

**MEMORANDUM**

To: Planning Commission Chairperson Jessica Plowgian and Planning Commissioners

From: David B. Levy, Director of Planning and Zoning

Date: October 6, 2023

Re: October 11, 2023 Discussion
DPZ Discussion for Planning Commission Recommendations to the Town Council
on Potential Amendments to Chapters 17, 18 and 27 – Preserving and Enhancing
Tree Canopy.

NOTE: THIS MEMORANDUM IS AN UPDATED VERSION OF THE MEMORANDUM THAT WAS SENT TO THE PLANNING COMMISSION AS PART OF THE REPORT FOR THE SEPTEMBER 27, 2023 MEETING. NEW LANGUAGE IS IN THIS COLOR.

Early in 2023, the Town Council decided that addressing the Town’s declining tree canopy was one of its four top priorities for 2023. As such, the Town Council is focusing on potential code amendments that could facilitate improvements.

This memorandum discusses the decisions that the Town Council may wish to make regarding code changes, and therefore the areas on which the Planning Commission could focus in developing its recommendations to the Town Council. More background on the overall Town Council discussion of this matter, along with links to the research that has been conducted since 2020, may be found in Attachment 1 of the report for the September 13, 2023 Planning Commission meeting, at <https://vienna-va.legistar.com/Calendar.aspx>, or at the Web site of the Department of Planning and Zoning, at <https://www.viennava.gov/your-government/town-departments-at-your-service/planning-and-zoning/zoning-code-update-code-create-vienna>.

Potential Code Amendments

There are four main areas of discussion for changes to the code.

1. Development Standards

For jurisdictions within the Northern Virginia Planning District (the Chesapeake Bay region), in which Vienna sits, the State of Virginia allows for two options to address concerns about the loss of trees in the development process. Jurisdictions may **not** do both – if a jurisdiction wants to have a tree requirement during development, the jurisdiction must choose between the following two options:

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- 1) § 15.2-961. **Replacement** of trees during development process in certain localities.
<https://law.lis.virginia.gov/vacode/title15.2/chapter9/section15.2-961/> (Attachment 4)
- 2) § 15.2-961.1. **Conservation** of trees during land development process in localities belonging to a nonattainment area for air quality standards.
<https://law.lis.virginia.gov/vacode/title15.2/chapter9/section15.2-961.1/> (Attachment 5).

For years, Vienna has opted for the **Replacement** option, in Vienna Code Sections 17-15.1 and 18-252 (Attachment 5). On August 28th, the Council discussed potentially shifting over to the **Conservation** (VA code 15.2-961.1) option. **On October 23rd, the Council will hold a public hearing on this matter.**

Staff note: It is important to bear in mind that, under both options, a combination of tree preservation and new tree planting is likely to take place. Under the current “Replacement” option, many development projects include preservation of trees as part of meeting their canopy requirements. Canopy requirements are met mostly in the rear of the lot, with trees near the street taken down as part of the development process. Staff does not believe that this arrangement is likely to change under the Conservation option because developers like use the front area for construction and staging of development, and because there is no requirement for the location of the canopy (and State law does not permit such a requirement).

- **Decision 1** - Should Vienna continue to regulate through Virginia’s **Replacement** option or shift to the **Conservation** option?

If the Town shifts to the **Conservation** option, Vienna would be the first jurisdiction to adopt an ordinance under current State law, which includes specified rights and responsibilities of eligible jurisdictions. Fairfax County is the only other jurisdiction that has adopted a Conservation (15.2-961.1) ordinance, but some of its provisions preceded the State legislation and the State has permitted its “grandfathered” provisions to remain in place. An important “grandfathered” example is that Fairfax County is permitted to require that tree canopy reach its targets in 10 years, rather than the 20 years that jurisdictions are now permitted to require.

Required Canopy

A main component of the Conservation option is that, for large-lot residential properties, the Town would be able to require 25% tree canopy coverage, rather than the 20% tree canopy coverage that is currently permitted under the Town’s current 15.2-961 ordinance. In Vienna, those large lots are zoned RS-12.5 and RS-16. The Conservation option would still limit RS-10 lots in Vienna to 20% tree canopy coverage.

In the Town’s commercial and industrial areas, the tree canopy requirements under the Conservation option would remain the same (10%) as in the Replacement option (10%).

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Required Credits

The Conservation option also includes State-required provisions that could result in the total amount of tree canopy being lower than the 25%, 20% or 10% requirement. The Town would be required to provide a series of credits of between 1.25 and 1.5 times (and sometimes higher) the canopy in 20 years for each tree that is preserved, or for the planting of native species, the planting of environmentally beneficial trees, and/or other environmentally beneficial conditions. (No more than two credits may be claimed for any tree.) Such credits are not required under the Replacement (15.2-961) option, and the Town does not currently offer such credits (see the attached memorandum from the Department of Parks and Recreation for a brief discussion of credits).

