

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS
Round 27 – Item E-1 Champion Trees - Interim Adjustment
Town Council Meeting
December 19, 2013

EXECUTIVE SUMMARY

Staff compiled a series of amendments to the Land Development Ordinance (LDO) (*LDO Amendment Round 27, Items A – G*) in response to concerns raised by property owners, representatives of the development community, and staff. Town Council conducted a public hearing on all of the Round 27 amendment items on October 24, 2013. Item E-1 (Champion Trees – Interim Adjustment) is being presented to Town Council for action at this time. The remaining Items included in Round 27 will be brought forward at a later date.

OVERVIEW

BACKGROUND:

Item E of the Round 27 LDO amendments pertains to standards and approval procedures related to when champion trees may be removed. We note that two different issues related to champion trees were addressed in recent amendments that were included in Round 25. A [table](#) providing a summary and chronology of both the Round 25 changes and the proposed Round 27 changes to champion tree regulations is attached for reference.

The proposed changes to champion tree regulations presented for public hearing on October 24, 2013 (Round 27, Item E), included more specific criteria that the Planning Director would use to determine when a healthy champion tree could be removed in order to accommodate development activity.

Following the October public hearing, Town Council directed staff to conduct a stakeholders meeting to receive more comprehensive input and discussion on this issue. The stakeholders meeting was held on November 14, 2013. Development of more comprehensive revisions to champion tree regulations remains underway (See “Summary of Process and Actions to Date” below).

Item E-1, which is being presented for consideration at this time, is the original amendment as presented at the October 24, 2013 public hearing, with several refinements as listed under “Staff Recommendation” below. This amendment is being forwarded to Town Council for consideration at its December 19 meeting in order to provide the option to address immediate needs on an interim basis, as the current regulations (in effect since adoption on June 13, 2013), limit removal of champion trees to only those determined to be dead or diseased.

Item E-2 will include the more comprehensive revisions regarding champion tree protection, based on input from the stakeholders and the Planning and Zoning Board. This item will be brought forward at a later date (*tentatively April, 2013*).

FISCAL IMPACT:

Implementation of the proposed changes will be absorbed by existing staff during the review and approval process for various development applications and/or construction plan submittals.

STAFF RECOMMENDATION:

Staff recommends approval of Item E-1 (*Champion Trees – Interim Adjustment*) as presented at the October 24, 2013 Town Council public hearing and modified to:

- A. Revise the definition of a Champion Tree to exclude trees that may meet the size criteria but are, dead, damaged, diseased or significantly misshapen. Although there will be situations where an arborist’s report is still needed to confirm such a status, this simplifies what has to subsequently be addressed under the exceptions and replacement sections. In addition, staff has provided a definition for a “Dominant Tree” which is referred to in the definition of a Champion Tree. Also, the Critical Root Zone definition is being revised to reflect how it is being presently implemented (even though the Critical Root Zone is currently defined as an area 1.5 times the drip line of the tree, the LDO only requires Tree

Protection Fencing to be placed 1.25 feet away from the tree for each inch of caliper – this change will make the perimeter of the Critical Root Zone consistent with the currently required location of the Tree Protection Fencing).

- B. Expand criteria for removal of healthy Champion trees to include situations where construction of public infrastructure improvements outside the control of the property owner has resulted in disturbance of more than 25% of the critical root zone of the tree.
- C. Allow greater flexibility regarding replacement trees on sites being redeveloped in the Town Center, and require replacement trees only to the extent that they can be accommodated on the site.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Town Council Public Hearing (October 24, 2013)

Town Council conducted a public hearing on all of the Round 27 amendment items (Items A – G) on October 24, 2013. Following the public hearing, Town Council directed staff to convene a champion tree stakeholders meeting to address more comprehensive issues related to tree preservation (Item E), noting that:

- results of focus group discussion may need to be addressed in a future ordinance amendment; and
- the proposed ordinance would not be delayed based on the focus group recommendations.

