

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 17 – Subdivisions, Article 1. – In General, Section 17-15.1. – Planting and replacement of trees, repealing, amending and adopting new provisions to Chapter 17 Section 17-15.1 as indicated; and to amend Chapter 18 – Zoning, Article 25. – Site Plan Control Provisions, Section 18-252(E) Site Plan Specifications, repealing, amending and adopting new provisions to Chapter 18 Section 18-252(E) Site Plan Specifications as indicated, to the Code of the Town of Vienna.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

Section 1: The Town Code, Chapter 17 – Subdivisions, Article 1. – In General, Section 17-15.1. – Planting and replacement of trees, repealing, amending and adopting new provisions to Chapter 17 Section 17-15.1 as indicated, and repealing, amending and adopting new Sections provisions 17- , to the Code of the Town of Vienna, to read as follows:

Chapter 17 SUBDIVISIONS, ARTICLE 1. – IN GENERAL AND SERVICES, ETC.

Sec. 17-15.1. Planting and replacement of trees.

- ~~A. The preliminary plat required by this article shall be accompanied by a plan providing for the planting and replacement of trees on site during development to the extent that, at maturity of 20 years, minimum tree canopies or covers will be provided in the respective zoning districts of the Town as follows:
 - ~~1. 20 percent tree canopy in the RS-16, RS-12.5 and RS-10 zones.~~
 - ~~2. 15 percent in the RM-2 and RTH zones.~~
 - ~~3. Ten percent tree canopy in the T, C-1, C-1A, C-2, CMP and CM zones.~~~~
- ~~B. All trees planted shall meet the specifications of the American Association of Nurserymen and the Town shall maintain in writing a system for rating the desirability for planting of various tree species, which writing shall be available in the office of the director of public works.~~
- ~~C. The planting of trees shall be done in accordance with either the standardized landscape specifications jointly adopted by the Virginia Nurserymen's Association, the Virginia Society of Landscape Designers and the Virginia chapter of the American Association Society of Landscape Architects, or the road and bridge specifications of the state department of transportation.~~
- ~~D. Existing trees which are to be preserved as otherwise provided in this chapter may be included in the plan to meet all or part of the canopy requirements, and may include wooded~~

~~preserves, if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town.~~

~~E. The Town Council may grant reasonable exceptions or deviations from the requirements of this section when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:~~

~~1. Areas devoid of woody materials.~~

~~2. Dedicated school sites.~~

~~3. Playing fields and other non-wooded recreation areas and uses of a similar nature.~~

~~F. Violation of this section shall constitute a Class 3 misdemeanor punishable by fine of not more than \$250.00 and each day after the first during which such violation shall continue shall constitute a separate violation.~~

**NEW LANGUAGE REPLACING REPEALED 17-15.1
AND ADDING NEW PROVISIONS**

Sec. 17-15.1. Planting and replacement of trees.

- (a) All listed plans for preliminary subdivision plat, subdivision plan, development or re-development, shall provide for the preservation or replacement of trees on the development site such that, after twenty (20) years after development, minimum tree canopy is projected to be as follows:

Table 1 - Tree Canopy Requirements as applied to Town of Vienna Zoning Districts

Use or Zoning District	Percentage of Site to be Covered by Tree Canopy in 20 Years
RS-16 - Single Family Detached Residential	Twenty five percent (25%)
RS-12.5 - Single Family Detached Residential	Twenty five percent (25%)
RS-10 - Single Family Detached Residential	Twenty percent (20%)
RM-2 - Multifamily Low Density	Fifteen percent (15%)
RTH - Townhouse	
T - Transitional	Ten percent (10%)
C-1 - Local Commercial	
C-1A- Special Commercial	
C-1B - Pedestrian Commercial	
C-2 - General Commercial	
CMP - Industrial Park	
CM - Limited Industrial	

(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 Director of Planning and Zoning in consultation with the Director of Public Works and Director of Parks and Recreation.

Commented [BS1]: Is this needed?

Sec. 17-15.2. Standards for Tree Canopy Requirements.

- (a) The Tree canopy requirements set forth in Table 1 above may be met through the preservation or planting of trees. However, when existing trees meet standards of health, condition, and suitability, and when it is feasible to preserve those trees within the framework of permissible uses, densities, design standards, and construction practices, all efforts shall first be made to meet the Tree canopy requirement through the preservation of trees before tree planting is allowed to meet any portion of the Tree canopy requirement.
- (b) Tree canopy credit shall be given to existing areas of trees and forested areas designated to be preserved on plans and comprised of self-supporting and woody plant

material exceeding five feet in height at time of plan submission provided that the trees and forested areas meet standards for health, condition, and suitability.

- (c) Any portion of the Tree canopy requirement that cannot first be met through the preservation of trees as provided for in § 17-15.13 shall be provided through tree planting.
- (d) Tree canopy credits for trees and plant material used to satisfy 20-year Tree canopy requirements shall be determined in accordance with the provisions of Vienna's Tree Preservation and Planting Guide.