Analysis of Impacts of the Potential Shift

To staff, it is unclear whether the combination of new rights and requirements under the Conservation option would result in more overall tree canopy in Vienna than it would if Vienna remained under the Replacement option.

Under the Conservation option, the large lots (RS-12.5 and RS-16), would only be required to meet the 25% coverage on-site when the developer meets the canopy requirement through new trees that are not native and do not offer certain environmental benefits. The preservation of existing trees and select native tree types results in credits that may require less planting. In an extreme case, the actual 20-year canopy provided on a large lot could be 16.67%, if the developer were to use only trees for which a credit of 1.5 times the actual canopy is required. (Note: $16.67\% \times 1.5 = 25\%$).

Under the Conservation option, developers of RS-10 lots would have the same credits available to them, but the permitted maximum would be 20% in 20 years, as it is now under the Replacement option. If a developer took advantage of even one of the required credits, the developer would be permitted to have a 20-year projected tree canopy of less than 20%. The same logic would apply to commercial and industrial lots.

Below is the distribution of RS-zoned lots in Vienna.

Zoning District	Number of Total Lots	% of Total Lots
RS-10	2,580	54.4%
RS-12.5	1,447	30.5%
RS-16	651	13.7%
Split-Zoned*	63	1.3%
Total	4,741	100.0%

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Potentially More Trees Preserved

It is possible, however, that the incentive structure built into the Conservation option may result in more trees preserved and more plantings of environmentally beneficial and native species, as compared to the Replacement option. That is, credits are available to developers only if they provide such benefits, in exchange for their being able to have a lower amount of tree canopy.

Tree Bank or Fund

State law requires certain features to be included in the local ordinance. For example, Vienna would be required to allow for deviations from meeting the requirement, in part or in whole, for certain site-specific reasons (VA code 15.2-961 E. and F.). If the developer cannot meet the canopy requirement on-site, 15.2-961.1 requires that either a **tree canopy bank or fund** be created, to permit compensation for not meeting the requirement on site.

A **tree bank** would permit the locality to facilitate off-site tree preservation or tree planting, or restoration projects on stream banks or riparian areas.

A **tree fund** would provide a financial mechanism into which developers would provide funds in-lieu of planting on site. The money in the fund could be used either to plant trees on public property, and/or disburse money to community-based non-profit organizations with tree planting or community beautification missions for tree planting programs. 961.1 provides a specific methodology that the State requires be used for calculating the amount that may be collected.

The law appears to provide a choice to the locality, rather than allowing both (or neither) to be chosen.

- **Decision 2** - If Vienna chooses to regulate under 15.2-961.1, should Vienna choose to establish a **tree bank or tree fund**, in cases where developers are unable to meet their canopy requirements on site?

Requirements of 15.2-961.1 are that the locality must:

- (I.1.) Provide a **credit** for tree preservation of “**up to one and one-quarter times** the canopy area at the time of plan submission for individual trees or the coalesced canopy....”
- Provide a series of credits enumerated in J.1. through J.5.

Options available to localities within 15.2-961.1 include:

- (I.2.) Credits in connection with tree preservation
 - (I.2.a.) The ordinance “may provide canopy credits up to one and one-half times the actual canopy area for the preservation of forest communities....that achieve...objectives set by the locality.”
 - o Vienna has not, as of this writing, established any such areas.

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- (I.2.b.) “The ordinance may provide canopy credits of up to three times the actual canopy area of trees that are officially designated for preservation in conjunction with local tree conservation ordinances based on the authority granted by 10.1-1127.1”
 - o At present, Vienna has no trees that have been designated in this manner.

➤ **Decision 3** – Should Vienna include either of these credits in the local ordinance?

One option (M.) available to jurisdictions who adopt a 15.2-961.1 provision is that certain species may be identified that cannot be used to meet tree canopy requirements or that will only receive partial 20-year tree canopy credits.

- **Decision 4** – Should Vienna identify trees that may not be used for tree canopy requirements or those that should receive partial credit?
 - o Staff suggests that, if Vienna adopts this provision, the selection of such species be designated to staff and should be enumerated in the Town’s Tree Preservation and Planting Guide, rather than being codified in code.

Another option (N.) available for those who adopt a 15.2-961.1 provision is to allow tree seedlings to meet the “tree canopy requirements in large open spaces, low-density residential settings, or in low-impact development reforestation/afforestation projects.” More detail can be found in the ordinance.

- **Decision 5** – Should Vienna allow for the use of tree seedlings for meeting tree canopy requirements in large open spaces, low-density residential settings, or in low-impact development reforestation/afforestation projects?
 - o Staff does not view this provision as problematic, but does not, at this time, know of any sites where this option would be applicable.

