

**RESOLUTION TO AMEND THE WAKE COUNTY UNIFIED
DEVELOPMENT ORDINANCE OA-01-20**

WHEREAS, the Wake County Unified Development Ordinance guides the physical development of the County, and preserves and enhances the overall quality of life of residents, by mandating the protection of existing trees and vegetation around the outer perimeter of a development; and

WHEREAS, the area of protection, called the Tree and Vegetation Protection Zone, provides enhanced visual character, reduces stormwater runoff, and increases absorption; and

WHEREAS, the proposed text amendments will clarify the documentation required to allow encroachment of septic systems into the Tree and Vegetation Protection Zone and simplify the enforcement and remediation when there is non-compliance; and

WHEREAS, the Planning Staff recommends approval of the proposed text amendments; and

WHEREAS, on May 6, 2020, the Wake County Planning Board voted unanimously to recommend that the Board of Commissioners approve the proposed text amendments; and

WHEREAS, the Wake County Board of Commissioners held a duly-noticed public hearing on July 6, 2020 to consider amending the Unified Development Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE WAKE COUNTY BOARD OF COMMISSIONERS THAT:

The proposed text amendments are hereby adopted, and the Unified Development Ordinance is hereby amended as shown in the attached OA-01-20 Ordinance Amendment Summary.

Adopted this 8th day of September 2020.

ATTEST:

BOARD OF COMMISSIONERS FOR
THE COUNTY OF WAKE

Clerk to the Board

By: _____
Gregory D. Ford, Chair

APPROVED AS TO FORM:

Scott Warren, County Attorney

OA-01-20 Ordinance Amendment Summary

Article 16 Landscaping and Tree Protection

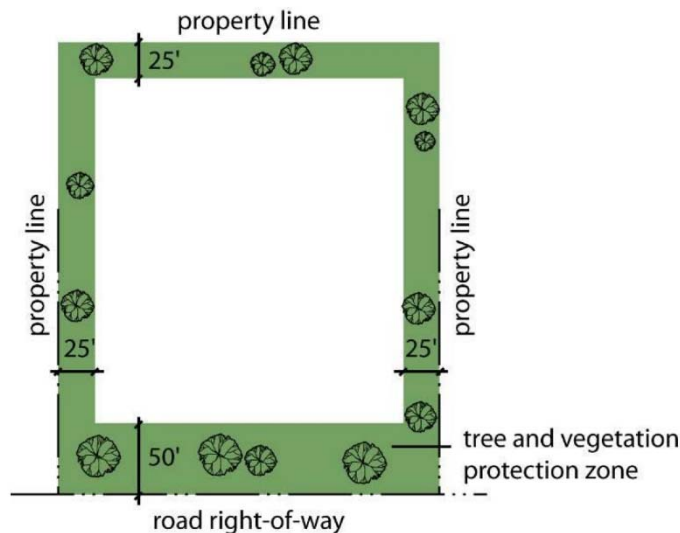
16-12 – Tree and Vegetation Protection.

16-12-1 **General Intent.** The regulations of this section are intended to preserve trees and other significant vegetation along the outer perimeter of development sites. Such regulations will help to ensure that trees and vegetation along the perimeter of a site are not removed or disturbed ~~so as~~ to preserve and enhance the visual character of the County, control surface water runoff, and moderate temperatures. Tree and vegetation protection will also help conserve water because of increased absorption ability of retained plants.

16-12-2 **Applicability; Effect.**

(A) The tree and vegetation protection standards of this section apply to the outer perimeter of parcels proposed to be graded, disturbed or subdivided—an area known as the "tree and vegetation protection zone." The boundaries of the tree and vegetation protection zone shall extend the following distances from the outer perimeter of a parent parcel's property lines:

- (1) Fifty feet from all public road rights-of-way; and
- (2) Twenty-five feet from all other property lines.



- (B) The standards of this section generally require that the tree and vegetation protection zone remain undisturbed and that trees and vegetation within the zone be preserved, except that the Planning Director may permit land disturbance and tree and vegetation removal within the protection zone when deemed necessary to allow for reasonable use and development of the property in accordance with Section 16-12-6.
- (C) A permanent tree and vegetation protection zone is required on the outer perimeter of lands included in the initial approved preliminary plan of a parent tract of land. Subsequent subdivisions of lots within the parent tract are not required to provide additional tree and vegetation protection zones.