Sec. 17-15.2. Tree Preservation Requirements.

- (a) Except as provided for in § 17-15.3(b), the percentage of the development site covered by Tree canopy at the time of plan submission shall equate to the minimum portion of the total 20-year Tree canopy requirement of § 17-15.2(a) that should be met by means of tree preservation. This minimum portion shall be identified in plats and plans as the "tree preservation target."
- (b) Deviations, in whole or part, from the tree preservation target may be requested under the following conditions:
 - 1. Meeting the tree preservation target would prevent the development of uses or densities otherwise allowed by the Town Zoning Ordinance;
 - 2. Meeting the tree preservation target would require the preservation of trees and forested areas that do not meet standards for health, structural condition, and other vegetation and risk management requirements.
 - 3. Construction activities could be reasonably expected to impact existing trees or forested areas used to meet the tree preservation target to the extent they would not likely survive in a healthy and structurally sound manner for a minimum of twenty (20) years in accordance with the post-development standards for trees and forested areas.
- (c) Deviations from the Tree Preservation Target shall be granted for any of the justifications listed above provided that a written request is submitted and approved by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation.
- (d) **The Director of Planning and Zoning in consultation with the Director of Parks and Recreation shall grant additional canopy credits as required by Virginia Code Section 15.2-961.1 in order to encourage the preservation of forest communities that provide valuable environmental, ecological, and wildlife conservation benefits.**
- (e) All tree and forested areas designated to be preserved on plans shall be protected and managed during all phases of construction.

Sec. 17-15.4. Tree Planting Requirements.

- (a) Tree canopy credit shall be given to areas of planted Tree canopy based on the projected 20-year Tree canopy calculation as set forth in the **Vienna's Tree Preservation and Planting Guide**, provided that the proposed tree species meets

Commented [S2]: There are specific credits that are required to be granted, and then optional credits. See Section 15.2-961.1(l)1 and 2 and 15.2-961.1(l)

I. 1. In recognition of the added benefits of tree preservation, the ordinance shall provide for an additional tree canopy credit of up to one and one-quarter times the canopy area at the time of plan submission for individual trees or the coalesced canopy of forested areas preserved from the predevelopment tree canopy.

2. The following additional credits may be provided in the ordinance in connection with tree preservation:

a. The ordinance may provide canopy credits of up to one and one-half times the actual canopy area for the preservation of forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality.

The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits. Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).

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.

J. The following additional credits shall be provided in the ordinance in connection with tree planting:

1. The ordinance shall provide canopy credits of one and one-half the area normally projected for trees planted to absorb or intercept air pollutants, tree species that produce lower levels of reactive volatile organic compounds, or trees that act

to reduce air pollution or greenhouse gas emissions by conserving the energy used to cool and heat buildings.

2. The ordinance shall provide canopy credits of one and one-quarter the area normally projected for trees planted for water quality-related reforestation or afforestation projects, and for trees planted in low-impact development and bioretention water quality facilities. The low-impact development practices and designs shall conform to local standards

in order for these supplemental credits to apply.

3. The ordinance shall provide canopy credits of one and one-half the area normally projected for native tree species

Commented [S3]: Add references to actual tree canopy credit amounts ie. 1.5/1.25, etc.?

standards established to manage proper levels of biodiversity and the spread of invasive plants, pests, and diseases.

- (b) Tree canopy credits shall be given to tree seedlings, shrubs and woody seed mix planted in large open spaces, low-density residential settings, or in low-impact development projects.
- (c) Additional Tree canopy credits shall be granted for the planting of trees that will provide air quality, energy conservation, water quality, wildlife conservation benefits.
- (d) Additional Tree canopy credits shall be granted for the use of native tree species, and the use of cultivars or varieties that develop desirable growth and structural patterns, resist decay organisms and the development of cavities, show high levels of resistance to disease or insect infestations, and exhibit high survival rates in harsh urban environments.
- (e) In order to provide higher levels of biodiversity and to minimize the spread of pests and diseases, or to limit the use of species that cause negative impacts to native plant communities, cause damage to nearby structures, or possess inherent physiological traits that prone trees to structural failure, Vienna's Tree Preservation and Planting Guide may designate trees that cannot be planted to meet Tree canopy requirements or that shall only receive partial Tree canopy credits.
- (f) All plant materials used to satisfy 20-year Tree canopy requirements shall be selected, located, handled and installed in accordance with the Vienna's Tree Preservation and Planting Guide.

Sec. 17-15.5. Use of Tree Preservation and Planting Fund if Tree Canopy Requirement Cannot be Met On-Site.

