

**ORDINANCE AMENDMENT
Town of Cary, NC**

This ordinance amends Chapter 2; Chapter 5, Parts 6, 7, & 12; and Chapter 14 Parts 1 & 6 of the Cary Unified Development Ordinance.

**PART 12
RESERVED
TREE CLEARING CERTIFICATE**

5.12.1. Purpose.

The Tree Clearing Certificate requirement has been developed to implement the enabling legislation granted to the Town by the North Carolina General Assembly. The purposes for these regulations are to:

- (A) Protect existing trees and shrubs located upon undeveloped sites for use as future buffers and streetscapes to meet development plan requirements;**
- (B) Preserve existing tree and vegetative cover to protect the health safety and welfare of the public by preserving the visual and aesthetic qualities of the Town; maintaining property values; controlling erosion; and reducing sediment and other pollutant run-off into streams and waterways in an effort to protect water quality; and**
- (C) To create a process whereby some properties are required to obtain a tree clearing certificate, recognize some properties are exempted from the requirement to obtain a tree clearing certificate prior to the removal of vegetation, and establish penalties for removal of all or substantially all of the required vegetation within required vegetation protection areas.**

5.12.2. Applicability.

The requirements for obtaining a Tree Clearing Certificate and penalties for non-compliance are applicable to all undeveloped properties which are zoned for residential or nonresidential use located within the Town Limits and/or Extraterritorial Jurisdiction (ETJ). For the purposes of the Part, “undeveloped properties” shall include any property within the Town’s jurisdiction which is not subject to an approved development plan.

5.12.3. Exemptions from Tree Clearing Certificates

The requirement to obtain a Tree Clearing Certificate shall not apply to the activities listed below.

- (A) Normal forestry activities taking place on property which is taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the North Carolina General Statutes, and provided such activities are accomplished in compliance with Section 5.12.7.**

- (B) Properties with a Town-approved development plan, provided such plan has not expired and that any clearing or vegetation removal is done in strict accordance with the approved development plan.
- (C) The removal of vegetation by public or private agencies within the lines of any public street rights-of-way, utility easements, or other Town property, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to preserve or enhance the symmetry and beauty of such Town property.
- (D) The Town-initiated or approved removal of any vegetation which is in an unsafe condition, constitutes a nuisance or noxious weed, or which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, stream or conveyance channels, or other public improvements, or vegetation which is infected with any injurious fungus, insect, or other pest.
- (E) The removal of vegetation on property located within an approved residential subdivision which is zoned for single family use, and provided such vegetation is not a portion of a required streetscape or other landscaping buffer.

5.12.4 Required Buffers and Vegetation Protection Areas.

Other than that necessary to gain reasonable access to the property, clearing and/or removal of trees and other vegetation shall be prohibited in the areas listed below. In situations where one or more buffer zones or vegetation protection areas overlap on the same site, then the more restrictive requirement shall apply.

- (A) A perimeter streetscape zone having a width of fifty (50) feet as measured from all ultimate property boundaries which adjoin existing roadways as depicted in the Cary Transportation Plan or as required in Section 14.1.5 Streetscape Landscaping. For the purposes of this Part, the term "ultimate property boundary" of a parcel or tract shall mean the final demarcation line around the perimeter of a parcel excluding all areas which must be dedicated to the Town for use as rights-of-way.
- (B) A perimeter buffer zone having a width of sixty-five (65) feet as measured from all property boundaries which adjoin developed property or vacant property with an approved development plan.
- (C) A perimeter buffer zone having a width of thirty-two (32) feet as measured from all property boundaries which adjoin undeveloped property or vacant property without an approved development plan.
- (D) Any other areas necessary for the protection of existing vegetation as indicated within this Ordinance (e.g. riparian buffers).

5.12.5. Application Requirements.

- (A) An application for a Tree Clearing Certificate is not required for those activities which can demonstrate an exemption in accordance with the provisions of Section 5.12.3 above.
- (B) An application for a Tree Clearing Certificate may be filed only by all the owners of the property or by such owners' authorized agent.

