

STAFF SUMMARY OF TA19-03 TEXT AMENDMENT APPLICATION AND FEE SCHEDULE AMENDMENT

APPLICATION SUMMARY	
Case Number: TA19-03	
Request: To amend the Zoning Ordinance regulations related to the protection of trees and to amend the County Fee Schedule to include Tree Mitigation Fees.	
Applicant: New Hanover County	Subject Ordinance: Zoning Ordinance
Subject Article(s) and Section(s): <ul style="list-style-type: none"> • Article II: Definitions, Section 23 • Article VI: Supplementary District Regulations, Section 62 Landscaping 	

BACKGROUND

At the September 16th 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.

Amendments to Section 23: Definitions

Define “specimen tree” as “any Live Oak tree that is 36” diameter at breast height (DBH) or larger.”

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 only addresses Live Oak trees.

Amendments to Section 62: Landscaping

Prohibit removal of specimen trees: The proposed amendment includes language that prohibits the removal of specimen trees (large Live Oak trees defined above).

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.

Variance process: The proposed amendment also includes 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. Variances are heard by the Zoning Board of Adjustment.

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.

Mitigation Fees and Penalties for removal of specimen trees without a permit: The specific dollar amount for the mitigation fee is part of a companion fee schedule change. The proposed changes to the Zoning Code remove the language referencing the fee as "set by the Parks Department" and will now 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-inch caliper formula. The proposed fee is based on current market 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.

PLANNING BOARD ACTION ON TEXT AMENDMENT

The Planning Board considered this application at their October 3, 2019 meeting. At the meeting, two members of the public spoke in support of the proposed text amendment. The Board recommended approval (6-0), finding 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. The Board also found **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.

STAFF RECOMMENDATION

Staff recommends approval of the requested amendment as stated in the Planning Board's action. Staff concurs with the Planning Board's statements that the application is consistent with the Comprehensive Plan. **Staff also recommends approval of the requested Fee Schedule amount** and suggests the following motion:

I move to **APPROVE** 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 **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, and I move to **APPROVE** the proposed amendment to the New Hanover County Fee Schedule FY19-20.