- (a) Where it can be demonstrated to the satisfaction of the Director of Planning and Zoning in consultation with the Director of Parks and Recreation that the Tree canopy requirements set forth in § 17-15.1 cannot be met on-site, the portion of the requirement that cannot be met on-site may be met through a pro rata payment into a Tree Preservation and Planting Fund.
- (b) If it is demonstrated to the satisfaction of the Director of Planning and Zoning in consultation with the Director of Parks and Recreation that the Tree canopy requirements set forth above cannot be met on-site, the Director of Planning and Zoning may allow developers to contribute a pro-rated fee into Vienna's Tree Preservation and Planting Fund. The Town may use this fund directly to preserve or plant trees on public property or may elect to disburse these funds to community-based organizations exempt from taxation under § 501(c)(3) of the Internal Revenue Code with tree planting or community beautification missions for the purpose of implementing tree planting projects or programs that benefit the community at large.
 - 1. Fees collected for these purposes will be based on the cost to establish 20-year Tree Canopy Cover using 2-inch caliper nursery stock tree.
 - 2. The cost to establish 200 square feet of 20-year Tree Canopy using 2-inch caliper landscape tree will be set at the unit cost for a 1.5-2.0-inch caliper deciduous tree

as stated in the current Fairfax County Land Development Services' Comprehensive Unit Price Schedule.

3. Funds collected in lieu of on-site planting shall be spent within a five-year period established by the collection date, or the Town shall return such funds to the original contributor, or legal successor.

Commented [S4]: Required by Virginia Code Section 15.2-961.1(G)2

Sec. 17-15.6. Exemptions and Deviations.

- (a) The following uses are exempt from the requirements of this chapter: bona fide silvicultural activity as defined by Va. Code Ann. § 10.1-1181.1 and the areas of sites included in lakes, ponds, and the normal water elevation area of stormwater retention facilities.
- (b) Deviations of the overall canopy requirements set forth in § 17-15.1 may also be granted by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation and the Director of Public Works to allow for the preservation of wetlands, the development of farm land or other areas previously devoid of healthy and/or suitable tree canopy, or where the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer.

Sec. 17-15.6. Penalties for Violations.

The penalties for violation of Town Code Section 17-15.1-6 shall be the same as those applicable to criminal/civil violations of the Zoning Ordinance of the Town of Vienna.

Commented [S5]: Which penalties? See Town Code Article 27, 18-281 et seq.

Sec. 17-15.7. Definitions

- (a) *Forested area* means areas as defined by the the Virginia State Forester pursuant to Virginia Code §58.1-3230 and comprised of self-supporting tree and woody plants that exceed five feet in height at time of plan submission and meet criteria for health, condition and suitability as further defined in this section. Areas that meet the administrative definition provided above usually represent native forest or woodland plant communities that occur in a range of successional stages from rapidly changing early successional pioneer woodlands (often described as “scrub”) to stable long-term sub-climax and climax forests. During mid to late successional stages, these plant communities typically consist of multiple layers of vegetation and other natural features including: super- and sub-canopy tree species; woody shrubs, herbaceous plants, vines, non-vascular plants and epiphytes; decaying leaf litter, root mass, fungi, soil biota; and abiotic components which the vegetation is dependent upon such as: soils, hydrologic conditions, and underlying geomorphic features.
- (b) *Tree* means any self-supporting woody plant which visually produces one main trunk and a more or less distinct and elevated head with many branches that typically reach at least 15 feet in height at maturity, and for purposes related to 20-year Tree canopy requirements exceeds five feet in height at time of plan submission.
- (c) *Tree canopy* includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at 20 years maturity. Planted canopy at 20 years maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen, and arborist in the community.

(d) *Tree conservation, as applied to trees and forested areas, incorporates both tree preservation and tree planting efforts.*

Section 2: The Town Code, Chapter 18 – Zoning, Article 25. – Site Plan Control Provisions, Section 18-252 Site Plan Specifications, repealing, amending and adopting new provisions to Chapter 18 Section 18-252(E) Site Plan Specifications and repealing, amending and adopting new Sections provisions Sections 18-252(E), to the Code of the Town of Vienna, to read as follows:

Sec. 18-252. Site plan specifications.

Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a building permit to erect or alter any structure in a C-1, C-1A, C-1B, C-2, CM, T, RTH, RM-2, or PR zone, submit to the director of public works a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. Additionally, the provisions for replacement of trees as set forth in section 18-252 E shall apply to any of the following located in the RS-16, RS-12.5, and RS-10 zones: the development of an undeveloped tract; the redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or the addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.

Such plan shall include the following data:

- A. 1. Location of all existing and proposed buildings and structures.
2. Boundary of the entire tract by courses and distances.
3. Area of the tract.
4. Zone of the tract.
5. Present record owner of the tract.
6. Owner, zone and present use of all contiguous property.
7. Width of all streets adjoining the tract (both right-of-way and pavement widths).
8. Location of existing edge of pavement or curbs.
9. Location of existing easements and underground facilities, proposed easements and buildings and their dimensions.
10. Number of floors, floor area and use of each building and height of each building.
11. A schedule showing compliance with the parking requirements of this chapter.
12. All off-street automobile parking space and type of surfacing (indicating size of stalls and width of aisles).
13. All off-street loading and pickup spaces.
14. Location of any poles, fire hydrants, retaining walls, pump islands, signs, doorways, window wells, guy wires, or other structures which might interfere with automobile parking or maneuvering.