- (C) An application for a Tree Clearing Certificate shall be filed with the Planning Department on a form prescribed by the Department, along with the fee prescribed by the Town Council.
- (D) The application form shall be accompanied by a Vegetation Protection Plan which shall include, at a minimum, the following information on a sheet size no larger than 24 by 36 inches at a minimum scale of 1 inch equals 50 feet:
- (1) Vicinity map showing the location of the tract at a readable scale.
 - (2) A map of the entire tract, including the property boundary of the entire tract by courses and distances with references to true meridian and the location and dimension of all on-site and adjacent off-site easements (e.g. drainage, utility, public access, aerial utility, conservation, permanent and temporary construction easements).
 - (3) General information about the tract, including but not limited to the owner of the tract; the current zoning of the tract, the area of the tract, and the conditional-use zoning conditions, planned unit development master plan requirements, if applicable.
 - (4) The location and use(s) of all existing building(s) on the tract.
 - (5) The owner, current zoning and present use of all contiguous properties (including property on opposite side of adjoining streets).
 - (6) The general classification of all existing and proposed adjacent roadways (as depicted in the Cary Transportation Plan) and the ultimate right-of-way boundaries associated with these roadways.
 - (7) The location and width of all future/existing buffers and associated vegetation protection areas, including riparian buffers, perimeter buffers and perimeter streetscapes.
 - (8) The proposed limits of timbering activities, including the location and extent of all tree protection fencing as required under Chapter 14 Part 1 of this Ordinance.
- (E) The Planning Director may reduce or waive the requirements for a Vegetation Protection Plan in situations where it can be demonstrated that all vegetation removal will take place outside of required vegetation protection areas.

5.12.6. Procedure.

Prior to the commencement of any vegetation clearing or removal on any undeveloped property, the owner or the owner's agent must demonstrate exemption from the requirements of this Part, or submit the required application materials and applicable fees for a Tree Clearing Certificate.

- (A) Upon receipt of documentation that a property is exempted from obtaining a Tree Clearing Certificate, the Planning Director shall review all materials and make a determination if a property is exempted from the requirements, or if the requirements apply. In situations where exemption status is claimed based on forestry use, this documentation shall include proof that the property is taxed under the present-use value standard or a copy of the valid forestry management plan prepared or approved by a North Carolina registered forester.

The decision of the Planning Director may be appealed to the Zoning Board of Adjustment pursuant to the provisions of Chapter 6 Part 2 of this Ordinance.

- (B) If a property is not exempted from the provisions pertaining to a Tree Clearing Certificate, then such application materials shall include a Vegetation Protection Plan consistent with the requirements listed in Section 5.12.5(D) above.
- (C) The Vegetation Protection Plan shall be reviewed by the Planning Director based upon the provisions of Chapter 5, Part 7 of this Ordinance. The Director may defer the decision on the Vegetation Protection Plan to the Town Council if he or she has concerns about the plan's ability to meet the standards of this Ordinance. In the event the Director disapproves the plan, an appeal may be filed with the Town Council within ten (10) days of disapproval. If an appeal is filed, the Town Council shall decide whether to consider the appeal by majority vote and may affirm, reverse or modify the Director's disapproval.
- (D) An applicant for a Tree Clearing Certificate shall be notified upon approval of the Vegetation Protection Plan, and shall be free to erect or install any and all barriers necessary to protect existing vegetation within required buffer areas and vegetation protection areas from damage during tree clearing and/or removal activities. Failure to protect these areas shall result in penalties as indicated in Section 14.1.15 Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines.
- (E) Once all barriers for the protection of existing vegetation have been installed, a property owner or agent shall request inspection of such barriers for compliance with the requirements of this Ordinance.
- (F) Upon a passing inspection of vegetation protection barriers, the Director of Planning shall issue a Tree Clearing Certificate, and authorized vegetation clearing and/or removal may commence.
- (G) An approved Tree Clearing Certificate shall be valid for a period of not more than twelve (12) months from the date of issuance.

