

TOWN OF BILTMORE FOREST
PLANNING COMMISSION

AGENDA

Tuesday, January 28, 2025

4:00 p.m.

Biltmore Forest Town Hall

1. Welcome – Chairman Saponaro
2. Tree Protection Ordinance Discussion
3. Accessory Buildings and Maximum Roof Coverage/Impervious Surface Coverage Discussion
4. Impervious Surface Definition Discussion
5. Adjourn

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

Meeting ID: 830 1514 8121

Passcode: 226922

**PLANNING COMMISSION MEETING
STAFF MEMORANDUM
DECEMBER 4, 2024**



AGENDA ITEM - 2

Tree Protection Ordinance Discussion

BACKGROUND

The Planning Commission discussed the Town's existing tree protection ordinance, in relation to the aftermath of Hurricane Helene, at last month's meeting. This discussion item is to continue that focus and review the existing ordinance, as well as considering potential amendments or items of focus as a result of the massive change in the Town's forest canopy.

TREE PRESERVATION

§ 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.

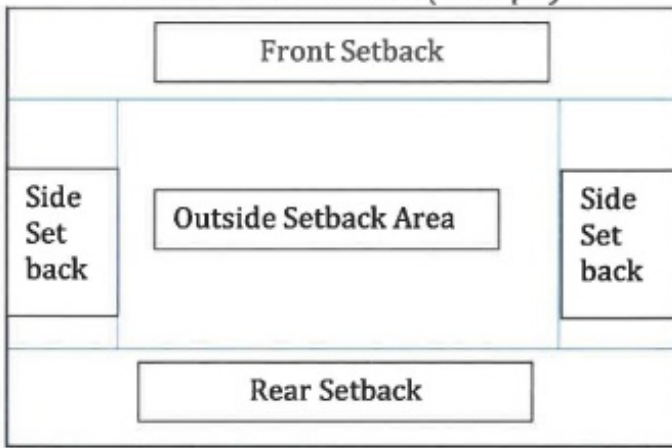
PROTECTED TREE. A protected tree is any tree six inches or more in diameter at a height of four and one-half feet from the ground (DBH-diameter at breast height) that is in sound, healthy condition.

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
31+ trees	Board of Commissioners

(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)

**PLANNING COMMISSION MEETING
STAFF MEMORANDUM
DECEMBER 4, 2024**



AGENDA ITEM - 3

**Accessory Buildings and Maximum Roof
Coverage/Impervious Surface Coverage Discussion**

BACKGROUND

The Planning Commission made a recommendation last month for the Board of Commissioners to approve an amendment allowing staff to handle compliant accessory structures administratively. This recommended amendment was approved by the Board of Commissioners on January 14 and is now in effect.

During the review of this item, the Planning Commission also briefly discussed reviewing the potential for more than one accessory building to be located on a lot and for removing the current limit on maximum roof coverage for an accessory building.

The Board of Commissioners directed the Planning Commission to review these areas as well during their meeting in January. Copies of the pertinent ordinances are provided with this memo to assist with the discussion.

§ 153.029 ACCESSORY STRUCTURES AND BUILDINGS.

(A) Accessory structures and/or necessary buildings shall not detract from nor interfere with adjacent properties. No accessory structure or building shall be constructed, erected, or located within any front yard or within any side yard or rear yard setback.

(B) (1) In addition, the following standards are established for accessory structures and accessory buildings:

- (a) The maximum number of accessory buildings permitted on a lot shall be one;
- (b) The maximum roof coverage area for accessory buildings shall be 750 square feet;
- (c) The maximum height for accessory buildings shall be 25 feet;
- (d) The accessory building must be screened by vegetation or other buffer as set forth in §153.008;
- (e) The accessory building must be located behind a line parallel to the rear of the principal structure on the lot;
- (f) The accessory building must be designed in the same architectural style as the principal structure;
- (g) Any accessory structure and/or accessory building shall be included in the calculation of allowable roof coverage and allowable impervious surface coverage on the lot pursuant to §§ 153.043 and 153.048; and
- (h) Solar collectors shall be regulated in accordance with G.S. § 160D-914.

(2) For all satellite dishes less than 24 inches in diameter, an application for a zoning compliance certificate shall be made directly to the Zoning Administrator; the Zoning Administrator shall issue a zoning compliance certificate.