16-12-3 **Exemptions.** The following activities are exempt from the tree and vegetation protection standards of this section:

- (A) The removal of dead or naturally fallen or severely damaged trees or vegetation, or the removal, by an approved method, of trees or vegetation that are a threat to the public health, safety, or welfare;
- (B) The removal, by hand, of diseased or insect-infected trees or vegetation that pose a risk to adjoining trees as determined by the North Carolina Division of Forest Resources or by a certified arborist (International Society of Arboriculture);
- (C) The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways, intersections, or within required sight triangles;
- (D) The removal of trees or vegetation on parent tracts of two acres or less in area located within a single-family residential zoning district. Land within public rights-of-way is excluded from the area calculation.

Commentary: Since tracts of two acres or less are exempt from compliance with tree and vegetation protection standards, it is intended that development and building on such lots will be subject only to the building setback standards of the underlying zoning district. The "tree and vegetation zone" definition is not to be interpreted as additional building setback requirements in those instances in which tree and vegetation preservation is not required.

- (E) The removal of trees as part of normal forestry activities on property taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to NCGS Chapter 89B. However, for such properties, the County may deny a building permit or refuse to approve a site plan or subdivision plan for a period of three years following completion of the harvest if all or substantially all of the trees that should have been protected within the tree and vegetation protection zone were removed from the tract of land for which the permit or plan is sought. The County may deny a permit or refuse to approve a site plan or subdivision plan for a period of two years if the owner replants the protection zone within 120 days of harvest with plant material that is consistent with buffer areas required under the County buffer area standards;

Commentary: As its name implies, the "tree and vegetation protection zone" is intended as an area in which tree and vegetation removal is prohibited or otherwise strictly limited. It is not intended as an additional building setback requirement in those instances in which tree and vegetation preservation is not required.

~~(F) The removal of trees or vegetation for the purpose of sale by commercial garden centers, greenhouses, or nurseries; and~~

- ~~(G)~~ The removal of damaged or dead trees or vegetation during or after emergencies or inclement weather such as wind storms, ice storms, fire, or other disasters.

16-12-4 **Maximum Size of Tree and Vegetation Protection Zone.** The total area of a tree and vegetation protection zone ~~is shall~~ not ~~required to~~ exceed 20 percent of the total area of the parcel, excluding any land area located within public road rights-of-way and any required conservation easements. (Note: Conservation easements located within tree and vegetation protection zones will be credited toward compliance with the tree and vegetation protection standards of this section)

16-12-5 **Delineation of Tree and Vegetation Protection Zone.** Subdivision and all site plans submitted for development must indicate the limits of the tree and vegetation protection zone.

~~Tree surveys of individual trees are not required, but whenever protected trees are proposed for removal, such plans must indicate the location and size of all protected trees within the tree and vegetation protection zone that are proposed for removal (and replacement).~~

16-12-6 **Allowed Encroachments.**

- (A) It is the intent of this section to permit reasonable predevelopment activity on lands that are subject to the tree and vegetation protection standards of this section. It is recognized that encroachment into the tree and vegetation protection zone may be necessary to allow for reasonable use and development of the subject parcel. The Planning Director may approve encroachments ~~it_ deemed~~eds necessary to permit reasonable use and development. Examples of encroachments that may be permitted include ~~utilities~~utility lines (electric, gas or public water/sewer lines), driveways, sidewalks, entrances and entrance features, supplemental landscaping, as well as access routes for construction vehicles or equipment where no alternative means of access exists on the site.
- ~~(B)~~ Septic fields must be allowed to encroach into the tree and vegetation protection zone if a qualified soil scientist determines that such location is the only feasible and safe alternative. The qualified soil scientist must submit sealed documentation indicating encroachment is the only feasible and safe alternative and identify the limits of disturbance within the tree and vegetation zone.
- ~~(C)(B)~~ At the time of consideration of a site plan or other authorized development plan for the subject site, review and decision-making bodies are authorized to approve land disturbance, development activity and tree and vegetation removal in accordance with applicable zoning and site development regulations.
- ~~(D)(C)~~ When encroachment is deemed necessary by the Planning Director, ~~any protected trees that are removed or that die within one year after the encroachment must be replaced in accordance with Sec. 16-12-7. In addition, when encroachment must occur, care must be taken to remove and/or disturb the minimum amount of trees and vegetation, possible. Any proposed encroachment within tree and vegetation protection zones must be indicated on subdivision plans.~~