15. The location and type of entrances and driveways which shall conform to the state department of highways and Town standards and specifications.
 16. Location of all curbs to be constructed and specify type.
 17. Location and width of all sidewalks.
 18. Fencing and walls to be erected; type, height and location.
 19. The location, type and size of all existing trees as defined in this Code. If the property is densely wooded in whole or in part, the limits of such densely wooded areas may be shown on the plan in lieu of locating individual trees within these areas.
 20. Topography, existing and proposed (indicating areas of major grading and slopes to be maintained).
 21. Disposition of storm water drainage (indicating all pipe sizes, types and grade elevations).
 22. All sanitary sewerage facilities, indicating pipe size, type and grades and where connection is to be made to the Town system.
 23. Name of architect, engineer or surveyor preparing site plan.
 24. Specifications for the removal of trees and protection of trees during clearing and grading to include tree species, size and condition per the Town of Vienna Tree Preservation and Planting Specifications Manual.
 25. Grade changes or other work adjacent to a tree that is to be preserved which might affect it adversely, with specifications on how the ground drainage and aeration will be maintained around said tree per the Town of Vienna Tree Preservation and Planting Specifications Manual.
 26. Landscape planting, clearly identified by appropriate symbols, showing the location, type and size of trees, shrubbery and screening to be planted.
- B. All information required by sections 17-14 and 17-15(a) through (o) where applicable.
 - C. A tabulation listing the site plan specifications as they compare to minimum zoning requirements shall be furnished with each copy of the site plan.
 - D. All information required by chapter 18.1, where applicable.
 - E. ~~Provisions for replacement of trees during development as follows:~~
 1. ~~A plan for the planting and replacement of trees on site during development to the extent that, at maturity of 20 years, minimum tree canopies or covers will be provided in the respective zoning districts of the Town as follows:~~
 - a. ~~Twenty percent tree canopy in the RS-16, RS-12.5, and RS-10.~~
 - b. ~~Fifteen percent in the RM-2 and RTH zones.~~
 - c. ~~Ten percent tree canopy in the T, C-1, C-1A, C-2, CMP, and CM zones.~~
 - d. ~~Replacement trees shall be in kind in accordance with the Tree Preservation and Planting Specifications Manual.~~

2. ~~All trees planted shall meet the specifications of the Town of Vienna Tree Preservation and Planting Specifications Manual. The Manual will be available in hardcopy at the Department of Public Works and online available for download at www.viennava.gov.~~
3. ~~Existing trees which are to be preserved, and with no citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.~~
4. ~~The Town Council may grant reasonable exceptions or deviations from the requirements of this section when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:

 - a. ~~Areas devoid of woody materials.~~
 - b. ~~Dedicated school sites.~~
 - c. ~~Playing fields and other non wooded areas and uses of a similar nature.~~~~
5. ~~Violation of this section shall constitute a Class 3 misdemeanor punishable by fine of not more than \$250.00, and each day after the first during which such violation shall continue shall constitute a separate violation.~~

(Code 1969, § 18-252; Ord. of 4-1968; Ord. of 4-19-1971; Ord. of 2-25-1974; Ord. of 7-6-1981; Ord. of 1-4-1982; Ord. of 9-1989; Ord. of 7-1991; Ord. of 3-7-1994; Ord. of 9-9-2003; Ord. of 2-23-2004; Ord. No. 14-002, § 1, 5-12-2014)

**NEW LANGUAGE REPLACING REPEALED 18-252(E)
AND ADDING NEW PROVISIONS**

Sec. 18-252. Site plan specifications.

Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a building permit to erect or alter any structure in a C-1, C-1A, C-1B, C-2, CM, T, RTH, RM-2, or PR zone, submit to the director of public works a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. Additionally, the provisions for replacement of trees as set forth in section 18-252 E shall apply to any of the following located in the RS-16, RS-12.5, and RS-10 zones: the development of an undeveloped tract; the redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or the addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.

Such plan shall include the following data:

- A. 1. Location of all existing and proposed buildings and structures.
 2. Boundary of the entire tract by courses and distances.
 3. Area of the tract.

