

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



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Staff Tree Mitigation Zoning Text Amendment

Case Number: ZTA 2023-20

Application Type: Zoning Text Amendment

Applicant: Pender County Planning & Community Development

UDO Sections to be Amended: Section 8.1.1, Intent and Section 8.1.3, Tree Survey Required

Description: Pender County Planning & Community Development, applicant, is requesting the approval of a Zoning Text Amendment to the Pender County Unified Development Ordinance. Specifically, the request is to amend Article 8.1.1 "Intent," and Article 8.1.3 "Tree Survey Required." These amendments are requested to encourage and incentivize the preservation of significant trees and existing vegetation while also providing design flexibility that promotes development that is in harmony with the natural vegetation of the site.

Board of County Commissioners/Planning Board Meeting

PB: 9/6/2023, BOCC: 10/16/2023

Included: Application Materials, Application Package, Proposed Amended Text

APPLICATION PACKAGE

APPLICATION FOR TEXT AMENDMENT

THIS SECTION FOR OFFICE USE

Application No.	ZTA	Date	
Application Fee	\$	Invoice Number:	
Pre-Application Conference		Hearing Date	

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	Pender County Planning & Community Development
Applicant's Address:	805 S. Walker St.
City, State, & Zip	Burgaw, NC 28425
Phone Number:	910-259-1202
Email Address:	dadams@pendercountync.gov

SECTION 2: UDO TEXT TO BE AMENDED

Current Text to be Amended (Please site accurate Article number referenced):
Article 8 Landscaping and Buffering
Article 8.1.1 Intent
Article 8.1.3 Tree Survey Required
Proposed Text to be added:
See staff report and attachments

SECTION 3: SIGNATURE

Applicant's Signature	<i>DLA</i>	Date:	8/4/2023
Applicant's Printed Name	Daniel Adams	Date:	8/4/2023

NOTICE TO APPLICANT

If the applicant makes significant changes to the application for a text amendment after the Planning Board has made its recommendation, the Administrator may refer the modified request back to the Planning Board for an additional public hearing.

TEXT AMENDMENT CHECKLIST

<input type="checkbox"/>	Signed application form
<input type="checkbox"/>	Application fee
<input type="checkbox"/>	A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO (shown on page 1 of this application)

Office Use Only

<input type="checkbox"/> ZTA Fees: \$250		Total Fee Calculation:	
Payment Method:	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application Received By:		Date:	
Application completeness approved by:		Date:	
Dates Scheduled for Public Hearings:	<input type="checkbox"/> Planning Board:	<input type="checkbox"/> BOC:	

ATTACHMENT 1 – PROPOSED TEXT CHANGES

New text is in green, bolded and underlined

~~Removed text is in red and struck through~~

PROPOSED TREE MITIGATION AND PRESERVATION LANGUAGE ZTA
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8.1.1 Intent

The preservation of existing significant trees and vegetation is to be encouraged through this article. The preservation of existing vegetation and the placement of landscape plants on a property

can serve numerous purposes. One of the most obvious is to enhance the appearance of the property and increase the property's value. Other benefits of plants and vegetative buffers in the home and business property landscape are as follows:

- A. Reduce air pollution by absorbing Carbon Dioxide and releasing Oxygen.
- B. Reduce erosion by dispersing and absorbing rainfall.
- C. Reduce stream pollution by stabilizing soil and slowing, dispersing and absorbing stormwater runoff.
- D. Reduce stormwater runoff and the potential for flooding.
- E. As properties provide trees, plants and other landscape vegetation, not only is the appearance of individual properties improved, but community appearance is enhanced. This provides a substantial value to the community and other properties in the community.
- F. Buffer and Landscape trees and other plants also help reduce noise from auto traffic, glare from auto and other lights and help collect & reduce litter from reaching adjacent properties.

8.1.3 Tree Survey Required

A. Significant Tree Survey

- 1) A significant tree survey shall be required for any commercial or industrial zoned property and all mixed use districts. The significant tree survey shall show the general location, species and size of any significant tree. ~~However, a significant tree survey shall not be required for land in designated Special Flood Hazard Areas (unless filled or developed in accordance with an approved permit), jurisdictional and coastal wetlands and wetland buffers, designated Areas of Environmental Concern, and stream buffers.~~
- 2) For purposes of this Ordinance, a significant tree shall be defined as follows:

Recommend amending 8.1.1, Intent to clarify that one intention of Article 8 is to preserve existing significant trees and vegetation. Existing language did not specify tree preservation as an intention of the article.