5.12.7. Non-compliance.

Failure to comply with the provisions of this Section shall constitute a violation of this Ordinance, and shall subject an offending party to a series of actions, including the payment of fines, delay in development plan approval or building permit issuance, and the requirement to double the amount of required vegetation as would typically be required during the development plan review and approval process. Table 5.12.1 below describes the penalties for non-compliance with this Section. An "X" in a particular cell indicates that the associated penalty which applies:

Table 5.12.1

<u>Type of Violation:</u>	<u>Payment of Fines (based upon Chapter 14 Part 1)</u>	<u>Review of all subsequent Development Plans by Town Council</u>	<u>Five year delay in approval of a Building Permit or Development Plan</u>	<u>Requirement to double the landscaping provisions during development plan review as indicated in Section 14.1.9(i)</u>
<u>Property is exempt from Tree Clearing Certificate requirements, but all or substantially all* vegetation within required buffers and/or vegetation protection areas is removed</u>		<u>X</u>	<u>X</u>	<u>X</u>
<u>Property owner obtains a Tree Clearing Certificate, but removes some of the vegetation within a required buffer and/or tree protection area</u>	<u>X</u>			<u>X</u>
<u>Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes some of the vegetation within a required buffer and/or tree protection area</u>	<u>X</u>	<u>X</u>		<u>X</u>
<u>Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes all or substantially all* of the vegetation within a required buffer and/or tree protection area</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>* "all or substantially all" shall mean seventy-five (75) percent or more of the existing trees with a caliper of four (4) inches or greater.</u>				

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**CHAPTER 5.
DEVELOPMENT REVIEW PROCEDURES
PART 6.
SUBDIVISIONS OF LAND**

5.6.5. Subdivision Plan Requirements and Process.

- (c) *Review and Action by Director of ~~Planning Development Services~~.* Upon receipt of the subdivision plan for subdivisions that meet the requirements of this Ordinance, the Director of ~~Planning Development Services~~ shall review the subdivision plan, the comments of the Development Review Committee, and other applicable boards and commissions, and shall approve or disapprove the subdivision plan.

The Director shall approve the subdivision provided that the following standards are met:

- (1) It fully complies with applicable requirements of this Ordinance;
- (2) It adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
- (3) It provides harmony and unity with the development of nearby properties;
- (4) It provides safe conditions for pedestrians or motorists, such as presenting an appropriate arrangement of pedestrian and vehicular ways; and
- (5) It provides safe ingress and egress for emergency services to the residences of the subdivision.

The Director may deny the subdivision plan if it does not meet Town Ordinances and/or standards or the standards specifically listed above (see appeal procedure in Section 5.6.2c). The Director may also defer the decision on the subdivision plan to Town Council when he or she deems that any of the above standards may not be met by the proposed plan or in cases where the parcel or tract involved had vegetation removed without an approved Tree Clearing Certificate, or if the parcel was exempt from the need to obtain a Tree Clearing Certificate, but all or substantially all trees in a protected area have been removed. The Director may also choose to seek input from other Boards and Commissions to assist in making a final decision.

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**PART 7.
SITE PLANS**

5.7.6. Action by the Planning Department of ~~Development Services~~ on Site Plans Approved By Staff.

- (a) Unless approved by the Town Council along with a Major Special Use, or due to a request for a reduction or deviation from the requirements of this Ordinance, or may not meet the standards in Section 5.7.6(c), or due to approval requirements within the Town Center Overlay District (See Chapter 10, Part 4), the **Planning** Department of ~~Development Services~~ shall review the site plan, the comments and recommendations of the Development Review Committee, the responses and comments of the applicant, and the requirements of this Ordinance, and either approve or reject the site plan. (NOTE: Delays in the approval process can result if the proposed property within the site plan boundaries requires annexation into the Town limits. Official approval of the site plan connecting to Town utilities is contingent on annexation into the Town (See Section 5.1.4).
- (b) The **Planning** Department of ~~Development Services~~ may approve a site plan only if it meets the standards and requirements set forth in Chapter 14, Part 1 of this Ordinance or any other part of this Ordinance (note: plans within Planned Unit Developments may be subject to different requirements based on the PUD approval) and provides for the dedications and improvements, or payments and guarantees in lieu thereof, required by Chapter 15, Part 2 of this Ordinance.
- (c) The **Planning** Director of the ~~Department of Development Services~~ shall approve the site plan provided that the following standards are met:
 - (1) That it fully complies with all applicable requirements of this Ordinance;

- (2) That it adequately protects other property, or residential uses located on the same property, from the potential adverse effects of a nonresidential use;
- (3) That it provides harmony and unity with the development of nearby properties;
- (4) That it provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways;
- (5) That it provides safe ingress and egress for emergency services to site-;

The Director may defer the decision on the site plan to Town Council when he or she deems that any of the above standards may not be met by the proposed plan or in cases where the parcel or tract involved had vegetation removed without an approved Tree Clearing Certificate, or if the parcel was exempt from the need to obtain a Tree Clearing Certificate, but all or substantially all trees in a protected area have been removed. The Director may also choose to seek input from other Boards and Commissions to assist in making a final decision.

