

Town of Cape Charles

APPENDIX F

Tree Conservation and Preservation Ordinance

ARTICLE I

GENERAL

Section 1.1 Narrative.

Trees are proven producers of oxygen, a necessary element for the survival of man. Trees appreciably reduce the ever-increasing and environmentally dangerous carbon dioxide contents in the air, and they play a vital role in purifying the air that man breathes.

Trees, through their root systems, stabilize the water table and play an important and effective part in soil conservation and erosion control.

Trees are an invaluable physical and psychological counterpart to the town setting, make town life more comfortable by providing shade and cooling of the air and land, reducing noise levels and glare.

The Town Council of Cape Charles has determined that the planting and preservation of trees within the Town of Cape Charles is not only desirable but essential to the present and future health, safety and welfare of all its citizens.

Section 1.2 Intent and Purpose.

The intent of the Cape Charles Tree Master Plan is to develop vibrant green infrastructure in all town districts by promoting the planting of appropriate new trees, and protecting appropriate existing trees. The Plan's purpose is to ensure the beauty and ecological health of Cape Charles for its citizens and guests. The general intent and purpose of this Tree Conservation and Preservation Ordinance is to implement the Cape Charles Tree Master Plan.

The specific purposes of this ordinance are: to perpetuate tree growth; to encourage tree preservation; to provide adequate tree canopy and density; and to protect water quality by minimizing erosion and sedimentation, enhancing the infiltration of storm water runoff, and maximizing nutrient intake. The intent of these regulations is also to preserve and enhance the aesthetics of the Town, and to reduce the negative impact such as noise and glare of uses and structures which are in close proximity to each other and which are generally regarded as incompatible, and to promote attractive landscaping in residential, commercial and industrial districts of the Town. A comprehensive plan for each individual lot or parcel is essential for the visual enhancement of the Town and for the protection and promotion of appearance, character, and economic values. The purpose and intent of such landscaping

requirements are to reduce the visibility of paved areas from adjacent properties and streets, moderate climatic effects, minimize noise and glare, and enhance public safety. Landscaping will provide transition and buffers between neighboring properties.

The terms and provisions of this article shall apply to real property in the town as follows:

- (a) All undeveloped property and property undergoing redevelopment.
- (b) Streetscape area of all developed property including existing developed areas and the historic district.
- (c) Public rights-of-way, parks and public grounds.

Section 1.3 Definitions.

For the purposes of this ordinance, certain terms are defined as follows:

Arborist: A person trained and certified in arboriculture, forestry, horticulture and/or landscape architecture in the employ of or under contract to the town duly appointed by the town manager.

Caliper: The diameter of a tree measured six (6) inches above existing grade.

Canopy cover: The crown "branch" area of a tree measured in square feet after twenty (20) years from installation as specified in this ordinance.

Cultivar: A "variety" of plant denoting an assemblage of cultivated individuals which are distinguished by any significant characteristics and which, reproduced, retain their distinguishing characteristics.

Destroy: To cut down a tree or to perpetrate any intentional or negligent act which will cause a tree to decline or die within a period of two (2) years of such act. This shall include, but not be limited to, damage inflicted upon the root system of a tree by the application of toxic substances, by the operation of equipment and vehicles, landscape, by unapproved excavation or filling within the covered area of a tree, or damages caused by the unapproved alteration of natural physical conditions.

Development: Any alteration of the natural environment of improved and unimproved real estate which requires the application and approval of a site plan, subdivision plan, plot plan, or development plan related to regulated land disturbance activities and/or requiring permits, including, but not limited to, demolition, grading, filling, excavation and building.

Diameter at Breast Height (DBH): Diameter of a tree measured at a height of four and a half feet above ground.

Drip line: An imaginary, perpendicular line that extends downward from the outermost tips of the branches to the ground.

Historic tree: A tree on public property which has been determined by the town council to be of notable historic interest because of its age, size, or historic association and has been so designated in the official records of the town.

Invasive species: A non-native species whose introduction does or is likely to cause economic or environmental harm to human, animal or plant health. (National Invasive Species Council, approved April 27, 2006)

Lot area: That portion of the lot allowed for use in determining the minimum lot size requirements as stated in the Town's zoning ordinance.

Memorial tree: A tree on public property that has been individually designated by the town council to be a special commemorating memorial.

Multistem tree: A tree having more than one stem "trunk" emerging from the root system.

Planning director: The director of the department of planning or his designee.

Redevelopment: The process of developing land that is or has been previously developed.

Signature tree or planting: Types of trees notable for size age, and rarity, as well as those traditionally planted by residents of Cape Charles for food or shade. Among these signature trees are Crape Myrtle, Sycamore, Pecan, Sweet Gum, Carolina cottonwood, Linden, Basswood, Japanese Black Pine, Fig, Camellia, and Nandina.

