



MEMORANDUM

To: Honorable Mayor and Councilmembers

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

Date: November 1, 2023

Re: November 13, 2023, Town Council Conference Session and Meeting
Questions for Town Council Discussion on Potential Code Amendments Related to
Preserving and Enhancing Vienna's Tree Canopy.

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 questions that the Town Council may wish to answer regarding code changes and organizes them by categories. Staff recognizes that there may be additional questions that the Town Council wishes to discuss, and looks forward to any such discussion.

A. 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:

- 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 3)
- 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 3)

For years, Vienna has opted for the **Replacement** option, in Vienna Code Sections 17-15.1 and 18-252 (Attachment 4). On August 28th, the Council discussed potentially shifting over to the **Conservation** (VA code 15.2-961.1) option.

- **Question 1** – Does the Town Council wish to continue to regulate through Virginia's **Replacement** option (15.2-961) or shift to the **Conservation** option (15.2-961.1)?

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Staff Discussion:

If the Town shifts to the **Conservation** option, Vienna would be the second jurisdiction to adopt a Conservation ordinance (15.2-961.1). Fairfax County is the only other jurisdiction that has done so, though its version includes a “grandfathered” provision that is not available to Vienna: requiring developers to reach the canopy standard in 10 years, rather than the 20 years that is available to Vienna.

There appear to be two main reasons being discussed for shifting to the Conservation option:

- 1) a desire to preserve a greater number of existing trees, for ecosystem preservation and the beauty of these older trees; and
- 2) a desire to slow or reverse or slow the loss of tree canopy that has been occurring in Vienna over the past decade.

What follows is a brief staff discussion of both, to help inform the Town Council’s decision.

1) Preserving Trees

15.2-961.1 provides two mechanisms towards tree preservation, which are not part of 15.2-961.

The first mechanism is in subsection D. of 15.2-961.1, which states that “Except as provided in subsection E, the percentage of the site covered by tree canopy at the time of plan submission shall equate to the minimum portion of the requirements identified in subsection C that shall be provided through tree preservation.”

As an example of how this would function, one might imagine a property zoned RS-10 that has a tree canopy, prior to construction, of 40%. The canopy requirement under subsection C. for an RS-10 lot would be 20%. Under subsection D., 40% of that 20% minimum canopy requirement, or 8%, must be provided through preservation. So, 8% of the total 20% would be preservation, and the other 10% could be through replacement. (Please note that the developer would still be permitted to remove existing trees that provide 32% of the pre-construction canopy.) Subsection E. provides exceptions to meeting this preservation requirement, and staff has understood, both from Fairfax County staff and developers, that those exceptions are used quite extensively for properties that are smaller than 1/4 acre; but the Conservation option does provide an overall thrust and requirement to preserving trees, which does not exist in the Replacement option.

The second mechanism is to provide an incentive to preserve by offering a reduction of the overall canopy requirement, through “credits,” for preserving trees. Subsection I.1. requires that jurisdictions provide a “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.” Staff’s interpretation is that, through this credit, developers may produce less overall tree canopy in 20 years if they preserve trees,

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which is an incentive for developers to preserve trees. As an example, a developer building a new home on an RS-16 lot, which would otherwise require 25% tree canopy, could reduce its requirement to 20% if it met its requirements completely through preservation and took advantage of the 1 ¼ credit for each tree.

As an additional note, tree 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 anticipate that this arrangement is likely to change on most lots, even if the Conservation option is adopted, because developers prefer to use the front area for construction and staging of development, and State law does not permit local governments to establish a locational requirement.

2) Required Canopy and Required/Optional Credits

One key 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. In Vienna, those large lots are zoned RS-12.5 and RS-16. State law would continue to limit RS-10 lots to a 20% minimum required tree canopy under the Conservation option, as it is under the Replacement ordinance. The minimum requirements would also remain the same for properties zoned for multi-unit residential (10% or 15%, depending on density), commercial (10%) and industrial (10%). So, superficially, there would appear to be an increased amount of canopy under the Conservation option as compared the Replacement option.

However, the Conservation option also includes a requirement that credits be offered. Those credits would have the result of lowering total amount of tree canopy required. The Town would be required to provide a series of credits of between 1.25 and 1.5 times 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.

Under the Conservation option, the large lots (RS-12.5 and RS-16) would be required to meet the full 25% coverage on-site only in a case when the developer meets the canopy requirement through new trees that are not native and do not offer specified environmental benefits. The structure of the credits are such that developers may be able to comply with the requirement with far lower than 25%, and may even be under 20%. In an extreme case, the actual 20-year projected canopy provided on a large lot could be as low as 16.67%, if the developer were to use only native trees, for which a credit of 1.5 times the actual canopy is required. (Note: $16.67\% \times 1.5 = 25\%$). However, there are likely to be cases where a lot would preserve some trees and there would be more than 20% coverage.

RS-10 lots are a very specific, but important, case. Owners of these lots, which represent the majority of RS-zones lots in Vienna, would have the same credits available to them, but the

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permitted maximum would be the same 20% in 20 years as it is now under the Replacement ordinance. 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 multi-unit residential, commercial and industrial lots.

The reason that RS-10 lots are so important in terms of anticipated future canopy is that RS-10 lots are 54% of the total RS-zoned lots in Vienna. Furthermore, 65% of RS-zoned lots on which there has been full redevelopment since 2016 have been on RS-10 lots. These numbers are shown in the table that follows.

