

<b>REQUEST</b>	Text amendment to Sections 21-2, 21-95 and 21-96 of the Charlotte Tree Ordinance
<b>SUMMARY OF PETITION</b>	The petition proposes to revise the Tree Ordinance to: <ol style="list-style-type: none"> <li>1) Clarify definition of single family development,</li> <li>2) Limit the applicability of the tree save incentives to single family development sites that are subject to the Subdivision Ordinance, and</li> <li>3) Require a perimeter tree save buffer for developments with greater than 25 percent tree save.</li> </ol>
<b>PETITIONER</b>	Engineering and Property Management and Charlotte-Mecklenburg Planning Department
<b>AGENT/REPRESENTATIVE</b>	Engineering and Property Management and Charlotte-Mecklenburg Planning Department
<b>COMMUNITY MEETING</b>	Meeting is not required.
<b>STATEMENT OF CONSISTENCY</b>	<ul style="list-style-type: none"> <li>• The Zoning Committee found this petition to be consistent with the <i>Centers, Corridors and Wedges Growth Framework</i>, based on information from the staff analysis and from the public hearing, and because:             <ul style="list-style-type: none"> <li>• It meets the goal to maintain a healthy and flourishing tree canopy</li> </ul> </li> <li>• Therefore, this petition is found to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because the proposed text amendment:             <ul style="list-style-type: none"> <li>• Clarifies the tree save provisions by defining “single family development”; and</li> <li>• Exempts the incentives from being used for individual single family lots that are not subject to the Subdivision Ordinance. Tree save incentives being applied to single lots are increasing the density in existing residential neighborhoods by allowing reduced lot sizes and only resulting in negligible tree save opportunities that are difficult to monitor and preserve; and</li> <li>• Adds perimeter protection for single family developments providing greater than 25 percent tree save area to minimize visual impacts on adjacent single family properties; and</li> <li>• Includes changes that are not expected to impact the City’s overall tree canopy goal because to date the total acreage of tree save areas saved by projects not subject to the Subdivision Ordinance is minimal;</li> </ul> </li> </ul> <p>By a 4-2 vote of the Zoning Committee (motion by Wiggins seconded by Majeed).</p>

<b>ZONING COMMITTEE ACTION</b>	The Zoning Committee voted 4-2 to <b>APPROVE</b> this petition.
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<b>VOTE</b>	Motion/Second:      Wiggins / Majeed Yeas:                      Lathrop, Majeed, Watkins and Wiggins Nays:                      Labovitz and Spencer Absent:                  Eschert Recused:                None
<b>ZONING COMMITTEE DISCUSSION</b>	Staff provided an overview of the text amendment and the issues and concerns associated with the tree save incentives used for individual single family lots. Commissioners had a number of questions for staff. These questions and associated staff responses are categorized by topic area below.

### History of Tree Save Incentives

How did the tree save incentives allowing a change in zoning categories come about? In 2000, a concern was raised by citizens and the Council about trees that were being clear-cut in single family development. An advisory group was convened and over an 18-month process, the tree save incentives were developed to incent greater amounts of tree preservation. The intent was for the incentives to apply to single family development (major and minor subdivisions), not existing lots of record being further subdivided.

### Tree Save Incentive

Where is the tree save area located on a lot? Staff does not specify where the tree save area is located on the lot. Developers typically locate it in the rear of the lot.

Based on staff's experience, would a developer in a major subdivision make a decision to meet the minimum 10% tree save area that would result in less trees being saved? Staff responded that experience has shown developers are willing to provide greater tree save areas in order to reduce lot sizes and widths, if there is enough area to do so.

Can a developer raze the trees on external side lots in a tree save development? The development site would still have to provide the required tree save area in order to reduce the size and width of the lots.

Are there safeguards for individual trees, and does anyone assess viable trees? The urban forestry staff reviews subdivision plats and visits each site to assess existing trees and evaluate their health. If there are risk factor trees, the applicant is notified that certain risk factor trees should be removed in the tree save area and replaced.

### 20-foot Perimeter Tree Save Buffer

Would adding the 20-foot perimeter buffer apply to all single family development subject to the Subdivision Ordinance? Yes, for both major and minor subdivisions, either for greenfield or infill development with four or more lots, and when greater than a 25% tree save area is provided. The increase in density, would justify having perimeter protection.

If the developer doesn't elect to use the tree save incentives, there are no requirements to add a perimeter buffer? Staff responded that is correct.

For infill development, where the developer doesn't desire more density, and the subdivision is not subject to the Subdivision Ordinance, then the 20-foot buffer doesn't come into play? Staff responded, correct.

Would the 20-foot perimeter buffer apply to major and minor subdivisions? Yes.