(3) Fences, gates, and walls shall be regulated in accordance with §153.049 of this Zoning Ordinance.

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

Editor’s note:

This amendatory language was passed during a Board meeting, July 9, 2013

§ 153.043 MAXIMUM ROOF COVERAGE.

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

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

(2) The maximum roof coverage permitted is as follows:

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

<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>	<i>Lot Size (Acres)</i>	<i>Max. Roof Coverage (Ft.²)</i>
0.50	2,552	1.60	5,836	3.25	7,837
0.60	3,067	1.70	6,008	3.50	8,047
0.70	3,502	1.80	6,169	3.75	8,241
0.80	3,879	1.90	6,322	4.00	8,424
0.90	4,212	2.00	6,467	4.25	8,595
1.00	4,509	2.20	6,736	4.50	8,756
1.10	4,779	2.40	6,981	4.75	8,921
1.20	5,024	2.60	7,207	5.00	9,054
1.30	5,250	2.80	7,417	5.25	9,191
1.40	5,459	3.00	7,611	5.50	9,325
1.50	5,654				

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

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

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

(Ord. 2023-04, passed 7-1-2023)

**PLANNING COMMISSION MEETING
STAFF MEMORANDUM
DECEMBER 4, 2024**



AGENDA ITEM - 4

Impervious Surface Definition Discussion

BACKGROUND

During the Board of Commissioner meeting in January, Commissioner Drew Stephens asked the Planning Commission to review the existing definition for impervious surface coverage. Specifically, Commissioner Stephens requested the Board consider amending this definition and remove wooden decks from the “impervious surface” category, as these types of decks allow water to pass through to the ground below them.

A copy of the existing definition is attached to this memorandum.

§ 153.004 INTERPRETATIONS AND DEFINITIONS.

(A) *Tense; singular and plural.* Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.

(B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. A structure incidental and subordinate to the principal use or building on the lot and located on the same lot with such principal use or building. **ACCESSORY STRUCTURES** include, but are not limited to, fences, walls, curbs, pools, play sets, statues, water features, playhouses, decorative walls, sculptures, solar collectors, residential street lamps, rock and stone moved from its original location to any other location on the property, and the like.

ALLEY. A public way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

APARTMENT. A part of a building consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

APARTMENT, GARAGE. A part of a garage consisting of a room or rooms intended, designed, or used as a residence by an individual or a single-family.

BOARD OF ADJUSTMENT. The Town of Biltmore Forest Board of Adjustment, and shall include both regular and alternate members.

BOARD OF COMMISSIONERS. The Town of Biltmore Forest Board of Commissioners.

BONA FIDE FARM. All land on which agricultural operations are conducted as the principal use, including the cultivation of crops, the husbandry of livestock and timber resources, and the management of open pasture land.

BUFFER STRIP. A strip of land together with some form of screening such as existing vegetation, planted vegetation, a landscaped earth berm or grade change, or combination of the above. The purpose of the **BUFFER STRIP** is to minimize the potential conflicts between adjoining land uses.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. Two structures shall be deemed a single building only if connected by heated and enclosed living space.

BUILDING, ACCESSORY. A detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

BUILDING HEIGHT. The distance measured from the average ground level at the building foundation to the highest point of the roof, but in no event above 40 feet from the highest point in the foundation. A chimney that complies with the minimum the State Building Code requirements for height of a chimney shall not be included in the calculations for height of the building; provided, that the chimney shall not extend more than five feet above the immediately adjoining ridge line of the roof.

BUILDING, PRINCIPAL. A building used for the same purpose as the principal use of the lot.

BUILDING SETBACK LINE. A line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the street line.

CARETAKER. A person that maintains grounds or structures on a lot or cares for the well-being of person(s) residing in the principal dwelling on a lot, and resides on the premises without being charged a rental fee.

CLOTHING AND JEWELRY SALE. The sale to the public of clothes and jewelry that have been brought to the home for that purpose.

CLUSTERED HOUSING DEVELOPMENT. Grouping or concentration of housing units on lots smaller than permitted by the existing zoning to preserve open space without increasing the allowable density of the development.

COMMERCIAL SERVICE or **PROFESSIONAL SERVICE.** Establishments or professions charging a fee for providing a service to the public.