4. Zone of the tract.
5. Present record owner of the tract.
6. Owner, zone and present use of all contiguous property.
7. Width of all streets adjoining the tract (both right-of-way and pavement widths).
8. Location of existing edge of pavement or curbs.
9. Location of existing easements and underground facilities, proposed easements and buildings and their dimensions.
10. Number of floors, floor area and use of each building and height of each building.
11. A schedule showing compliance with the parking requirements of this chapter.
12. All off-street automobile parking space and type of surfacing (indicating size of stalls and width of aisles).
13. All off-street loading and pickup spaces.
14. Location of any poles, fire hydrants, retaining walls, pump islands, signs, doorways, window wells, guy wires, or other structures which might interfere with automobile parking or maneuvering.
15. The location and type of entrances and driveways which shall conform to the state department of highways and Town standards and specifications.
16. Location of all curbs to be constructed and specify type.
17. Location and width of all sidewalks.
18. Fencing and walls to be erected; type, height and location.
19. The location, type and size of all existing trees as defined in this Code. If the property is densely wooded in whole or in part, the limits of such densely wooded areas may be shown on the plan in lieu of locating individual trees within these areas.
20. Topography, existing and proposed (indicating areas of major grading and slopes to be maintained).
21. Disposition of storm water drainage (indicating all pipe sizes, types and grade elevations).
22. All sanitary sewerage facilities, indicating pipe size, type and grades and where connection is to be made to the Town system.
23. Name of architect, engineer or surveyor preparing site plan.
24. Specifications for the removal of trees and protection of trees during clearing and grading to include tree species, size and condition per the Town of Vienna Tree Preservation and Planting Specifications Manual.
25. Grade changes or other work adjacent to a tree that is to be preserved which might affect it adversely, with specifications on how the ground drainage and aeration

will be maintained around said tree per the Town of Vienna Tree Preservation and Planting Specifications Manual.

26. Landscape planting, clearly identified by appropriate symbols, showing the location, type and size of trees, shrubbery and screening to be planted.
- B. All information required by sections 17-14 and 17-15(a) through (o) where applicable.
 - C. A tabulation listing the site plan specifications as they compare to minimum zoning requirements shall be furnished with each copy of the site plan.
 - D. All information required by chapter 18.1, where applicable.
 - E. Provisions for replacement of trees during development as follows:
 1. ~~A plan for the planting and replacement of trees on site during development to the extent that, at maturity of 20 years, minimum tree canopies or covers will be provided in the respective zoning districts of the Town as follows:~~
 - a. ~~Twenty percent tree canopy in the RS-16, RS-12.5, and RS-10.~~
 - b. ~~Fifteen percent in the RM-2 and RTH zones.~~
 - c. ~~Ten percent tree canopy in the T, C-1, C-1A, C-2, CMP, and CM zones.~~
 - d. ~~Replacement trees shall be in kind in accordance with the Tree Preservation and Planting Specifications Manual.~~
 2. ~~All trees planted shall meet the specifications of the Town of Vienna Tree Preservation and Planting Specifications Manual. The Manual will be available in hardcopy at the Department of Public Works and online available for download at www.viennava.gov.~~
 3. ~~Existing trees which are to be preserved, and with no citations having been issued by the Town of Vienna throughout the duration of the project, may be included in the plan to meet all or part of the canopy requirements if the site plan identifies such trees and the trees meet standards of desirability and life expectancy established by the Town. Town of Vienna staff will perform a minimum of two unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.~~
 4. ~~The Town Council may grant reasonable exceptions or deviations from the requirements of this section when strict application of the requirements would result in unnecessary or unreasonable hardship to the developer, or to allow for reasonable development of the following:~~
 - a. ~~Areas devoid of woody materials.~~
 - b. ~~Dedicated school sites.~~
 - c. ~~Playing fields and other non-wooded areas and uses of a similar nature.~~
 5. ~~Violation of this section shall constitute a Class 3 misdemeanor punishable by fine of not more than \$250.00, and each day after the first during which such violation shall continue shall constitute a separate violation.~~

E. Planting and replacement of trees.

1. Table for Tree Canopy Preservation/Replacement Percentages

- (a) All listed plans for development or re-development, shall provide for the preservation or replacement of trees on the development site such that, after twenty (20) years after development, minimum tree canopy is projected to be as follows:

Table 1 - Tree Canopy Requirements as applied to Town of Vienna Zoning Districts

Use or Zoning District	Percentage of Site to be Covered by Tree Canopy in 20 Years
RS-16 - Single Family Detached Residential	Twenty five percent (25%)
RS-12.5 - Single Family Detached Residential	Twenty five percent (25%)
RS-10 - Single Family Detached Residential	Twenty percent (20%)
RM-2 - Multifamily Low Density	Fifteen percent (15%)
RTH - Townhouse	
T - Transitional	Ten percent (10%)
C-1 - Local Commercial	
C-1A- Special Commercial	
C-1B - Pedestrian Commercial	
C-2 - General Commercial	
CMP - Industrial Park	
CM - Limited Industrial	

- (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 Director of Planning and Zoning in consultation with the Director of Public Works and Director of Parks and Recreation.

Commented [B56]: Is this needed?

2. Standards for Tree Canopy Requirements.

- (a) The Tree canopy requirements set forth in Table 1 above may be met through the preservation or planting of trees. However, when existing trees meet standards of

health, condition, and suitability, and when it is feasible to preserve those trees within the framework of permissible uses, densities, design standards, and construction practices, all efforts shall first be made to meet the Tree canopy requirement through the preservation of trees before tree planting is allowed to meet any portion of the Tree canopy requirement.