Why does this proposal apply to major subdivisions? Staff responded that when infill occurs, with greater than a 25% tree save area, adjoining residents are complaining that they are getting no perimeter protection from increased density, and no opportunity to participate in a public process. The buffer protection is for larger infill development, too.

Will the buffer provide a better transition to areas where lots have been made smaller? Yes, the buffer serves a transition, so the change in lot size is not so abrupt and more compatible.

### Infill Development

How many infill developments, over the last three to four years, have used the incentive to increase density by one to two zoning district categories? Staff responded that between 9-1-14 to 6-1-16, nineteen parcels have been approved that used the tree save incentive to subdivide and reduce the size and width of the lots. There are another seven plats in review. The total number of "not subject to" the Subdivision Ordinance plats in the same period was 404.

Where in Charlotte are other infill developments occurring that are using the tree save incentive to reduce lot sizes and widths besides Wonderwood and Hunter Lane? A map depicting the dispersal of areas where this is occurring, including neighborhoods near Freedom Park, Country Club Heights and NoDa was shown.

It is occurring along streets where there are large size residential lots without deed restrictions.

#### Impacts

How did staff conclude that this text amendment will have a net zero impact on the Tree Ordinance? It will have a minimal impact on the tree canopy, not a net zero impact. Of 19 parcels using the tree save incentive, four acres have been preserved.

How does the tree save incentive affect a corner lot that is made into a duplex? Corner lots with a duplex are not treated as a single family lot. The lot would be exempt from the Subdivision Ordinance.

How will this text amendment impact infill developments underway or already in the review process? How will this affect Wonderwood? Applications filed with tree save incentives and under review prior to Council decision will be able to apply the tree save incentives in effect as of the date of application. Since May, seven proposals have been submitted to apply the incentives, and several more are anticipated to be submitted. Staff does not know, off-hand, how many are on Wonderwood.

A Commissioner made the observation that trees are renewable resources and it is hard to provide enough housing for people. The decision made on this text amendment will apply to all neighborhoods, not just a few.

#### Process

Why is this text amendment been accelerated? The schedule with the Tree Ordinance may seem aggressive, but actually began in May. Growing neighborhood concern and complaints increased the number of responses required by Engineering and Planning staff. This workload led staff to bring the issue to the City Council Environment and Transportation and Planning Committees in May for discussion. In May and June, staff gathered input from the Development Services Technical Advisory Committee, Charlotte Tree Advisory Commission, Home Builders Association, Chamber Land Use Committee, and the Charlotte Tree Advisory Commission. A Community Forum was also held for neighborhood representatives and developers to provide their input, prior to finalizing the text amendment for a public hearing in July.

If there are other unintended consequences found, will the Ordinance be amended again and again, resulting in the teeth eventually be removed from the Tree Ordinance? With any Ordinance, experience and insight after adoption can identify unintended consequences or something that is not working that becomes a catalyst to seek a change. In this case, the amendment tries to achieve a balance, being sensitive to residents' concerns and neighborhood character and being mindful of the tree canopy goal by still allowing the tree incentive provisions to apply, but with an added perimeter buffer to serve as a transition.

What are the consequences of delaying the text amendment to give more time to evaluate the impacts? Delaying the text amendment will allow individuals to file an application to use the existing tree save incentives before they are changed. Several Commissioners noted there is no perfect solution. The longer this is delayed, the more time applications can be submitted for review using the existing tree save provisions. Staff has done a good job of alerting Council and the Zoning Committee that people are circumventing the tree save purpose. The text amendment is good for larger, older neighborhoods.

Another Commissioner recommended that the text amendment be sent back to City Council with a request to have additional meetings with homeowners, prior to making a decision.

#### Other Solutions

Is there any way the Commission can look at these lots on a case-by-case basis? Staff responded that the Commission would only see them if they were part of a rezoning initiated by the property owner.

What kind of text amendment could be made to the Tree Ordinance so that the tree save provisions do not equate to a rezoning without notice? Staff

responded that a provision could be added requiring City Council approval when an applicant wants to provide greater than 25% tree save on a site in order to reduce the size and width of lots. Also, a property owner can rezone their property to a higher density residential district, which does involve a City Council decision. Even with this text amendment, and lots being subject to the Tree Ordinance, one can still use the tree save incentive to vary lot sizes and get a higher density. This amendment removes this option for smaller lots.

#### Clarification of Terms

What does "common open space" mean in Section 21-95(f)(3)(b) of the Tree Ordinance? Common open space is the tree save area that must be dedicated to a homeowners' association or a public or private agency that agrees to accept ownership and maintenance responsibilities for the area.

Is the perimeter buffer also considered to be "common open space? Yes.

