

PROPOSED ORDINANCE

Proposed by: Town Attorney

A proposed ordinance to amend Chapter 18 –specifically repealing and replacing Chapter 18, Article 4A. Development Standards – Public, Institutional, and Community Uses, Division 3. Landscape, Screening, Fences and Walls, Section 18-409; Chapter 18, Article 4B, Division 3. Landscape, Screening, Fences and Walls, Section 18-462; Article 5A, Division 3. Landscape, Screening, Fences and Walls, Section 18-510; and Article 5B, Division 3. Landscape, Screening, Fences and Walls, Section 18-559, Amending Chapter 18, Article 6, Division 6, Section 18-628.13, Chapter 18, Article 8, Division 6, Section 18-855.5, and adopting a new Chapter 17 – Tree Preservation and Canopy Requirements During Development to Chapter 18 of the Town Code with new provisions related to Tree Preservation and canopy requirements during development.

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

Section 1: The Town Code, Chapter 18, Sections 18-409, 18-462, 18-510 and 18-559, Planting and replacement of trees, amending, repealing, and adopting new replacement provisions to Chapter 18 as indicated in a new Chapter 17, Sections 17-1001 *et seq.*, and amending Chapter 18, Sections 18-628.13 and 18-855.5 of the Code of the Town of Vienna, to read as follows:

Chapter 18 - DIVISION 3. LANDSCAPE, SCREENING, FENCES, AND WALLS

Section 18-409 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 *et seq.*

- ~~1. Under the following circumstances, a plan shall be submitted for the planting and replacement of trees on the site such that a twenty (20) percent minimum tree canopy coverage will be achieved within twenty (20) years:
 - A. The development of an undeveloped tract;
 - B. The redevelopment of any existing tract by removal of a dwelling and replacement with a new dwelling; or
 - C. The addition to an existing dwelling that results in an area of disturbed soil exceeding 2,500 square feet.~~
- ~~2. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
- ~~3. Existing trees that are to be preserved, and with no relevant 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 (See §18-830) 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.~~~~

Section 18-462 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

- ~~1. Under the following circumstances, a plan shall be submitted for the planting and replacement of trees on the site such that a fifteen (15) percent minimum tree canopy coverage will be achieved within a maturation of twenty (20) years:
 - ~~A. The development of an undeveloped tract;~~
 - ~~B. The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or~~
 - ~~C. The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.~~~~
- ~~2. All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
- ~~3. Existing trees that are to be preserved, with no relevant 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 (See §18-830) 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.~~~~

Section 18-510 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

- ~~1. A tree canopy coverage plan shall be submitted along with applications for the following projects:~~

- A. ~~The development of an undeveloped tract;~~
 - B. ~~The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or~~
 - C. ~~The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.~~
2. ~~A tree canopy coverage plan shall illustrate how the site will, after a maturation of twenty (20) years, achieve the tree canopy coverage minimums set forth in the table below.~~

Zone or District	Tree Canopy Coverage (as a percentage of total lot area)
Residential Single Unit Detached Zones (RS-10, RS-12.5, RS-16)	Twenty (20) percent min.
Residential Multi Unit Zone (RMU)	Fifteen (15) percent min.
Avenue Center (AC), Avenue East (AE), Avenue West (AW), Gateway South (GS), Mill (M), and Corporate Park (CP) Districts, Transitional (T) and Neighborhood Mixed Use (NM) Zones	Ten (10) percent min.

- 3. ~~All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
- 4. ~~Existing trees which are to be preserved, and with no relevant 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 (2) unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.~~
- 5. ~~The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See §18-830) 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.~~

Section 18-559 Minimum Tree Canopy Coverage

See, Chapter 17, §1001 et seq.

REVISED DRAFT TOWN CODE AMENDMENTS with Town Attorney/Director of Planning and Zoning edits
 POST CODECREATE ADOPTION
 01/29/24

1. ~~A tree canopy coverage plan shall be submitted along with applications for the following projects:

 - A. ~~The development of an undeveloped tract;~~
 - B. ~~The redevelopment of any existing tract by removal of a principal structure and replacement with a new principal structure; or~~
 - C. ~~The addition to an existing principal structure that results in an area of disturbed soil exceeding 2,500 square feet.~~~~

2. ~~A tree canopy coverage plan shall illustrate how the site will, after a maturation of twenty (20) years, achieve the tree canopy coverage minimums set forth in the table below.~~

Zone or District	Tree Canopy Coverage (as a percentage of total lot area)
Residential Single Unit Detached Zones (RS-10, RS-12.5, RS-16)	Twenty (20) percent min.
Residential Multi Unit Zone (RMU)	Fifteen (15) percent min.
Avenue Center (AC), Avenue East (AE), Avenue West (AW), Gateway South (GS), Mill (M), and Corporate Park (CP) Districts, Transitional (T) and Neighborhood Mixed Use (NM) Zones	Ten (10) percent min.

3. ~~All planting and replacement of trees shall be in accordance with the Town of Vienna Tree Preservation and Planting Specifications Manual, which is available online for download at www.viennava.gov.~~
4. ~~Existing trees which are to be preserved, and with norelevant 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 (2) unannounced site inspections to determine compliance with tree protection and preservation regulations during construction.~~
5. ~~The Town Council may grant reasonable exceptions or deviations from the requirements of this section (See §18-830) 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.~~~~

Section 18-628.13. Property Trees and Landscaping.

Subdivision development is governed by the requirements of the zone or district the property is located in (see **Article 2**) *and the required tree preservation and canopy requirements as shown in Chapter 17.*

Section 18-Tree Canopy Coverage. Violation of *Chapter 17* ~~4A-§18-409; Article 4B-§18-462; Article 5A-§18-510; or Article 5B-§18-559~~ 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.