16-12-7 **Replacement of ~~Protected~~ Trees and Vegetation.** ~~No protected~~ Any trees and vegetation that are removed from the tree and vegetation protection zone without Planning Director approval must comply with Section 16-12-7 (A). ~~may be removed from tree and vegetation protection zones unless the applicant or developer replaces such trees within the tree and vegetation protection zone at a rate of one inch of replacement tree (DBH) per two inches of removed tree (DBH). For example, if a 24-inch tree is removed, the following options exist for replacement: 1, 12-inch tree; 2, six-inch trees; 3, four-inch trees; 4, three-inch trees; or 6, two-inch trees.~~

- (A) ~~(A)~~ The minimum size (DBH) of a replacement tree is two inches. Any trees and vegetation that are removed from the tree and vegetation protection zone without the Planning Director's approval must be replaced as a Type C Intermittent-2 Screen as described in Section 16-10-2 (F)(4)
- (B) The Planning Director may allow replacement trees and vegetation to be placed outside the tree and vegetation protection zone when adequate area does not exist within the tree and vegetation protection zone., ~~or when placement in other areas of the site, or protection of other significant trees adjacent to the perimeter of the site, would better meet the general intent of this section.~~

~~(C) It is the intent of this section to preserve protected trees and other vegetation and understory plant material that surrounds protected trees. It is recognized that clearing or disturbance of vegetation in and adjacent to protection zones can significantly impact protected trees within close proximity. Therefore, while there is no replacement requirement for the clearing of vegetation surrounding protected trees, clearing of any vegetation in these areas is strongly discouraged.~~

16-12-8 Tree Protection During Construction.

- (A) **Owner's Responsibility.** During development of the property, the owner is responsible for the erection and maintenance of any and all barriers necessary to ensure protection of ~~protected~~ trees and vegetation within the tree and vegetation protection zone from damage during construction.
- (B) **Protective Fencing.**
- (1) **Where Required.** ~~All protected trees~~ The tree and vegetation protection zone that are to be preserved must be surrounded by a clearly visible fence before grading begins. Required fencing must extend as far as practical from ~~a protected tree; preferably at least one foot from the tree for each inch of DBH. Protective fencing is not required to extend beyond the tree's dripline;~~ the tree and vegetation protection zone. No construction, grading, equipment or material storage, or any other activity is allowed within the tree and vegetation protection zone, unless approved by the Planning Director in accordance with Sec. 16-12-6.
 - (2) **Plans.** The location and a detail of the proposed protective fencing or other means of demarcation must be clearly shown on subdivision plans.
 - (3) **Type of Fencing.** All fencing required by this section must be a minimum four feet in height and of durable construction. Orange polyethylene laminar fencing is acceptable. Passive forms of tree and vegetation protection may be utilized to delineate tree and vegetation protection zones that are not located near areas of land disturbance. These must be surrounded by fencing, continuous rope, or durable taping that is a minimum of four inches wide.
 - (4) **Signs.** Signs must be installed on the protective fence so that they are visible on all sides of the area to be protected. At least one sign must be placed on each side, with signs spaced no more than 150 linear feet apart. The size of each sign must be a minimum of two feet by two feet and must contain the following language: "KEEP OUT, TREE AND VEGETATION PROTECTION ZONE," both in Spanish and in English.

[OA 04/10 January 18, 2005; Amended of 1/22/2008 by OA 04-07.]

Article 21 Definition and Measurement

21-11 Definitions

~~Protected Tree means any deciduous tree with a diameter at breast height of 24 inches or more~~