#### Additional Information

A Commissioner noted his struggle with this text amendment and the concerns and issues raised by residents, developers, environmental groups, and the writers of the Tree Ordinance, and the lack of data. Staff is working on a follow-up response to City Council questions that will contain the 2001 and 2002 City Council Minutes to clarify the intent of the original Tree Ordinance tree save provisions. Staff is also gathering additional tree save data by reviewing all the major and minor subdivisions from 9-1-14 to 5-31-16 as well as the nineteen "not subject to" plats, to provide more clarity and data for Council. This will be provided in Council's 8-22-16 packet, prior to their decision. It will also be provided to the Zoning Committee for their reference.

#### **MINORITY OPINION**

One Commissioner preferred a solution to protect Wonderwood, so that the goals of tree save are preserved while finding a way so that there is not essentially a "rezoning" without notice, which is unfair to the neighborhood and property owners. Another Commissioner stated that this is a solution, but would like it to go further to help both sides.

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### **FINAL STAFF ANALYSIS** (Pre-Hearing Analysis online at [www.rezoning.org](http://www.rezoning.org))

#### **PLANNING STAFF REVIEW**

##### **• Background**

- The Tree Ordinance was adopted in 1978, with revisions made in 1988, 2000, 2002, and 2011.
- In 2002, an incentive to provide a residential density bonus was added for single family developments that provided tree save. The Tree Ordinance requires all new single family development sites to provide a minimum of ten percent tree save area. If the tree save is placed in common open space, the following incentives apply:
  - If more than ten percent tree save in common open space is provided, the zoning district's cluster provisions may be used to reduce the lot size, width, and internal yards.
  - If more than 25 percent tree save in common open space is provided, the next lower zoning district's cluster provisions may be used to reduce the lot size, width, and internal yards. For example, if a property is zoned R-3 (single family residential) and more than 25 percent tree save in common open space is provided, the property may be developed under R-4 (single family residential) cluster zoning regulations to reduce the lot size, width, and internal yards.
  - Single family development sites may be granted a density bonus provided the entire tree save area is dedicated to common open space. The density bonus is calculated by multiplying the entire area dedicated to tree save in common open space by the maximum residential density number for the underlying zoning district.
- Within the last year, concerns have been raised by both neighborhood representatives and staff regarding the use of the tree save incentives. Concerns expressed by neighborhood representatives have been mainly about changes to the character and fabric of single family neighborhoods. Staff is concerned about the management and preservation of tree save areas when the incentives are applied to individual lots due to the burden of tracking and inspecting numerous small sites on an on-going basis.

- Staff is recommending changes to the applicability of the Tree Ordinance tree save incentives to limit the incentives to parcels that are subject to the subdivision ordinance.
- When the incentive for preserving more than 25 percent of the site as tree save is used, staff recommends adding a requirement to provide perimeter protection with either perimeter lots that meet the underlying zoning cluster provisions or a minimum 20-foot perimeter tree save area.
- This text amendment is expected to have a minimal impact on the overall City tree save goals, based on the number of acres saved to date.
- **Proposed Request Details**  
The text amendment contains the following provisions:
  - Adds a new definition for single family development to provide clarity within the Tree Ordinance. The new definition is: "Single family development shall refer to any single family detached dwelling or duplex dwelling submitted for review subject to the Subdivision Ordinance". Previously, the terms, "residential single family development" and "single family development projects" were used.
  - Removes the term "tenant" from the definition of homeowner.
  - Limits the application of the tree save incentives to developments that are subject to the Subdivision Ordinance.
  - Adds a provision to require sites utilizing the incentive resulting from saving more than 25 percent of the site as tree save to minimize visual impacts to existing adjacent lots by providing either perimeter lots that meet the underlying cluster provisions or a minimum 20-foot perimeter tree save buffer.
- **Public Plans and Policies**
  - This petition is consistent with the *Centers, Corridors and Wedges Growth Framework* goal to maintain a healthy and flourishing tree canopy.
- **TRANSPORTATION CONSIDERATIONS**
  - No comments received.

**DEPARTMENT COMMENTS** (see full department reports online)

- **Charlotte Area Transit System:** No comments received.
  - **Charlotte Department of Neighborhood & Business Services:** No comments received.
  - **Charlotte Fire Department:** No issues.
  - **Charlotte-Mecklenburg Schools:** Not applicable.
  - **Charlotte-Mecklenburg Storm Water Services:** No issues.
  - **Engineering and Property Management:** No issues.
  - **Mecklenburg County Land Use and Environmental Services Agency:** No comments received.
  - **Mecklenburg County Parks and Recreation Department:** No issues.
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**OUTSTANDING ISSUES**

No issues.

**Attachments Online at [www.rezoning.org](http://www.rezoning.org)**

- Application
- Pre-Hearing Staff Analysis
- Department Comments
  - Charlotte Fire Department Review
  - Charlotte-Mecklenburg Storm Water Services Review
  - Engineering and Property Management Review
  - Mecklenburg County Parks and Recreation Review

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