CONSUMER SERVICES. Businesses providing services to the public for profit, including dining and restaurant services (not to include fast food service restaurants), lodging and motel services, financial, real estate and insurance services, and other personal services. In addition to the above, **CONSUMER SERVICES** shall not include filling and gasoline service stations or auto repair shops as defined by this chapter.

DAY NURSERY and **PRIVATE KINDERGARTEN.** A use of land and buildings to provide group care for children.

DISTRICT. A section of the Town of Biltmore Forest in which zoning regulations are uniform.

DWELLING. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of G.S. Ch. 160D, Art. 12, the term does not include any manufactured home, mobile home, or

recreational vehicle, if used solely for a seasonal vacation purpose.

DWELLING, MULTI-FAMILY. A building or portion thereof used or designed as a residence for two or more families living independently.

DWELLING, SINGLE-FAMILY. A building arranged or designed to be occupied by one family.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EASEMENT. A grant by a property owner of a strip of land for specified purpose and use by the public, a corporation, or persons.

ESTATE/AUCTION SALE. The one-time sale to the public of goods that is held at the home. The goods and items offered for sale at the auction must be personal property that has been owned by the resident(s) of the home. No goods or items to be sold shall be shipped or transported to the home from any other location. The sale shall be limited to no more than two consecutive days and the hours for the sale shall be between 10:00 a.m. and 8:00 p.m.

FAMILY. One or more persons occupying a single-dwelling unit; provided, that unless all members are related by blood or marriage or adoption, no such family shall contain over three persons, but further; provided, that domestic servants, caretakers, and security personnel employed or living on the premises may be housed on the premises without being counted as a **FAMILY** or **FAMILIES**.

GARAGE/YARD SALE. The sale to the public of typical household items that is held at the residence. The household items to be sold shall be items from the residence where the sale is to occur. Each residence is limited to one such sale per year. The sale shall not begin before 8:00 a.m. and shall end by 5:00 p.m.

GASOLINE SERVICE STATION/AUTO REPAIR SHOP. Buildings and premises where gasoline, automotive fuel, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made and no other. Sales and servicing as follows: spark plugs, batteries, and distributors and distributor parts; tire servicing and repair, but not recapping or regrooving; replacement of mufflers and tail pipes, water hoses, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; radiator cleaning and flushing; washing and polishing, the sale of automotive washing and polishing materials; greasing and lubrication; providing and repairing fuel pumps, oil pumps, and lines; minor servicing and repair of carburetors; emergency wiring repairs; adjusting and repairing brakes, wheel balancing and alignment, minor motor adjustments not involving removal of the head or crankcase or racing the motor; sale of cold drinks, packaged foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operation; automobile body repair services; provision of road maps and other informational materials to customers; provision of restroom facilities.

GRADING. Any land-disturbing activity where the ground cover on or above the soil surface is removed and reconfigured, including trees, grasses, or pavements or other surfaces either natural or human-made.

HOME BUSINESS ACTIVITY. A business conducted from the home such as internet enterprise, professional office, or the making of crafts or items where no one is employed that does not live in the home and no one comes to the home for a business transaction as part of the activity.

HOME OCCUPATION. An occupation providing a service carried on by the occupants of a dwelling; provided, that certain conditions are met as listed in § 153.008(C)(5).

HOME STAY. Rental of a part of a dwelling unit or accessory structure for consideration, including in kind compensation, to a transient person or persons for a period of less than 90 days. Advertising and renting a room or rooms in a dwelling unit of accessory structure on Airbnb or similar internet web sites would be an example of a **HOME STAY**. **HOME STAYS** are not allowed in any zoning district in Biltmore Forest.

IMPERVIOUS SURFACE. Any paved, hardened, or structural surface, including, but not limited to, buildings, driveways, walkways, parking areas, patios, decks, streets, swimming pools, tennis courts, and other structures and surfaces, that substantially reduces or prevents the infiltration of stormwater into the ground.

INCOMPATIBLE LAND USE. A land use requiring a special use permit from the Board of Adjustment in property zoned R-4 or R-5 adjacent to land zoned R-1, R-2, R-3, Public Service, or land zoned R-4 or R-5 in residential use.

INDIVIDUAL SEWER SYSTEM. Any septic tank, ground absorption system, privy, or other facility serving a single source or connection and approved by the County Sanitarian.