- (b) Tree canopy credit shall be given to existing areas of trees and forested areas designated to be preserved on plans and comprised of self-supporting and woody plant material exceeding five feet in height at time of plan submission provided that the trees and forested areas meet standards for health, condition, and suitability.
- (c) Any portion of the Tree canopy requirement that cannot first be met through the preservation of trees as provided for in § 17-15.13 shall be provided through tree planting.
- (d) Tree canopy credits for trees and plant material used to satisfy 20-year Tree canopy requirements shall be determined in accordance with the provisions of Vienna’s Tree Preservation and Planting Guide.

3. Tree Preservation Requirements.

- (a) Except as provided for in § 17-15.3(b), the percentage of the development site covered by Tree canopy at the time of plan submission shall equate to the minimum portion of the total 20-year Tree canopy requirement of § 17-15.2(a) that should be met by means of tree preservation. This minimum portion shall be identified in plats and plans as the “tree preservation target.”
- (b) Deviations, in whole or part, from the tree preservation target may be requested under the following conditions:
 - 1. Meeting the tree preservation target would prevent the development of uses or densities otherwise allowed by the Town Zoning Ordinance;
 - 2. Meeting the tree preservation target would require the preservation of trees and forested areas that do not meet standards for health, structural condition, and other vegetation and risk management requirements.
 - 3. Construction activities could be reasonably expected to impact existing trees or forested areas used to meet the tree preservation target to the extent they would not likely survive in a healthy and structurally sound manner for a minimum of twenty (20) years in accordance with the post-development standards for trees and forested areas.
- (c) Deviations from the Tree Preservation Target shall be granted for any of the justifications listed above provided that a written request is submitted and approved by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation.
- (d) The Director of Planning and Zoning in consultation with the Director of Parks and Recreation shall grant additional canopy credits as required by Virginia Code Section 15.2-961.1 in order to encourage the preservation of forest communities that provide valuable environmental, ecological, and wildlife conservation benefits.

Commented [S7]: There are specific credits that are required to be granted, and then optional credits. See Section 15.2-961.1(I)1 and 2 and 15.2-961.1(J)

- I. 1. In recognition of the added benefits of tree preservation, the ordinance shall provide for an additional tree canopy credit of up to one and one-quarter times the canopy area at the time of plan submission for individual trees or the coalesced canopy of forested areas preserved from the predevelopment tree canopy.
- 2. The following additional credits may be provided in the ordinance in connection with tree preservation:
 - a. The ordinance may provide canopy credits of up to one and one-half times the actual canopy area for the preservation of forest communities that achieve environmental, ecological, and wildlife conservation objectives set by the locality. The ordinance may establish minimal area, dimensional and viability standards as prerequisites for the application of credits. Forest communities shall be identified using the nomenclature of either the federal National Vegetation Classification System (FGDC-STD-005, or latest version) or the Natural Communities of Virginia Classification of Ecological Community Groups, Second Approximation (Version 2.2, or latest version).
 - 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.
- J. The following additional credits shall be provided in the ordinance in connection with tree planting:
 - 1. The ordinance shall provide canopy credits of one and one-half the area normally projected for trees planted to absorb or intercept air pollutants, tree species that produce lower levels of reactive volatile organic compounds, or trees that act to reduce air pollution or greenhouse gas emissions by conserving the energy used to cool and heat buildings.
 - 2. The ordinance shall provide canopy credits of one and one-quarter the area normally projected for trees planted for water quality-related reforestation or afforestation projects, and for trees planted in low-impact development and bioretention water quality facilities. The low-impact development practices and designs shall conform to local standards in order for these supplemental credits to apply.
 - 3. The ordinance shall provide canopy credits of one and one-half the area normally projected for native tree species planted to provide food, nesting, habitat, and migration opportunities for wildlife. These canopy credits may also apply to

(e) All tree and forested areas designated to be preserved on plans shall be protected and managed during all phases of construction.

4. Tree Planting Requirements.

(a) Tree canopy credit shall be given to areas of planted Tree canopy based on the projected 20-year Tree canopy calculation as set forth in the Vienna's Tree Preservation and Planting Guide, provided that the proposed tree species meets standards established to manage proper levels of biodiversity and the spread of invasive plants, pests, and diseases.

Commented [S8]: Add references to actual tree canopy credit amounts ie. 1.5/1.25, etc.?

(b) Tree canopy credits shall be given to tree seedlings, shrubs and woody seed mix planted in large open spaces, low-density residential settings, or in low-impact development projects.

(c) Additional Tree canopy credits shall be granted for the planting of trees that will provide air quality, energy conservation, water quality, wildlife conservation benefits.

(d) Additional Tree canopy credits shall be granted for the use of native tree species, and the use of cultivars or varieties that develop desirable growth and structural patterns, resist decay organisms and the development of cavities, show high levels of resistance to disease or insect infestations, and exhibit high survival rates in harsh urban environments.

(e) In order to provide higher levels of biodiversity and to minimize the spread of pests and diseases, or to limit the use of species that cause negative impacts to native plant communities, cause damage to nearby structures, or possess inherent physiological traits that prone trees to structural failure, Vienna's Tree Preservation and Planting Guide may designate trees that cannot be planted to meet Tree canopy requirements or that shall only receive partial Tree canopy credits.

