATIONS.

(A) Recommended plant species. Plants may be chosen from the recommended plant species list available from the Town ~~Manager~~. The list encourages the use of plant materials which are indigenous to this region and are readily available from local nurseries. Plant materials which are not on the list may be used following approval from the Board of Adjustment.

(B) Minimum plant size requirements.

(1) Large-maturing deciduous tree. Greater than 35 feet at maturity. Minimum size at planting shall be 12 to 14 feet in height and two inches caliper (diameter);

(2) Small-maturing deciduous tree. Smaller than 35 feet at maturity. The tree shall be at least one and one-half inch caliper and eight to ten feet high at time of planting;

(3) Evergreen tree. Minimum height of ~~four to five~~ eight (8) feet at time of planting; and

(4) Evergreen shrub. Minimum three gallon container or ten-inch root ball with a height of 18 to 24 inches at time of planting.

(C) Plant standards.

(1) All plants shall meet the requirements of the most recent edition of the American Standards for Nursery Stock, ANSI 260.1.

(2) Plants shall be healthy, well-branched, and free of disease and insect infestation.

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