INDIVIDUAL WATER SYSTEM. Any well, spring, stream, or other source used to supply a single connection.

LEGISLATIVE DECISION. The adoption, amendment, or repeal of a regulation under this chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of G.S. Ch. 160D, Art. 10. Legislative decisions for development regulations shall be approved on first reading by simple majority vote.

LEGISLATIVE HEARING. A hearing to solicit public comment on a proposed legislative decision.

LIVING AREA. Includes the area inside the dwelling walls of each particular floor, but shall not include basements, utility rooms, laundry rooms, storage rooms (other than closets), pantries, garages, and attics. **LIVING AREA** shall, however,

include living rooms, dens, studies, kitchens, bedrooms, breakfast rooms, bathrooms, and closets in any of said rooms, foyers, entrance ways, and hallways connecting any of these rooms.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words **PLOT** or **PARCEL**.

LOT DEPTH. The mean horizontal distance between front and rear lot lines.

LOT OF RECORD. Any lot for which a plat has been recorded in the Register of Deeds Office of Buncombe County, or described by metes and bounds, the description of which has been so recorded.

LOT WIDTH. The distance between side lot lines measured at the front building line.

MAY. The word **MAY** is permissive.

MOBILE HOME. A factory assembled, movable dwelling designed and constructed to be towed on its own chassis, comprised of frame and wheels, to be used without permanent foundation and distinguishable from other types of dwellings in that the standards to which it is built include provisions for its mobility on that chassis as a vehicle.

NONCONFORMING USE. Any parcel of land, use of land, building, or structure existing at the time of adoption of this chapter, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

ORDINANCE. The Zoning Ordinance of the Town of Biltmore Forest.

PARKING SPACE. An area for parking a vehicle, plus the necessary access space. **PARKING SPACE(S)** shall always be located outside the dedicated street right-of-way and shall be provided with vehicular access to a street or alley.

PARKS. Includes those areas developed either for passive or active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multi-use courts, swimming and wading pools, amphitheaters, and the like. The term **PARK** shall not include zoos, travel trailer parks, amusement parks, or vehicle, equestrian, or dog racing facilities.

PERSON or **APPLICANT.** Includes a firm, association, organization, partnership, corporation, company, trust, and an individual or governmental unit.

PLANNED UNIT DEVELOPMENT. A development where more than one principal building is proposed to be constructed on a single tract or a clustered housing development or any residential complex containing at least six or more units or any building with a gross floor area of 50,000 square feet or more, shall be deemed a **PLANNED UNIT DEVELOPMENT (PUD)**. Multi-family structures shall have no less than three dwelling units per structure. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, condominiums, and other multi-family type residential units, excluding time sharing units, mobile homes, and mobile home parks.

PLANNING COMMISSION. The Town of Biltmore Forest Planning Commission.

PROTECTIVE BARRIER. A protective barrier is either:

(a) A temporary fence which is at least three feet high and constructed in a post and rail configuration, using two by four posts and one by four rails;

(b) A temporary fence with two by four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or

(c) A temporary fence using an equivalent material.

PUBLIC SEWER SYSTEM. Any sewer system owned and operated by a local government in Buncombe County, or other sewage treatment facility serving two or more connections, or any wastewater treatment system having a discharge to surface waters when approved by the Division of Environmental Management of the Department of Natural Resources and Community Development, or a ground absorption system serving two or more connections when approved by the County Sanitarian.

PUBLIC WATER SYSTEM. Water systems serving 15 or more residential connections or serving more than 25 year-round residents are classified as public water supplies, and plans and specifications must be approved by the State Department of Human Resources, Division of Health Services. Also, water supply systems serving from two to 14 connections shall be regulated by the County Board of Health and plans shall be approved by the Buncombe County Health Department, Environmental Health Section.

RECREATION USER NONPROFIT. An indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of North Carolina.

RECREATION USER PROFIT. An indoor or outdoor recreation facility operated on a profit basis.

RESIDENTIAL DENSITY. The number of dwelling units per acre devoted to residential buildings, accessory uses, and open spaces within the site, but excluding land for streets and street right-of-ways. **RESIDENTIAL DENSITY** shall be

calculated by first subtracting the land area required for streets and rights-of-way from the total or gross land area of the tract to derive a net land area, and then dividing the number of dwelling units proposed to be built by the net land area.

