



MEMORANDUM

Town of Nags Head

Planning & Development Department

To: Planning Board

From: Kelly Wyatt, Planning Director
Kate Jones, Senior Environmental Planner

Date: March 11, 2022

Subject: Update on current Tree Preservation Regulations

Members of the Planning Board have expressed an interest in both better understanding and perhaps considering Unified Development Ordinance (UDO) amendments to enhance the Town's current tree protection and preservation ordinances. As a first step to begin the discussion, staff felt it would be beneficial to provide an analysis of the existing tree removal, tree protection and tree preservation ordinances within the Town Code and the Unified Development Ordinance.

Below is a listing of our current ordinances pertaining to trees, keeping in mind that we can only require and enforce what the ordinance authorizes.

Live Oak as the Town Tree - Town wide

- Section 26-9 of the Town Code establishes the Live Oak as the "Official Town Tree". No live oak with a height of 3 feet or 1-inch in diameter measured ½ foot above grade shall be removed in ANY zoning district. Live oaks may only be removed within the footprint of the principal building, required accessways, parking areas, utility installation sites, active septic repair areas and accessory buildings.

Pursuant to Section 1-6(b)(7) violations of this provision shall be a misdemeanor and punishable as provided by General Statute 14-4.

This language can be located [Here](#).

Special Zoning Districts

- SED-80, Special Environmental District. Section 8.4.3.4, Special Development Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. The removal of any tree with caliper of 16-inches or greater is prohibited without special approval from the Board of Commissioners. Staff should be involved as early as possible in any tree removal within this district as it is the most sensitive, ecologically relevant area within the Town and tree removal is greatly restricted. For any tree removal within this district, staff will first need to determine how to regulate the removal based upon the location of the tree and the caliper of the tree. Link to Special District Regulations [Here](#).

- SPD-20, Special Planning Development District. Section 8.4.2.2, Site Design Standards, regulates the removal of any tree greater than 4-inches in caliper measured at one foot above the ground. Trees greater than 4-inches in caliper shall only be removed if within the proposed building footprint, including decks and a 10-foot perimeter around the principal building and its accessory buildings, within vehicular accessways, within the septic drain field, and in areas where land disturbing has created slopes in excess of 3:1 in an effort to minimize erosion. As in the SED-80 District, for any tree removal within this district, staff will first need to determine how to regulate the removal based upon the location of the tree and caliper of the tree. This UDO language can be found [Here](#).

Note that in both the SED-80, Special Environmental Zoning District and SPD-20, Special Planned Development District, the Planning Department may approve the removal of any tree which:

- Poses a safety hazard to pedestrians or vehicular traffic or threatens to cause disruptions of public service;
 - Poses a safety hazard to a building; or
 - Is diseased or weakened by age, so as to pose a safety hazard.
- Section 4.9, Development Permitting Requirements, Purpose and Intent states that when developing one- and two- family dwellings removal of trees greater than 6-inches in caliper shall require a permit. Staff had previously identified this Section of the UDO as one that did need additional clarification. This regulation was originally developed in 2015 and was specific that no tree 6-inches in caliper or greater should be removed from a vacant lot without first acquiring site plan approval. This language was adopted as a means to address the clear cutting of lots that did not have yet have site plan approval. While that can be extrapolated from the existing language, staff does want to revise this language to ensure there is no ambiguity with the original intent. The 2015 amendment is included in this report for informational purposes. The existing UDO language can be found [Here](#).

Large Residential Dwellings, Open Space Preservation/Landscaping Requirements

- When a single- or two- family dwelling is constructed with a habitable area greater than 3,500 square feet certain criteria must be met in terms of minimum lot area, architectural design and open space preservation and landscaping requirements. In these instances, a homeowner has to meet one of two criteria:
 - Preservation of a minimum of 10% of the lots total area with existing natural vegetation and/or dune elevations. These areas shall contain significant examples of native vegetation and be identified and maintained in accordance with the UDO.
 - The planting of a minimum of 15% of the lots total area. A minimum of 50% of the required landscaping must be locally adapted live evergreen tree species that are a minimum height of 3 feet and one-inch in diameter measured at ½ foot above grade when planted. The remainder can be live forbs and shrubs.

These requirements may be altered due to unique or unusual physical conditions

including a reduction of landscaping requirements for oceanfront properties and other lots containing significant dune features that will be preserved in equal proportion. The property is responsible for maintaining these areas and must replace any dead and missing vegetation in accordance with requirements of the UDO.

The Section of the UDO pertaining to Large Residential Dwellings can be found [Here](#). The Section of the UDO pertaining to Maintenance and Replacement can be found [Here](#).

Commercial Design Standards, Site Design

As I am sure the Planning Board is aware, there are several landscape buffering and vegetation preservation requirements associated with commercial development. These are primarily located within Section 10.93 of the UDO and include:

- Parking Lot Buffers, a buffer strip of at least 10 feet in width shall be provided between the parking lot and the street right-of-way line.
- Commercial Transitional Protective Yards when applicable, High Impact Uses.
- Buildings adjacent to street frontage must have foundation landscaping.
- Interior Parking Lot Landscaping
- Vegetation Preservation/Planting Requirements

Language pertaining to commercial landscaping requirements can be found [Here](#).

Violation of regulations contained within the Unified Development Ordinance (UDO)

Violations of the UDO shall subject the offender to a civil penalty upon the issuance of a citation for such violation. Civil penalties shall be no more than \$500.00 for each violation, and each day any single violation continues shall be a separate violation.

Additional Information

There are currently no limitations on tree removal on residentially developed lots outside the Special Zoning Districts (SED-80 and SPD-20). With incentives being given for the use of existing mature vegetation as well as newly planted vegetation for stormwater management purposes, we need to develop a mechanism to ensure these plantings are not being removed or altered.

Staff does intend to create educational materials in the coming months to inform citizens of the Town's values regarding tree protection and preservation, existing regulations, and the role we would hope all residents and visitors would take when it comes to vegetation preservation.

As previously noted, this analysis is a first step towards better understanding our existing tree related regulations and where those regulations may need additional clarification and/or enhancement. Staff will be available to participate in the discussion.



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town Code; and

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to N.C.G.S. § 160A-175 the Town may adopt, establish and amend procedures for exercising remedies available for violations of the Town Code; and

WHEREAS, the Town values healthy, mature trees and vegetation for the aesthetic, erosion control, and stormwater benefits that they provide and;

WHEREAS, mature, native and/or locally adaptive trees and vegetation contribute to the quality and character of residential neighborhoods and;

WHEREAS, the Town acknowledges that clear cutting of lots prior to development is a practice that conflicts with the goals and objectives of the Town's Land Use Plan and;

WHEREAS, it is the Town's intent to ensure that lots maintain existing vegetation until such time that the lot is actively being developed; and

WHEREAS, the Town finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest;

NOW THEREFORE BE IT ORDAINED, by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town's Code of Ordinances be amended as follows:

PART I. That Section 48-375, Lot Clearing Prior to Development, be added to the Town of Nags Head zoning ordinance as follows:

Sec. 48-375. – Lot Clearing Prior to Development.

On a vacant, undeveloped parcel, removal of any tree greater than 6 inches in diameter at breast height is prohibited, except after receiving approval of a site plan for new construction in conjunction with a Town issued land disturbance permit or building permit. **Nothing in this section shall prevent the removal of a dead or diseased tree that has become an imminent danger or hazard to person(s) or property.**

PART II. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 3rd day of June 2015.


Robert C. Edwards, Mayor
Town of Nags Head

ATTEST:

Carolyn E. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: June 3, 2015

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