(f) All plant materials used to satisfy 20-year Tree canopy requirements shall be selected, located, handled and installed in accordance with the Vienna's Tree Preservation and Planting Guide.

5. Use of Tree Preservation and Planting Fund if Tree Canopy Requirement Cannot be Met On-Site.

(a) Where it can be demonstrated to the satisfaction of the Director of Planning and Zoning in consultation with the Director of Parks and Recreation that the Tree canopy requirements set forth in § 17-15.1 cannot be met on-site, the portion of the requirement that cannot be met on-site may be met through a pro rata payment into a Tree Preservation and Planting Fund.

(b) If it is demonstrated to the satisfaction of the Director of Planning and Zoning in consultation with the Director of Parks and Recreation that the Tree canopy requirements set forth above cannot be met on-site, the Director of Planning and Zoning may allow developers to contribute a pro-rated fee into Vienna's Tree Preservation and Planting Fund. The Town may use this fund directly to preserve or plant trees on public property or may elect to disburse these funds to community-based organizations exempt from taxation under § 501(c)(3) of the Internal Revenue

Code with tree planting or community beautification missions for the purpose of implementing tree planting projects or programs that benefit the community at large.

1. Fees collected for these purposes will be based on the cost to establish 20-year Tree Canopy Cover using 2-inch caliper nursery stock tree.
2. The cost to establish 200 square feet of 20-year Tree Canopy using 2-inch caliper landscape tree will be set at the unit cost for a 1.5-2.0-inch caliper deciduous tree as stated in the current Fairfax County Land Development Services' Comprehensive Unit Price Schedule.
3. Funds collected in lieu of on-site planting shall be spent within a five-year period established by the collection date, or the Town shall return such funds to the original contributor, or legal successor.

Commented [S9]: Required by Virginia Code Section 15.2-961.1(G)2

6. Exemptions and Deviations.

- (a) The following uses are exempt from the requirements of this chapter: bona fide silvicultural activity as defined by Va. Code Ann. § 10.1-1181.1 and the areas of sites included in lakes, ponds, and the normal water elevation area of stormwater retention facilities.
- (b) Deviations of the overall canopy requirements set forth in § 17-15.1 may also be granted by the Director of Planning and Zoning in consultation with the Director of Parks and Recreation and the Director of Public Works to allow for the preservation of wetlands, the development of farm land or other areas previously devoid of healthy and/or suitable tree canopy, or where the strict application of the requirements would result in unnecessary or unreasonable hardship to the developer.

7. Penalties for Violations.

The penalties for violation of Town Code Section 17-15.1-6 shall be the same as those applicable to criminal/civil violations of the Zoning Ordinance of the Town of Vienna.

Commented [S10]: Which penalties? See Town Code Article 27, 18-281 et seq.

8. Definitions

- (a) *Forested area* means areas as defined by the the Virginia State Forester pursuant to Virginia Code §58.1-3230 and comprised of self-supporting tree and woody plants that exceed five feet in height at time of plan submission and meet criteria for health, condition and suitability as further defined in this section. Areas that meet the administrative definition provided above usually represent native forest or woodland plant communities that occur in a range of successional stages from rapidly changing early successional pioneer woodlands (often described as “scrub”) to stable long-term sub-climax and climax forests. During mid to late successional stages, these plant communities typically consist of multiple layers of vegetation and other natural features including: super- and sub-canopy tree species; woody shrubs, herbaceous plants, vines, non-vascular plants and epiphytes; decaying leaf litter, root mass, fungi, soil biota; and abiotic components which the vegetation is dependent upon such as: soils, hydrologic conditions, and underlying geomorphic features.
- (b) *Tree* means any self-supporting woody plant which visually produces one main trunk and a more or less distinct and elevated head with many branches that typically reach

at least 15 feet in height at maturity, and for purposes related to 20-year Tree canopy requirements exceeds five feet in height at time of plan submission.

- (c) **Tree canopy** includes all areas of coverage by plant material exceeding five feet in height, and the extent of planted tree canopy at 20 years maturity. Planted canopy at 20 years maturity shall be based on published reference texts generally accepted by landscape architects, nurserymen, and arborist in the community.
- (d) **Tree conservation**, as applied to trees and forested areas, incorporates both tree preservation and tree planting efforts.

(Code 1969, § 18-252; Ord. of 4-1968; Ord. of 4-19-1971; Ord. of 2-25-1974; Ord. of 7-6-1981; Ord. of 1-4-1982; Ord. of 9-1989; Ord. of 7-1991; Ord. of 3-7-1994; Ord. of 9-9-2003; Ord. of 2-23-2004; Ord. No. 14-002, § 1, 5-12-2014)

Section 3: This Ordinance shall become **effective ten (10) days** following notice of adoption by the Town Council.