Vienna Total RS-Zoned Lots and Lots Redeveloped since 2016

Zoning District	Number of Total Lots	% of Total Lots	Lots Redeveloped since 2016	% of Lots Redeveloped
RS-10	2,580	54%	389	65%
RS-12.5	1,447	31%	113	18%
RS-16	651	14%	99	17%
Split-Zoned (all RS)	63	1%	0	0
Total	4,741	100.0%	601	100%

These numbers are extracted from the Town’s Geographic Information System and from Tyler Munis.

To DPZ staff, it is unclear which option would result in more overall tree canopy within 20 years in Vienna. Based on the recent history, though, staff suspects that the 20-year projected canopy might be lower than it currently is if the Town had put in place the Conservation ordinance in 2016. However, more older trees would likely have been preserved and would still be standing.

Questions based on Decision to Adopt a Conservation (Section 15.2-961.1) Ordinance

A.1. 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 (Sections 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 to the Town in-lieu of planting on site. The money in the fund could be used either to plant trees on public property, and/or to disburse money to community-based non-profit organizations

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with tree planting or community beautification missions for tree planting programs. 15.1-961.1 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.

- **Question 2** – If the Town Council chooses to regulate under 15.2-961.1, does the Town Council wish to establish a **tree bank or tree fund**, in cases where developers are unable to meet their canopy requirements on site?

A.2. Required and Optional Credits

Section 15.2-961.1 stipulates that a locality that adopts a Conservation ordinance 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.”
 - Vienna has not, as of this writing, established any such areas.
 - (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”
 - At present, Vienna has no trees that have been designated in this manner.

- **Questions 3 and 4** – Does the Town Council wish to include either of these credits in a local Conservation ordinance?

An additional 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.

- **Question 5** – Does the Town Council wish to identify trees that may not be used for tree canopy requirements or those that should receive partial credit?
 - 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. However, the Town Council could provide that authority to staff in the adopted code.

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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.

- **Question 6** – Does the Town Council wish to 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?
 - Staff does not view this provision as problematic, but does not, at this time, know of any sites where this option would be applicable.

A.3. Applicability

Both proposed approaches (Options 1 and 2) to adopting a Conservation ordinance include language that Fairfax County has adopted in its 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 as follows:

(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 canopy requirements, as compared to current practice. This language, which does not exist in Vienna’s current code, would remove 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 projects where tree canopy standards would be required. State code does not require these exemptions, in either the Conservation or Replacement approach.

- **Question 7** – Does the Town Council wish to remove the language listed above from either version of the code amendments, or should it remain? (Staff recommends removing this language, and the Town Attorney has expressed agreement with this change.)

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A.4. Tree Bond

Option 1 (Attachment 1) proposes that the Town Council adopt a regime that includes requiring a tree bond on the private property where there has been redevelopment, and then an inspection by the Town Arborist after one year, to assess whether the bond should be released or used to replant a tree.

The Town Attorney recommends against including this regime and does not include it in Option 2.

- **Question 8** – Does the Town Council wish to include a requirement of a tree bond and a one-year inspection in its approach?

B. Tree Board/Commission

The Vienna Town Code established the Conservation and Sustainability Commission (CSC) within Chapter 27. Section 27-5 (within Attachment 4) 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.”

The Town Council is now 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. The Planning Commission is also recommending consideration of including a Planning Commission member of the Tree Board/Commission.

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

- **Question 9** – Will the Tree Board/Commission be subsidiary to the CSC (and remain in Chapter 27) or be independent of the CSC and report directly to the Town Council (and be part of a new code chapter)?
- **Question 10** – Who will the membership of the Tree Board/Commission be? How many members will there be? How many will be appointed directly by the Town Council? How many will be appointed by other boards or commissions (e.g., CSC, Planning Commission)?
- **Question 11** – What will be the duties of the Tree Board/Commission?

C. 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.

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- **Question 12** – 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?

D. Structural Question – Which Code Chapters?

Option 1 (Attachment 1) of the proposed code amendments would, as indicated above, place all tree-related items in a single new Chapter 29 of the Town Code and identifies the Director of Parks and Recreation as the administrator of the Chapter.

Option 2 (Attachment 2) would make modifications to the Town Code in the locations where they currently sit – development standards would remain within current chapters 17 and 18 (and in Chapter 18 of the new code that will be in effect on January 1, 2024); and the Tree Board/Commission would remain within Chapter 27. Option 2 leaves the development standards under the administrative purview of the Zoning Administrator, which is very similar to Fairfax County’s approach that states in Section 122-1-6 (Attachment 5) that “The Director of Land Development Services shall be responsible for the administration and enforcement of this Chapter.” Doing so would also be consistent with the provision in both the Replacement and Conservation approaches that “Penalties for violation of ordinances adopted pursuant to this section shall be the same as those applicable to violations of zoning ordinances of the locality.” However, Option 2 also proposes added language to make it explicit that the Zoning Administrator will rely on the Department of Parks and Recreation’s and the Department of Public Work’s input.

- **Question 13** – Does Vienna wish to move all tree provisions into a new Chapter 29, or to leave development standards within Chapters 17 and 18 (to become the new Chapter 18) and the Tree Board/Commission within Chapter 27?
- **Question 14** – Does Vienna wish all these provisions to be administered by the Director of Parks and Recreation, or to have the development standards to be administered by the Zoning Administrator and the other provisions to be administered by the Director of Parks and Recreation?

E. 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 provide sufficient time.

Staff recommends that the effective date be approximately 4 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.

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- **Question 15** – When should the effective date of the amended code be? (Staff recommends at least 4 months after adoption. One suggestion would be to align the effective date with Arbor Day, which will be Friday, April 26, 2024.)

Conclusion

As indicated above, staff recognizes that there may be additional questions that need addressing and would welcome additional discussion and options from the Town Council.