RETAIL BUSINESS. Establishments selling commodities directly to the consumer. Fast food service restaurants, gasoline service stations/auto repair, or the dispensation of gasoline as an ancillary service to a retail use shall be prohibited.

ROOF COVERAGE. For the purposes of building construction and the calculation of maximum roof coverage pursuant to §§ 153.029(B)(1)(b) and 153.043 (and any other section of this chapter dealing with roof coverage), **ROOF COVERAGE** shall be the area contained under the roof of the primary building or any accessory structure/building and shall also include any impervious deck surface or any other above-grade impervious surface extending from or being attached to any primary building or accessory structure/building. Both heated and unheated enclosed spaces or any open space within, under or covered by the roof of the primary building or accessory structure/building or by any above-grade impervious surface (such as a deck, and the like), extending from the primary building or accessory structure/building shall be included in the calculation of **ROOF COVERAGE**.

ROOT PROTECTIVE ZONE. A circle encompassing an area around an existing tree or shrub that is the greater of the following two distances:

(a) A one-foot radius for every one inch of tree or shrub trunk caliper (diameter); or

(b) A measurement of the furthest or most outward branch or limb from the main trunk when that distance is then drawn as a circle around the remaining portion of the tree or shrub, commonly referred to as the 'drip line'. The minimum **ROOT PROTECTION ZONE** in any case is a radius of eight feet measured from the tree trunk.

SHALL. The word **SHALL** is mandatory.

SHORT TERM RENTAL. Rental of a dwelling unit or accessory structure for consideration, including in kind compensation, for a period of less than 90 days. **SHORT TERM RENTALS** are not allowed in any zoning district in Biltmore Forest.

SPECIAL USE. A use permitted in specified zoning districts only after review by the Board of Adjustment and found to meet specific conditions and procedures as set forth in this chapter to maintain the safety and general welfare and orderly development of the community.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties. **STREET** also includes the words **ROAD** and **HIGHWAY**.

STREET LINE. The edge of the roadway pavement.

STRUCTURE. Anything constructed or erected, including, but not limited to, buildings, which requires location on the land or attachment to something having permanent location on the land.

SUBSTANTIAL COMPLETION. For the purpose of building construction; the completion of all exterior work on the building; the completion of all plumbing, electrical, and HVAC work; the completion of all window installation; the completion of all interior and exterior door installation, the completion of all wall construction, painting, and/or covering, the completion of all floor installation and/or covering; and the completion of all other work necessary to receive a certificate of occupancy from the Buncombe County Inspections Department. Minor work typically noted on a punch list may be incomplete and the structure shall be deemed to be substantially completed.

SUBSTANTIAL PROGRESS. For the purpose of building construction, it is expected that construction of the building is continuous and that progress is obvious and observable with inspections as required under the State Building Code occurring on a regular basis.

VARIANCE. As defined in G.S. § 160D-705(d) together with any amendments thereto.

WHOLESALE BUSINESS. The sale of goods in large quantities usually for resale.

YARD. A space on the same lot with a principal building, open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

YARD, FRONT. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street or property line and the front line of the building, projected to the side lot lines of the lot. Driveways, to the extent possible, shall enter the property through the front yard. In the case of a lot with frontage on more than one street, the side of the lot with the most street frontage shall be considered the **FRONT YARD**; however, in the consideration and determination of applications for special use or variance on such a lot, the Board of Adjustment shall take into account and consider the visibility of both the **FRONT** and side yards to the street and adjoining properties in any determination.

YARD, REAR. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

YARD, SIDE. An open, unoccupied space on the same lot with a principal building extending the full width of the lot and being situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard. Notwithstanding the above definition, for the purposes of determining compliance with minimum yard setback

of § 153.007, the **SIDE YARD** shall be the entire length of each side lot line extending from the front lot line to the rear lot line and shall equally apply to lots with a principal building, lots without a principal building and vacant lots. Driveways shall not be located in the side yard setback.

ZONING ADMINISTRATOR. An official or designated person of the Town of Biltmore Forest charged with enforcing and administering the zoning ordinance.

ZONING MAP or BILTMORE FOREST ZONING MAP. The official zoning map of the Town of Biltmore Forest.

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