2. Tree Board or Commission

The Vienna Town Code established the Conservation and Sustainability Commission (CSC) within Chapter 27. Section 27-5 (Attachment 7) establishes the Tree Board. It states that “The conservation and sustainability commission, acting with the cooperation and advice of the ISA certified Town arborist, shall constitute the Town tree board.”

Based on recommendations from the reports and presentations discussed above, the Town Council is considering a new approach to the tree board. Options include:

- Leaving the Tree Board as subsidiary to the CSC
- Creating a new independent Tree Commission (or Board)

In both options, the Tree Board or Commission would no longer simply be the CSC acting as the Tree Board or Commission but would, instead, include direct appointees by the Town Council and some CSC representation.

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Questions related to the Tree Board or Commission include, but may not be limited to:

- **Decision 7** – Should Vienna maintain its Tree Board/Commission as subsidiary to the CSC or make it completely independent of the CSC and report directly, and only, to the Town Council?
- **Decision 8** – Should the Tree Board/Commission be defined, with its duties elaborated, remain in Chapter 27, along with the CSC, or be relocated to a new Chapter of the Town Code?
- **Decision 9** – Who should the membership of the Tree Board/Commission be? How large should it be? How many should be appointed directly by the Town Council? How many should be appointed by other boards or commissions (e.g., CSC, Planning Commission)?
- **Decision 10** – What should be the duties of the Tree Board/Commission?

3. Requirement to Produce an Annual Report on the Tree Canopy

The Town Council is considering adding a code provision that requires staff, perhaps in conjunction with the Tree Board/Commission, to produce an annual report on the state of the tree management in Vienna and, perhaps, a report on the state of the tree canopy every five years.

- **Decision 10** – Shall Vienna establish, in code, a requirement to produce such regular reports? If so, shall it be a requirement of staff, the Tree Board/Commission, or a combination of both?

4. Applicability

Both proposed approaches to tree canopy code amendments include a provision that Fairfax County has adopted in their tree ordinance. In Mr. Land's version, the language is in the new code Chapter 29. In the Town Attorney's version, it is in Chapters 17 and 18. The language within both drafts is:

- (b) For purposes of administering the above requirement, land development does **not include**: construction of additions to existing residential structures; construction of residential accessory structures; demolition of existing residential structures; reconstruction of residential structures on existing foundations; construction associated with minor site plans; construction of trails, sidewalks, sanitary sewers, storm sewers, and other public improvements of a linear nature not included as part of a larger common plan of development; and, other land disturbing activities that present a minor threat to existing tree resources as determined by the

Staff notes that this language would reduce the categories of development projects for which there would be tree requirements, as compared to current practice, because it removes such projects as large-scale additions, swimming pools, detached garages and large hardscape and landscape projects. The Town's current practice is to require any project that requires land disturbance of more than 2,500 square feet to meet tree canopy requirements. The examples listed above frequently do reach that scale. If the above language were included in the new amendments, the Town would inadvertently be reducing by a significant amount the number of

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projects where tree canopy standards would be required. State code does not require these exemptions.

- **Decision 11** – Should the language listed above be removed from either version of the code amendments, or should it remain?

5. Structural Question

Mr. Land's proposed ordinance would, as indicated above, place all tree-related items in a single new Chapter in the Town Code. The Town Attorney's version would make modifications to the Town Code in the locations where they currently sit – development standards within current chapters 17 and 18 would remain in those chapters (or as amended under Code Create); and the Tree Board/Commission would remain within Chapter 27.

- **Decision 12** – Shall Vienna adopt a single ordinance change, placing all tree components in a new Chapter to be administered by the Director of Parks and Recreation, or shall Vienna adopt changes to a series of sections of the code related to the locations where they currently sit?
 - Staff note – though Mr. Land's version places administration of a new chapter with the Director of Parks and Recreation, State law requires that final land development decisions be within the authority of the Zoning Administrator. As such, even if a new chapter is created that places all tree items in that new chapter, the chapter could not be administered, in whole, by the Director of Parks and Recreation. However, the Town Arborist, with Parks and Recreation, would remain, as is current practice, the subject-matter expert on whose expertise the Zoning Administrator would rely for this component of development decisions.

6. Effective Date

Staff will need time to make any changes to administration and guidance documents so that the updated approach can be implemented correctly. Staff believes that the standard effective date of 10 days after adoption would not be sufficient.

Staff recommends that the effective date be approximately 2 months after adoption, to allow for updating the Tree Preservation and Planting Guide; outreach to builders and the community; and updating staff's internal administrative processes, including staff training.

Conclusion

Staff recognizes that there may be additional questions that need addressing and would welcome additional discussion and options from the Planning Commission.