Policy 3.1.L: Tree Preservation:

The County shall continue to require tree preservation for significant trees.

Recommend striking this language based on Pender 2.0 Comprehensive Plan Recommended Action 3.1.L.2.

Recommended Action 3.1.L.2:

Consider removing the exemption for tree surveys/ preservation in Special Flood Hazard Area (SFHAs), Areas of Environmental Concern (AECs), wetland buffers, and stream buffers.

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- a) An American holly with a trunk caliper measurement of 6" or greater measured at 4.5 feet above ground;
 - b) A flowering dogwood with a trunk caliper measurement of 4" or greater measured at 4.5 feet above ground;
 - c) A water oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground;
 - d) A live oak with a trunk caliper measurement of ~~8~~ 6" or greater measured at 4.5 feet above ground;
 - e) Any tree species included in the planting table, except a "loblolly pine" (see Appendix B) with a trunk caliper measurement of 12" or greater measured at 4.5 feet above ground; and
 - f) Any tree species planted under a previously approved significant tree mitigation plan under this ordinance regardless of size.
- 3) For development plans where specific building locations are not shown, a more generalized survey of vegetation may be provided in lieu of a significant tree survey. This survey shall describe existing forest stands, indicating the average species and size of trees on the tract.
- 4) Where any significant tree shown on the significant tree survey is proposed to be removed such removal shall be mitigated by the planting on site of: ~~two (2) trees of the same species with a minimum caliper of 2" or greater.~~
- a) For an American holly with a trunk caliper measurement of 6" or greater measured at 4.5 feet above ground, one (1) tree of the same species with a minimum caliper of 2" or greater;
 - b) For a flowering dogwood with a trunk caliper measurement of 4" or greater measured at 4.5 feet above ground, one (1) tree of the same species with a minimum caliper of 2" or greater;
 - c) For a water oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground, one (1) tree of the same species with a minimum caliper of 2" or greater;
 - d) A live oak with a trunk caliper measurement of 6" or greater measured at 4.5 feet above ground,

Recommend amending the definition of 'significant tree' for live oaks by decreasing the size required to be deemed 'significant' from 8" to 6". This is based on prioritizing the live oak as a vital species.

*Recommend amending Tree Mitigation and Replacement standards for all species **other than** live oak to a 1:1 replanting requirement. This will ensure a prioritization of 6" diameter or larger live oaks and large (12" caliper) existing trees and encourage preservation of such trees as noted in Pender 2.0 Comprehensive Plan Policy 3.1.L.*

Policy 3.1.L: Tree Preservation:
The County shall continue to require tree preservation for significant trees.

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two (2) trees of the same species with a minimum caliper of 3” or greater;

- e) For any tree species included in the planting table, except a “loblolly pine” (see Appendix B) with a trunk caliper measurement of 12” or greater measured at 4.5 feet above ground, two (2) trees of the same species with a minimum caliper of 3” or greater; and
- f) For any tree species planted under a previously approved significant tree mitigation plan under this ordinance, two (2) trees of the same species with a minimum caliper of 3” or greater.

B. If the site cannot accommodate the required number of replacement trees in a reasonable and healthy manner, the Administrator is authorized to consider an administrative adjustment as follows:

- a) An adjustment in the Minimum Front Yard Setback, Minimum Side Yard Setback, Minimum Corner Yard Setback, or Minimum Rear Yard Setback (as defined in 4.14, District Dimensional Requirements) equated to a reduction of up to 20% per dimension;
- b) An adjustment in Section 7.10.1, Off-Street Parking Requirement Minimums equated to a reduction of up to 25% in the required number of off-street parking minimum spaces.

C. Required mitigation trees that are unable to be accommodated on site may be planted on another parcel of land within the boundaries of the associated approved Master Development Plan, if applicable.

D. Significant trees that are not proposed to be disturbed shall be clearly identified on site using construction fencing or some similar mechanism prior to land clearing activities being initiated.

Recommend adding an opportunity for incentives to preserve trees that allows for adjustments to some Required Setbacks or Off-street Parking Requirements. (B)(a) allows for shifting a building into the setbacks, ultimately allowing a reduction in setbacks of up to 20%. This is meant to allow for the preservation of significant trees on one side of the property by shifting the building to avoid impacts to the significant tree(s). (B)(b) allows for 25% less parking to be required to allow for more trees to be planted or preserved. This is meant to incentivize preservation of existing significant trees, as noted in the Pender 2.0 Plan. A reduction in parking requirements would allow for preservation of existing trees and reduce impervious surface coverage, which will improve drainage, natural absorption of stormwater, and reduction of stormwater runoff.