Species: The unit in the botanical classification of plants.

Standard tree: A tree grown with a single erect stem.

Streetscape area (developed): The area including all public rights of way, all front yards to the plane of the front of the house, and on corner lots, all side yards to the plane of the side of the house. (See Fig. 1)

Streetscape area (undeveloped): The area including all public rights of way, all front yards to the plane of the principal structure, and on corner lots, all side yards to the plan of the principal structure.

Street tree: Any tree which has been individually designated by the local governing body and which grows in the street right-of-way or on private property as authorized by the owner and placed or planted there by the local government.

Tree: Any self-supporting woody plant of a species which normally grows, in Town of Cape Charles, at a commonly accepted maturity, to an overall height of a minimum of fifteen (15) feet.

Section 1.4 Standards.

Section 1.4.1 General Standards.

A subdivision plat, site, or plot plan for any subdivision or site development activity shall include the planting and/or replacement of trees on the site to the extent that, at 20 years of growth, minimum tree canopy shall be provided in accord with the following standards:

- A. Ten percent (10%) tree canopy for a site zoned business, commercial, or industrial. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements and may include wooded preserves, if the approved site plan identifies such trees, and the trees meet the standards of appropriateness of the Cape Charles Tree Master Plan.
- B. Twenty (20%) tree canopy for a residential site zoned 10 units or less per acre is provided as a maximum goal under the Code of Virginia Section 15.2-961. On the typical 40' x 140' residential lot one (1) tree per twenty (20') feet of lot frontage is required. The location of the trees on the lot shall be at the owner's discretion. Existing trees which are to be preserved may be included to be all or in part of the canopy requirements if the approved site plan identified such trees, and the trees meet the standards of appropriateness (see the Cape Charles Tree Master Plan).
- C. Trees shall be selected from the specifications and standards and shall conform with the following minimum size or height (at date of planting) standards:
 - 1. Deciduous shade trees 6' height
 - 2. Streetscape trees 6' height
 - 3. Ornamental and understory trees 6' height
 - 4. Coniferous trees 6' height
 - 5. Evergreen shrubs 18" spread or height
 - 6. Deciduous shrubs 24" spread or height
- D. Tree canopy requirements may be reduced on a case-by-case basis by waiver of the Zoning Administrator during the site plan approval process where it can be clearly demonstrated by the applicant that either (a) the reduced canopy achieves the intended landscape design objective through a combination of alternative landscape architectural and landscaping techniques or (b) where the characteristics of the property are such that the canopy coverage would not be effective and other methods of landscaping provide equal and adequate design responses. The above stipulated sizes may be modified based on specific property conditions and site design requirements.

Section 1.4.2 General Requirements

- A. Landscaping shall be required in all residential, commercial and industrial districts. The owner or his agent shall be responsible for the maintenance, repair, and replacement of all landscaping materials as may be required under Town ordinances.
- B. All plant material, including trees, shall be tended and maintained in a healthy growing condition and free from refuse and debris and invasive species as identified by the Virginia Division of Forestry or the Virginia Department of Agriculture, at all times. All unhealthy, dying, or dead plant materials shall be replaced during the next planting season.
- C. Commercial and industrial district uses that abut residential zones shall provide a landscape buffer or screened areas between districts.
- D. All parking lots shall be screened and landscaped from adjoining properties or every other use and zoning district.
- E. Land disturbance shall be limited to the area necessary to provide for the desired use or development.
- F. The Cape Charles Historic District Guidelines referencing Street Trees and Plantings are incorporated by reference (Streetscape, pgs. 65-66).

Section 1.4.3 Streetscape tree planting

- A. All streetscape trees shall be a minimum of 6' in height at the time of planting. Trees shall be guaranteed to be in good physical condition as determined by the Zoning Administrator or his designee, for a period of one year by the developer or owner. The one-year period shall commence from the time of final inspection.
- B. Tree selection: Trees shall be selected from the specifications and standards identified in the Cape Charles Master Tree Plan 2006.

ARTICLE II

TREE REMOVAL, REPLACEMENT, AND CONSERVATION

The goal of the Cape Charles Master Tree Plan is to retain a “no net loss” in terms of trees in the streetscapes throughout the Town. However, the private property rights of landowners shall be respected in order to permit the uses of the property in accordance with the Town’s Zoning Ordinance. Therefore, removal of trees is allowed within the building envelope. Removal of diseased or unsafe trees is also allowed. Clearing shall be allowed only to provide a building site, necessary access, positive site drainage, water quality BMPs, and the installation of utilities as approved by Town officials. Replacement should be provided as described herein.

