

# STAFF SUMMARY OF TA19-03 TEXT AMENDMENT APPLICATION

## APPLICATION SUMMARY

**Case Number:** TA19-03

**Request:**

To amend the Zoning Ordinance regulations related to the protection of trees.

**Applicant:**

New Hanover County

**Subject Ordinance:**

Zoning Ordinance

**Subject Article(s) and Section(s):**

- Article II: Definitions, Section 23
- Article VI: Supplementary District Regulations, Section 62 Landscaping

## BACKGROUND

At their September 16<sup>th</sup> meeting, the Board of Commissioners directed staff to bring forward amendments to the Zoning Ordinance to protect large Live Oak trees. The proposed code changes would:

- a) define specimen trees and prohibit their removal,
- b) clarify that existing exemptions also apply to specimen tree removal,
- c) clarify the variance process for specimen tree removal,
- d) provide staff flexibility to adjust site development requirements to accommodate saving large trees (similar to the process utilized by the City of Wilmington), and
- e) modify the fee schedule for mitigation and add penalties relating to specimen tree removal without a permit

The Board of Commissioners also directed staff to address additional regulations to protect trees as part of the ongoing Unified Development Ordinance process.

## Staff Analysis

The proposed code changes will affect two sections of the Zoning Ordinance; 1) Definitions and 2) Landscaping.

### Section 23: Definitions

- a) Define “specimen tree” as “any Live Oak tree that is 36” diameter at breast height (DBH) or larger.”
- b) Define “DBH” as “the diameter or width of the main stem of a tree as measured 4.5 feet above the natural grade at its base. Whenever a branch, limb, defect, or abnormal swelling of the trunk occurs at this height, the diameter at breast height (DBH) shall be measured at the nearest point above or below 4.5 feet at which a normal diameter occurs.”

These definitions could be modified to include additional tree species and sizes as part of the ongoing Unified Development Ordinance project, but this amendment will only address Live Oak trees.

#### Section 62: Landscaping

- a) Prohibit removal of specimen trees: The proposed amendment will include language that prohibits the removal of specimen trees (large Live Oak trees defined above).
- b) Exemptions: The proposed amendment clarifies that existing exemptions allowing removal of trees will also apply to specimen trees. These exemptions include provisions for trees that are endangering the public health, safety, or welfare; causing a disruption of public services; diseased or damaged; within utility areas or easements; negatively affecting airport operations; associated with any Bona-Fide Farming activity; or located on a single-family lot.
- c) Variance process: The proposed amendment will also include language clarifying that applicants may apply for a variance to remove large Live Oak trees if they meet the relevant criteria. The variance is not a method to avoid the protection requirements but exists to alleviate genuine hardships, such as a tree obstructing the site's only access point from a public right of way or being located in the center of a small lot where a traditional building could not be built around the tree.
- d) Staff flexibility: The primary purpose of this amendment is to preserve existing trees. Occasionally, site design standards in the Zoning Ordinance make it more difficult to protect existing trees. Currently, any deviation from these standards requires the applicant to request a variance before the Board of Adjustment, which has strict criteria for approval including findings of hardship, circumstances unique to the site, and others. The strict criteria can discourage an applicant from making site modifications that would save trees such as shifts in the driveway, parking areas, or building locations.

The proposed amendment will allow staff flexibility to accommodate saving large trees by permitting administrative modifications to site dimensional, parking, and landscaping standards during the development review process. These standards include items such as street yards, landscape islands, foundation plantings, setbacks, etc. The City of Wilmington has utilized this flexibility since the early 2000s and their staff has expressed that it has been an effective approach to saving trees.

- e) Mitigation Fees and Penalties for removal of specimen trees without a permit: The specific dollar amount for the mitigation fee and penalty modifications will be part of a companion fee schedule change that is not part of the Zoning Ordinance requiring a Planning Board recommendation. However, the proposed changes to the Zoning Code will remove the language referencing the fee as "set by the Parks Department" and reference the County fee schedule. The fee is proposed to be changed to \$200 per caliper inch required to be mitigated from the current \$295 per 3" caliper formula. The proposed fee is based on typical pricing for Live Oak trees including installation as found in a survey of multiple local nurseries. The proposed changes will also add a penalty for removing a specimen tree without a permit that is double the mitigation fee.

## STAFF RECOMMENDATION

**Staff recommends approval of the requested amendment** and suggests the following motion:

I move to recommend **APPROVAL** of the proposed amendment to New Hanover County's Zoning Ordinance. I find it to be **CONSISTENT** with the purposes and intent of the Comprehensive Plan because the proposal will provide flexibility in site design to accommodate business success while protecting large Live Oak trees that are important to the character of the area. I also find recommending **APPROVAL** of the proposed amendment is reasonable and in the public interest because it will encourage conservation and enhance the unique environment, character, and history of the County.