Champion Tree Stakeholders Meeting (November 14, 2013)

The stakeholders meeting was held on November 14, 2013.

Planning and Zoning Board Work Session (November 25, 2013)

The Planning and Zoning Board subsequently discussed all of the Round 27 amendment items (Items A – G).

Planning and Zoning Board Public Hearing (December 19, 2013)

A second public hearing on the Round 27 LDO Amendments is scheduled to be held by the Planning and Zoning Board on December 16, 2013. In an effort to address immediate needs while also allowing time for preparation of draft ordinance text for an appropriate long-term solution, Item E has been split into two parts:

- **Item E-1 Champion Trees – Interim Adjustment**

Item E-1 includes the proposed amendment presented at the October 24, 2013 public hearing, with some minor adjustments to incorporate a portion of the feedback received at the public hearing and at the stakeholders meeting. This amendment (Item E-1) is being forwarded to Town Council for consideration at its December 19 meeting in order to provide council the option to address immediate needs on an interim basis until more comprehensive changes regarding preservation of champion trees can be developed and considered.

ITEM E-1 SCHEDULE <i>(italicized dates are tentative)</i>	
Planning and Development Committee	September 19, 2013
Advertisements in <i>The Cary News</i>	October 9 and 16, 2013
Public Hearing	October 24, 2013
Planning and Zoning Board Work Session	November 25, 2013
Planning and Zoning Board Meeting	December 16, 2013
Final Action by Town Council	<i>December 19, 2013</i>
Effective	Upon Adoption

The Planning and Zoning Board recommendation on this item will be presented at the December 19, 2013 Town Council meeting.

- **Item E-2 Champion Trees – Comprehensive Revision**

Item E-2 remains focused on addressing more comprehensive issues related to tree protection. Following the Planning and Zoning Board’s public hearing on December 16, 2013, Item E-2 will be discussed at a subsequent P&Z Board work session and P&Z Board meeting. It is expected that the board’s recommendation on Item E-2 will be forwarded to Town Council in April 2013, in accordance with the following tentative schedule:

ITEM E-2 TENTATIVE SCHEDULE <i>(italicized dates are tentative)</i>	
Planning and Development Committee	September 19 , 2013
Advertisements in <i>The Cary News</i>	October 9 and 16, 2013
Public Hearing	October 24, 2013
Planning and Zoning Board Work Session	November 25, 2013
Planning and Zoning Public Hearing	December 16, 2013
Planning and Zoning Board Work Session	<i>February 10, 2014</i>
Planning and Zoning Board Meeting	<i>March 17, 2014</i>
Final Action by Town Council	<i>April 10 or 24, 2014</i>
Effective	Upon Adoption

PROPOSED TEXT

ITEM E-1 CHAMPION TREES – Interim Adjustment

3.19 REVIEW AND APPROVAL PROCEDURES: Minor Modifications

TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED		
Standard That May be Modified	Decision-Making Body	Modification Allowed (%)
<u>Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO section: 7.2.5(C)(4)</u>	<u>Town Council*</u>	<u>(not applicable)</u>
* For properties owned by the Town, the Planning Director shall review all requests for minor modifications that would otherwise be reviewed by the Town Council.		

7.2.5 Tree Surveys, Protection, and Replacement

(C) Protection of Champion Trees Required

(1) The intent of this subsection is to protect healthy champion trees on sites during the development process. With this in mind, flexibility in site design is provided for in Section 7.2.10 (Allowable Modifications and Reductions) to offset area used to preserve champion trees by deducting area from other required landscape/buffer areas. No champion tree may be removed during development, unless a report from a registered landscape architect, certified arborist, or other such specialist states that the tree is seriously diseased or damaged and treatment would not be practical. The approval authority may approve replacement of such tree pursuant to paragraph (D) below. the approval criteria of Section 7.2.5(C)(3) are met and the tree is replaced pursuant to Section 7.2.5(D), or unless approved by the Town Council pursuant to Section 7.2.5(C)(4). In support of any application which requests removal of a Champion tree, the applicant must submit a report from a, certified arborist, or other such specialist.

