

## **An Ordinance Amending the Town of Biltmore Forest Zoning Ordinance**

### **§ 153.029 - ACCESSORY STRUCTURES AND BUILDINGS**

(C) The Town is a unique community concerned with historic continuity. The Town, originally part of the Vanderbilt Estate, was established almost 100 years ago. Since its establishment, Biltmore Forest has been a forested residential community with substantial open space. Preservation of the forest environment requires substantial open space for trees, plants and wildlife.

Given Biltmore Forest's proximity to the Biltmore Estate, and the Estate's large deer population, a number of residents have had problems with deer. In response to resident requests, the Board of Adjustment has approved a number of requests for temporary deer fencing. Over the last several years, the Town has attempted to reduce the number of deer through depredation. The Board of Commissioners is committed to preservation and protection of the forested residential community concept. Current and prospective residents can participate in this effort by landscaping with plants that will not attract deer, confining dogs and other household pets with invisible fencing, limiting the construction of new fences and walls, and removing and not replacing existing fences and walls. In addition, fences and walls inhibit access to properties by the Town's Police Department, Skyland Fire Department and other first responders.

The effective date of this ordinance shall be July 1, 2017. As of the effective date of this Ordinance, construction of new fences or walls is allowed only as follows:

- (a) The fence or wall is necessary for safety, the protection of the public health, or is required as a condition of obtaining homeowner's insurance. Examples include the installation of a fence or wall around a swimming pool or along a steep grade or bank to prevent injury resulting from a fall. The property owner should provide written information from an insurance company documenting the need for the fence.
- (b) Where a retaining wall is part of a landscape plan, and there is a structural requirement for the wall. Structural requirements for retaining walls must be in accordance with *The Retaining Wall Ordinance of the Buncombe County Code of Ordinances* as the same may be amended from time to time, and must be certified by a Professional Engineer licensed in the State of North Carolina. . The wall must otherwise comply with this ordinance.
- (c) On those properties abutting Hendersonville Road where, in the discretion of the Board of Adjustment, a fence or wall is necessary to provide protection from pedestrians and motorists on Hendersonville Road.
- (d) Properties abutting the Blue Ridge Parkway and the Biltmore Estate shall be allowed to construct appropriate fencing to protect the property from deer. Such fencing shall be subject to review and approval by the Board of Adjustment.

- (e) The Board of Adjustment may require a property owner to construct a wall or fence to provide buffering between incompatible land uses. See 153.063.
  - (f) Except as set forth in paragraph (d), the Board of Adjustment shall not approve a fence for the purpose of confining or protecting dogs, other household pets or children, or for the purpose of preventing wild animals from entering a property.
  - (g) Electrified Fences, defined as an above ground fence carrying an electric voltage intended to deliver a shock if touched by a person or animal, are not allowed. Existing electrified fences should be removed within 180 days of the adoption of this ordinance whether or not the fences are currently carrying an electric voltage. Invisible fences, defined as underground cable systems carrying an electric voltage intended to trigger a shock through a compatible pet collar, are allowed.
  - (h) In granting permission to construct a new fence or wall, or to repair or replace an existing fence or wall, the Board of Adjustment may impose reasonable conditions, including a requirement that the fence or wall be buffered with vegetation so that it is not visible from adjacent properties and that the fence or wall be removed if the purpose or condition for which it was constructed is no longer in effect.
- 2) Replacement of existing fences and walls. Replacement of an existing fence or wall is a conditional use subject to the approval of the Board of Adjustment and the requirements of this zoning ordinance. An application to replace an existing fence or wall must include a photograph of the existing fence or wall, specify the type of fence or wall, include a map or sketch depicting the height and length of the fence, and state whether or not the fence is in any setbacks.
- (a) Existing chain link fences may not be replaced with new chain link fences.
  - (b) Existing fences or walls in the front yard may not be replaced. No new fences or walls shall be allowed in the front yard.
  - (c) Repair of more than half of an existing fence or wall shall be considered a replacement and shall be subject to this ordinance.
- 3) Acceptable Materials for Fences and Walls / Maintenance. The following materials and fences shall be deemed acceptable for fence construction.
- (a) Wooden fencing shall be of natural color or painted in a manner compatible with the residence and the lot.
  - (b) Non wooden fencing shall be black, dark green or brown to blend with surrounding trees or vegetation.
  - (c) No new chain link fencing shall be allowed.

- (d) Walls should be constructed of stone or similar material, and should be compatible with the construction materials of the house located on the same property.
- (e) When a fence or wall is not properly maintained or fails to comply with a condition imposed by the Board of Adjustment, the Town may require the property owner to repair the fence or, remove the fence at the property owner's expense. If the property owner fails to repair or remove the fence, the Town may remove the fence and recover the cost from the property owner.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

Approved as to Form:

\_\_\_\_\_  
Attorney