Section 2:

NEW LANGUAGE REPLACING THE FOLLOWING REPEALED SECTIONS FROM Chapter 18: Article 4A, Section 18-409; Article 4B, Section 18-462, Article 5A, Section-510; and Article 5B, Section 18-559 , AND ADOPTING NEW CHAPTER 17, ARTICLE 1 TO THE TOWN CODE AND ADDING THE FOLLOWING NEW PROVISIONS TO READ AS FOLLOWS:

***CHAPTER 17 – Article 1. TREE PRESERVATION AND CANOPY REQUIREMENTS
DURING DEVELOPMENT***

Sec. 17-1001. Planting and replacement of trees.

- (a) Any person, corporation, firm or other organization or association, shall, prior to or at the time of filing application for a building permit with land disturbance activity of 2500 square feet or more, submit to the Director of Planning and Zoning a site plan prepared by a registered architect, registered engineer or certified land surveyor authorized by the commonwealth to practice as such. This Article applies to the development of an undeveloped tract; the redevelopment of any existing tract by removal of any structure and replacement with a new structure, or the addition to an existing structure or dwelling, that results in an area of disturbed soil of 2,500 or more square feet.***
- (b) 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

<i>Zone or District</i>	<i>Percentage of Site to be Covered by Tree Canopy in 20 Years</i>
<i>RS-16 – Residential Single Unit Detached</i>	<i>Twenty five percent (25%)</i>
<i>RS-12.5 – Residential Single Unit Detached</i>	<i>Twenty five percent (25%)</i>
<i>RS-10 – Residential Single Unit Family Detached</i>	<i>Twenty percent (20%)</i>
<i>RMU – Residential Multi-Unit</i>	<i>Fifteen percent (15%)</i>
<i>T – Transitional</i>	<i>Ten percent (10%)</i>
<i>AC - Avenue Center District</i>	
<i>AE – Avenue East Gateway District</i>	
<i>AW – Avenue West Gateway District</i>	
<i>CS – Church Street District</i>	
<i>GS – Gateway South District</i>	
<i>CP – Corporate Park District</i>	
<i>M – Mill District</i>	
<i>NM – Neighborhood Mixed-Use Zone</i>	

Sec. 17-1002. Standards for Tree Canopy Coverage 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 §17-1003 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. 17-1003. Tree Preservation Requirements.

- (a) *Except as provided in this Article, 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 §17-1001(b) 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, with authority delegated to the Zoning Administrator, and in consultation with the Director of Parks and Recreation, shall grant additional canopy credits as permitted or 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. 18-1004. 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.*
- (b) *In accordance with Virginia Code §15.2-961.1(I)1, tree canopy credits of 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.*
- (c) *In accordance with Virginia Code §15.2-961.1(J)et seq., tree canopy credits of between one and one-half and one and one-quarter the area normally projected for trees planted shall be granted for the planting of trees that will provide air quality, energy conservation, water quality, wildlife conservation benefits.*

Commented [BS1]: The various subsections of (J) set out the specific amount of credits. My thought is the Staff would follow the State Code credit amounts.

Commented [DL2]: I am not sure what this one tracks to, in the State code. Plus, I am not sure how to enforce “between one and one-half and one and one-quarter the area...” Does that range reflect that the Arborist and Zoning Administrator have the prerogative to decide? Does this one need a bit of refinement or do others think it’s clear?

- (d) *Tree canopy credits of one and one-half the area normally projected for trees planted shall be granted for the use of native tree species, and of one and one-quarter the area normally projected for trees planted 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. The Vienna Tree Preservation and Planting Guide shall provide acceptable and unacceptable tree species eligible and ineligible for tree canopy credits. The Vienna Tree Preservation and Planting Guide shall be prepared in accordance with the specifications of the American Association of Nurserymen and the “Tree and Shrub Planting Guidelines” published by the Virginia Cooperative Extension.*

Sec. 17-1005. 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 §17-1000(b) cannot be met on-site, the portion of the requirement that cannot be met on-site may be met through a pro-rated payment into a Tree Preservation and Planting Fund.*
- (b) *The Town may use the Tree Preservation and Planting Fund 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 [BS3]: Are we OK using this pricing schedule?

Commented [BS4]: I would defer to Staff’s recommendation on this

Sec. 17-1006. 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 §18-1001(b) 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. 17-1007. Penalties for Violations.

In accordance with Virginia Code §15.2-961.1(R), the penalties for violation of this Chapter/Article shall be the same as those applicable to violations of the Zoning Ordinance of the Town of Vienna as set forth in §18-855.5 (violations currently in the Zoning Code)

Sec. 17-1008. Definitions

- (a) *Forested area means areas as defined by 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. The Town currently uses the Tree Canopy Spread & Coverage In Urban Landscapes <https://vnla.org/tree-canopy-spread-coverage-in-urban-landscapes/>, published Virginia Tech and the Virginia Nursery and Landscape Association.*

Commented [B55]: Suggested reference from staff

- (d) *Tree conservation, as applied to trees and forested areas, incorporates both tree preservation and tree planting efforts.*
- (e) *The Vienna Tree Preservation and Planting Guide shall be prepared by the Town Arborist or person designated by the Director of Parks and Recreation in accordance with the specifications of the American Association of Nurserymen and the “Tree and Shrub Planting Guidelines” published by the Virginia Cooperative Extension.*

Section 3: This Ordinance shall become effective April 26, 2024 (or three (3) months from the date of the notice of adoption by the Town Council).

Commented [BS6]: The Town Council should pick one or the other of the effective dates.

Passed and approved this _____ day of _____, 2023.

Linda J. Colbert, Mayor

ATTEST:

Town Clerk

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