(2) For purposes of this section 7.2.5(C) the following definitions apply:

- (a) Adversely impacted means that 25% or more of the critical root zone of the Champion tree will be, or has been within the three years prior to the date of application, impacted by the construction or installation of the listed improvement.
- (b) No practical alternative location means the applicant has prepared multiple designs or scenarios demonstrating that there is no practical alternative location for the required development feature that preserves the Champion tree and 75% or more of its critical root zone.

(3) The Planning Director shall approve removal of a Champion tree if the tree is adversely impacted by one of the following and no practical alternative location exists:

- (i) Required road connections;
- (ii) Required sanitary sewer or storm drain lines;
- (iii) Public infrastructure improvements made by others;
- (iv) Required stormwater treatment devices located in geographically and topographically appropriate areas; or
- (v) Town design standards that limit the location of buildings and/or other features such as parking and private streets on the site (e.g. requirements for the buildings to front on streets).

(4) The Town Council shall review any other request to remove a champion tree as a Minor Modification pursuant to Section 3.19.

(D) Replacement of Champion Trees

- (1)** When a champion tree is removed ~~from a site~~ during construction, or dies within one (1) year following construction, on a site located outside of the Town Center District, the applicant or developer shall replace such champion tree with trees of similar type planted at least thirty (30) feet from any other tree such that the total caliper inches of trees planted is no less than the diameter of the tree removed. The size of such replacement trees at the time of installation shall be a minimum of 2 ½ inches in caliper.
- (2)** When a champion tree is removed during construction, or dies within one (1) year following construction, on a site located within the Town Center District, the applicant or developer shall comply with the requirements of section 7.2.5(D)(1), except that the total caliper inches of trees planted may be less than the diameter of the tree removed if it is not practical to replant the required number and size of trees spaced at least 30 feet from any other tree on the same site or any adjacent property under common ownership.
- (3)** In consultation with the Town staff, acceptable replacement trees shall be determined by a person qualified by training or experience to have expert knowledge of the subject. Alternatively, the valuation of trees removed may be established in accordance with standards established by the International Society of Arboriculture and replaced with landscaping of equal dollar value.
- (4)** Replacement trees shall be maintained through an establishment period of at least three years, except that ~~single-family detached dwellings on an individual single lot shall have an establishment period of only one year. The applicant shall post a bond or other surety acceptable to the Town guaranteeing the survival and health of all replacement trees during the establishment period and guaranteeing any associated replacement costs. If the replacement trees do not satisfactorily survive the establishment period, the bond or surety will be used to purchase and install new replacement trees. The property owner and developer shall execute a landscape agreement guaranteeing the survival and health of all replacement trees during the~~

establishment period and guaranteeing to replace any replacement tree(s) that does not survive the establishment period in good health as determined by a certified arborist.

12.4 OTHER KEY TERMS DEFINED

CHAMPION TREE

Any single tree that has been determined to be of ~~exceptionally high~~ value because of its species, size, age, or other professional criteria. An upper-story tree which is thirty (30) inches or greater in diameter at breast height is considered as a champion tree. Size ranges for understory trees are smaller, and vary based upon species. A tree that meets the indicated size but is dead or diseased, or has an abnormal form that is not characteristic of its species (for example the habit is one-sided, or the crown is significantly misshapen or missing), shall not be considered to be a Champion Tree.

CRITICAL ROOT ZONE

An underground circular area extending laterally in all four cardinal directions from the base of a tree's trunk a distance of at least one and one-quarter (1.25) feet from the tree for each inch of caliper. ~~to a distance typically one and one-half (1½) times larger than the perimeter of the tree's dripline.~~