The Virginia Department of Transportation (“VDOT”) governs the public rights of way in Cape Charles and no work may be initiated in these rights of way without VDOT approval.

Section 2.1 Tree protection during construction.

- A. Existing trees that are to be used to meet the requirements of Section 1.4 shall be protected in accordance with the following:
 - 1. Before construction activity begins, protective barriers must be securely in place.
 - 2. Minimum undisturbed areas shall be determined. This area is approximately the ground area covered by the outermost branches (drip line), as defined in the Virginia Erosion and Sediment Control Handbook.
 - 3. All construction activities shall also be prohibited within the minimum undisturbed areas provided for any tree(s) for which credit is given toward satisfying the residential canopy requirements.
 - 4. All temporary construction activities shall also be prohibited within the minimum undisturbed areas, including all excavating, filling, trenching, construction storage and dumping, and parking of construction equipment/vehicles or employee vehicles.

- B. Inspection: Each lot shall be inspected and approved prior to the issuance of the certificate of occupancy or final inspection approval. All new trees must be identified with species identification tags and must remain tagged until after the inspection is complete. The inspection shall be performed by either the Zoning Administrator or a representative of the Department of Planning. Where additional residential lot trees are required, no certificate of occupancy or final inspection approval shall be issued until the required trees have been planted in accordance with Town of Cape Charles typical planting standards. When the occupancy of a structure is desired prior to the completion of the residential lot tree planting requirement, a temporary certificate of occupancy may be issued if the owner or developer provides to the Department of Code Enforcement a disclosure statement accepting responsibility for the installation of the required trees.

Section 2.2 Removal or treatment of trees on private property.

- A. Permit--Required.

A tree removal permit shall be required before any tree (or shrub which is in tree form) on property described in Article I, Section 1.2 may be destroyed or removed.

When a site plan, plot plan, or other development plan is required, application for a tree removal permit shall consist of a plan acceptable to the Zoning Administrator in form and content, submitted as part of the site plan or other development plan. The Zoning Administrator shall determine the plan's

compliance with the requirements of the town. No plan shall be approved which does not comply with these requirements.

When no site plan, plot plan, or other development plan is required, application for a tree removal permit shall be submitted to the Zoning Administrator in a form which provides the information deemed necessary by the Zoning Administrator. Where no emergency exists, the Zoning Administrator shall act upon a tree removal permit application within eight (8) days from receipt of application.

Factors to consider: In addition to reviewing for conformance to standards and guidelines promulgated in the Cape Charles Master Tree Plan, the following factors shall also be taken into consideration:

1. The extent to which tree clearing is shown to avoid excessive clearing and still permit the applicant to achieve the proposed development or land use.
 2. The extent to which the actual or intended use of the property is in accordance with the regulations of the zoning district in which the property lies requires clearing of trees.
 3. The hardship to the applicant which will result from a modification or rejection of the required permit.
 4. The desirability of preserving any tree by reason of its size, age or some other outstanding quality, such as uniqueness, rarity or status as a landmark or species specimen.
 5. The extent to which the area would be subject to environmental degradation due to removal of the trees.
 6. The heightened desirability of preserving tree cover in densely developed or densely populated areas.
 7. Whether the tree is diseased, injured beyond restoration, in danger of falling, interferes with utility services or creates unsafe visual clearance.
- B. Replacement of trees. When warranted in the judgment of the Zoning Administrator, the applicant may be required to replace, in accordance with a tree replacement plan, any tree being removed with a suitable replacement tree elsewhere on the site. In determining whether the replacement of trees is reasonable and shall be required, the Zoning Administrator shall consider the intended use of the property together with an evaluation of the following:
1. Existing tree coverage, size and type;
 2. Number of trees to be removed;
 3. Area to be covered with structures, parking and driveways;
 4. Grading plan and drainage requirements; and
 5. Character of the site and its environs.
- C. Approval. If the permit application conforms to standards and guidelines and there are no objections resulting from consideration of the factors listed above in this section, the permit application shall be approved.

- D. Rejection. If the permit application does not conform to standards and guidelines or there is an objection resulting from consideration of the factors listed above in this section, the permit application shall be rejected. The Zoning Administrator may require that the application be modified to bring it into conformance with the standards and guidelines or to eliminate any objections to the application.

- E. The area of land to be cleared of trees and other vegetation in conjunction with proposed development or land use shall not include any trees which are unique by reason of size, age or some other outstanding quality, such as rarity or status as a landmark or species specimen (see definition of "historic tree"). Subject to the Zoning Administrator's approval, the area to be cleared shall generally be limited to that area needed for:
 - 1. Street construction and necessary slope construction.
 - 2. Public service or utility easements and rights-of-way. This shall include area for utility line installation with any construction easements necessary for such installation and easements for maintenance access. These easements shall not be cleared prior to actual line installation.
 - 3. Building roof coverage area and ancillary structures such as patios and porches plus fifteen (15) feet on all sides for construction activity. (building envelope)
 - 4. Driveways, alleyways, walkways, parking lots and other land area necessary to the installation of the proposed development or use.
 - 5. Sediment basins. Only those trees within the area necessary for construction of the dam, the area in which sediment will collect, and the area necessary for construction and maintenance of the basin shall be cleared of trees.