Policy 3.1.L: Tree Preservation: The County shall continue to require tree preservation for significant trees.

Recommended Action 3.1.H.1: Explore options for implementing incentives for developers that utilize low-impact development (LID) techniques to manage the potential impacts of stormwater runoff.

**ATTACHMENT 2 – EXISTING LANGUAGE IN
ARTICLE 8.1.1 THROUGH ARTICLE 8.1.3 OF THE
UDO**

ARTICLE 8 LANDSCAPING AND BUFFERING

8.1 GENERAL

8.1.1 Intent

The placement of landscape plants on a property can serve numerous purposes. One of the most obvious is to enhance the appearance of the property and increase the property's value. Other benefits of plants and vegetative buffers in the home and business property landscape are as follows:

- A. Reduce air pollution by absorbing Carbon Dioxide and releasing Oxygen.
- B. Reduce erosion by dispersing and absorbing rainfall.
- C. Reduce stream pollution by stabilizing soil and slowing, dispersing and absorbing stormwater runoff.
- D. Reduce stormwater runoff and the potential for flooding.
- E. As properties provide trees, plants and other landscape vegetation, not only is the appearance of individual properties improved, but community appearance is enhanced. This provides a substantial value to the community and other properties in the community.
- F. Buffer and Landscape trees and other plants also help reduce noise from auto traffic, glare from auto and other lights and help collect & reduce litter from reaching adjacent properties.

8.1.2 Applicability

The landscaping and buffering requirements found in this Article shall apply to all development within Pender County with the exception of bona fide farming activities, properties listed on the National Register of Historic Places (NRHP) and residential development of one housing type in the Residential Performance Districts. Developments attempting to qualify for the National Register of Historic Places exemption must provide a copy of the National Parks Service listing, along with a narrative briefly requesting the aforementioned relief and how the landscaping standards would conflict with the historic significance of the property. Landscaping and buffer requirements shall apply in all business, planned development, industrial, and non-residential uses in other zoning districts when:

- A. A new principal structure is built, or
- B. An existing principal structure is expanded sufficiently to increase its interior square footage by fifty percent (50%) or more, in any one or more expansions, or
- C. An existing use is expanded sufficiently to increase its square footage by fifty percent (50%) or more, in any one or more expansions, or
- D. A change in use from residential related to office, service, commercial or industrial, or from office, service or commercial to industrial, or
- E. In any residential development with two or more types of housing development, or
- F. A use is discontinued on a site for a consecutive period of one hundred eighty (180) days per Section 10.4.4 and a new use is proposed.

8.1.3 Tree Survey Required

A. Significant Tree Survey

- 1) A significant tree survey shall be required for any commercial or industrial zoned property and all mixed use districts. The significant tree survey shall show the general location, species and size of any significant tree. However, a significant tree survey shall not be required for land in designated Special Flood Hazard Areas (unless filled or developed in accordance with an approved permit), jurisdictional and coastal wetlands and wetland buffers, designated Areas of Environmental Concern, and stream buffers.
- 2) For purposes of this Ordinance, a significant tree shall be defined as follows:
 - a) An American holly with a trunk caliper measurement of 6" or greater measured at 4.5 feet above ground;
 - b) A flowering dogwood with a trunk caliper measurement of 4" or greater measured at 4.5 feet above ground;
 - c) A water oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground;
 - d) A live oak with a trunk caliper measurement of 8" or greater measured at 4.5 feet above ground;
 - e) Any tree species included in the planting table, except a "loblolly pine" (see Appendix C) with a trunk caliper measurement of 12" or greater measured at 4.5 feet above ground; and
 - f) Any tree species planted under a previously approved significant tree mitigation plan under this ordinance regardless of size.
- 3) For development plans where specific building locations are not shown, a more generalized survey of vegetation may be provided in lieu of a significant tree survey. This survey shall describe existing forest stands, indicating the average species and size of trees on the tract.
- 4) Where any significant tree shown on the significant tree survey is proposed to be removed such removal shall be mitigated by the planting on site of two (2) trees of the same species with a minimum caliper of 2" or greater.