Passed and approved this _____ day of _____, 2023.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

c:\SDB\Ordinances\Chapters 17 and 18 Section 17-15.1 and 18-252 Tree Preservation and Replacement Town Attorney 09 21 2023

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 27 – Conservation and Sustainability Commission (CSC), Section 27-5. – Tree board, of the Code of the Town of Vienna.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF VIENNA, VIRGINIA THAT:

Section 1: The Town Code, Chapter 27 – Conservation and Sustainability Commission (CSC), Section 27-5. – Tree board, of the Code of the Town of Vienna, is amended to read as follows:

Sec. 27-5. – Tree Board

- (a) The conservation and sustainability commission, acting with the cooperation and advice of the ISA certified Town arborist *and augmented by additional Town residents*, shall constitute the Town tree board. *The Tree Board shall advise and assist the Town on matters relating to the conservation and management of the Town's trees and tree canopy and the development and maintenance of specifications and guidelines related to the same.*
- (b) *The Tree Board shall consist of seven (7) members, five (5) of whom shall be appointed by Town Council. Two members shall be selected by the Conservation and Sustainability Commission from its membership. In addition, a Town representative(s) from the Departments of Parks and Recreation and/or Planning and Zoning shall serve as an ex-officio member(s) of the commission. Except for the Town representative(s), all appointees shall be either residents of the Town or representatives of businesses or professions located in and licensed by the Town. In making all appointments to the board, Town Council shall give consideration to persons who have evidenced an interest or expertise in Tree conservation and tree policy.*
- (c) *The term of all members shall be for two years. Initially, two members of the Tree Board shall be appointed for a term of one year and three members shall be appointed for a term of two years. Thereafter, all appointments to the Tree Board except for those to fill an unexpired term, shall be for a period of two years. Vacancies occurring on the Tree Board for reasons other than the expiration of terms shall be filled by the body that appointed them Town Council for the remainder of the unexpired term. Members shall be eligible for reappointment. Members may be removed from the Tree Board by a majority vote of Town Council.*

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(d) *The Tree Board shall meet one (1) hour before each CSC regular meeting and shall adhere to the same ~~rules and requirements for~~ relating to organization, rules, meetings, and records applicable to the Conservation and Sustainability Commission as set forth in Section 27.3. The Tree Board may, to better implement its purpose, adopt and minor alterations to its schedule.*

(e) The ~~tree~~ ~~board~~ Board shall have the following powers and duties:

1. To promote and protect public health, safety, and general community appearance by planning and recommending the planting, maintenance, and removal of trees, shrubs, and other plants on public property within the Town.
2. To ensure that the planting, maintenance, pruning, and removal of trees and shrubs on public property within the Town are done in accordance with current accepted standards as established and set forth by the National Arborist Association and by the American Association of Nurserymen's Council American Standard for Nursery Stock.
3. To develop, maintain, and administer a written plan for the care, preservation, pruning, planting, replanting, removal, or disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan will be reviewed annually, updated as necessary, and presented to the Town Council; upon acceptance and approval by the Town Council, such plan shall constitute the official public tree management plan for the Town.
4. To recommend to the Town Council and to the appropriate municipal department directors the adoption of such rules, regulations, and policies *and programs relating to tree conservation and management, the care and improvement of the Town's urban forest, and protecting and enhancing the Town's tree canopy* including those necessary ~~as may be necessary~~ to implement and enforce the public tree management plan and related ordinances.
5. To undertake an ongoing program of public outreach and education in order to promote public understanding and support of the Town's public tree management plan and to increase public awareness of the value and benefits of a diversified, sustainable community forest.
6. *To serve as the Town's representative at, and to attend and bring back knowledge and information from, area, regional, and interagency meetings, seminars, summits, and conferences concerning urban forestry programs and policies.*
7. *To assist the Town with compiling, analyzing, publishing, and updating annually information and statistics regarding the Town's progress in maintaining and restoring tree canopy. Such information and statistics include: (a) the amount spent each year by the Town for the purchase and planting of trees, (b) the number of trees planted on Town property each year, (c) the number of trees on Town property cut down or removed, (d) any available data regarding the*

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extent of or changes to the Town's tree canopy, and (e) any available data regarding an inventory of the Town's street trees, such as the percentage of street tree planting sites that are filled, and priority street tree planting sites that are unfilled.

8. To present an annual Tree Report to the CSC for presentation to the Town Council that includes a description of the Tree Board's activities, key data and statistics compiled under subsection (e)(7) above, and ongoing and anticipated future activities. This information and report shall be published each year, including on the Town website.

- (f) Review by Town Council. The Town Council shall have the right to review the conduct, acts, and decisions of the Town tree board. Further, the tree board, when requested by the Town Council, shall consider, investigate, make findings, report on, and recommend any special matter or question coming within the scope of its work.

(Code 1969, § 27-5; Ord. of 9-2000; Ord. of 1-28-2019)

Section 2: This Ordinance shall become effective ten (10) days following notice of adoption by the Town Council.

Passed and approved this _____ day of _____, 2023.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

c:SDB\Ordinances\Tree Board Amendments Town Code 27-5 DRAFT 08 21 2023