Section 2.3 Activities of public utilities.

The authority of the zoning administrator shall extend to the control of the activities of utility companies in the matter of treating, trimming, planting or removing trees or shrubs on the public grounds and streets of the town.

It shall be unlawful for any such company to in any manner treat, trim, plant or remove trees or shrubs on any property, grounds or streets of the city without the written permission of the Zoning Administrator, who is hereby expressly given the right to withdraw any permission where inspection by the Zoning Administrator indicates that the work has not been or is not being done in compliance with good horticultural standards.

Section 2.4 Plantings along streets and public use easements. (rights of way)

- A. The planting, pruning or other treatment of trees upon the streets and public use easements shall be under the direction of the Town Manager or his designee.

No tree upon any street or public use easement in the town shall be destroyed, cut down or otherwise removed without the consent of the Town Manager or his designee. No trees or plants of any kind shall be planted upon any street, public use easement or public property except with the consent of the Town Manager or his designee.

- B. No trees shall be planted at public expense upon private property unless a public use easement has been granted; except, that, with the consent of the owner, trees may be planted upon the line between any street and the abutting private property, and trees may be planted in connection with public works projects which have disturbed private property and where the town has easements, on condition that the planting, pruning, removal or other treatment of the trees so planted shall be under the control of the Town Manager or his designee.
- C. It shall be unlawful to girdle, break, bend, wound, tack signs or notices upon or in any manner injure any tree planted upon any public use easement or street or on the line thereof within the corporate limits, except with the approval of the Town Manager or his designee.

Section 2.5 Failure to comply with plan.

If the Zoning Administrator determines that the permit holder has failed to comply with the plan, the Zoning Administrator shall immediately serve upon the permit holder a notice to comply which shall be sent by registered or certified mail to the address specified by the permit holder in his permit application. Such notice shall set forth specifically the measures needed to come into compliance with such plan and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to revocation of the permit and the town, at the direction of the Zoning Administrator, may correct the noted deficiencies at the permit holder's expense; furthermore, the permit holder may be deemed to be in violation of this article and upon conviction could be subject to the penalties provided by this article.

Section 2.6 Exceptions; waiver of chapter.

- A. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety, and require immediate removal without delay, verbal authorization may be given by the Zoning Administrator and the tree removed without obtaining a permit as herein required.
- B. During the period of an emergency, such as a tornado, ice storm, flood or any other act of nature, the requirements of this article may be waived by the town manager or his designee.

Section 2.7 Replacement of trees destroyed in violation of chapter.

When trees are destroyed in violation of this article, replacement trees shall be required unless exemption is granted by the Zoning Administrator. The size, species and quantity of these replacements shall be determined by the Zoning Administrator based on the value of the trees removed as calculated by the latest formula published by the International Society of Arboriculture.

Section 2.8 Appeals.

An appeal to the Board of Zoning Appeals may be taken by any person aggrieved by any decision of the Town Manager, his designee or Zoning Administrator relative to the administration of this chapter. An appeal shall be taken within thirty (30) working days from the date of the issuance of the Zoning Administrator's written order, by filing with the Zoning Administrator and the Town Manager a notice of appeal specifying the grounds thereof. The Zoning Administrator shall then transmit to the Board of Zoning Appeals the record upon which the appeal is based. All decisions by the Town Manager, his designee or the Zoning Administrator shall be appealed first to the Board of Zoning Appeals, then to the Northampton County Circuit Court. An appeal stays all compliance with the action being appealed, unless the Zoning Administrator certifies to the Town Manager that by reason of stated facts a stay would, in his opinion, cause imminent endangerment to life or property. In such cases, compliance shall not be stayed other than by a restraining order which may be granted by a court of record, on application and on notice to the Zoning Administrator and on due cause shown.

Section 2.9 Violations and penalties; remedies.

Any person, whether as an owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this chapter or permits any such violation or fails to comply with any of the requirements, or who erects any building or who uses any building or any land in violation of any detailed statement of plan submitted by him and approved under the provision of this chapter shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) for each violation. Each day upon which such violation continues shall constitute a separate violation. Furthermore the town manager, through the town attorney, may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this chapter, it being determined that vegetation in general and trees in particular are unique and thus a proper subject of equitable relief.