If the **Planning** Director of the ~~Department of Development Services~~ rejects the site plan, then the reasons therefore shall be stated in the record of action on the site plan.

- (d) Failure of the **Planning** ~~Department of Development Services~~ to act on a site plan within 90 days of receiving the site plan and recommendations from the Development Review Committee shall be deemed approval of the site plan, authorizing the applicant to proceed with development of the property in accordance with the site plan submitted to the **Planning** ~~Department of Development Services~~. This time limit shall not apply where the delay in site plan approval is caused by the applicant (such as failure to obtain any special use approval required for the proposed development, or failure to submit a plan that complies with the requirements of this Ordinance in a timely manner).
- (e) In the event the **Planning** ~~Department of Development Services~~ disapproves a site plan, an appeal may be filed with the Town Council within ten (10) days of disapproval. If an appeal is filed, the Town Council, at its next regularly scheduled meeting, shall decide whether to consider the appeal by majority vote and may affirm, reverse or modify the Director's disapproval. The Council may also direct that the Planning and Zoning Board and Town Council process the site plan.

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**CHAPTER 14.
COMMUNITY APPEARANCE AND ENVIRONMENTAL PROTECTION STANDARDS**

14.1.9. Other Landscape Requirements.

- (i) *Additional Requirement for Clear-Cut Sites or Sites with Removed Vegetation in Required Vegetation Protection Areas*: Larger trees up to four (4) inches in caliper and/or up to double the amount of the required number of trees and vegetation may be required by the Director of ~~Development Services~~ **Planning** if the site and/or the required vegetation protection areas specified in Section 5.12.4 were clear cut within ~~three~~ five ~~(3)~~ (5) years prior to the submittal of a development plan.

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14.1.15. Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines.

- (a) *Maintenance responsibility.* The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features (installed or vegetated natural areas) required under this Section, ~~or Chapter 10, Part 1, Thoroughfare Corridor Buffer District, and Part 3 Reservoir Watershed Protection District,~~ **Section 5.12.4 Vegetation Protection Areas, or Section 14.6.3 Protecting Riparian Buffers.** Damage to these areas results in revegetation **requirements** and fines (see 14.1.15(c)) **or other penalties as required under this Ordinance.**
- (1) Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe pruning, shall be replaced with locally adapted vegetation which conforms to the standards of this Section, ~~Chapter 10, Part 1, Ordinance~~ and to the approved development plan. **In the case of removal of existing original vegetation from required vegetation protection areas specified under Chapter 5 Part 12 of this Ordinance or Chapter 14 Part 6, the replacement requirements of Section 14.1.9 shall apply.**
- (2) In the event that any vegetation or physical element functioning to meet the standards of this Section ~~or Chapter 10, Part 1, Ordinance~~ is severely damaged due to an unusual weather occurrence or natural catastrophe, **or other natural occurrence such as damage by wild or domestic animals,** the owner may be required to replant if the buffer standards are not being met. The owner shall have one growing season to replace or replant after reconstruction is complete. **The Planning Director shall consider the type and location of the landscape buffer or required vegetation area as well as the propensity for natural revegetation in making a determination on the extent of replanting requirements.**
- (3) **Any appeals of the Planning Director's decision relating to the amount of required revegetation shall be made to the Town Council within 10 days following the notice of decision, and the Town Council shall consider reduction requests at the next available regular meeting.**
- (4) All required buffers, streetscapes, vehicular use areas, and other landscape areas shall be free of refuse and debris, and treated for pest/diseases in accordance with the approved development plan, and shall be maintained so as to prevent mulch, straw, dirt, or other materials from washing onto streets and sidewalks.
- (5) The owner should take actions to protect trees and landscaping from unnecessary damage during all facility and site management operations. Plants must be maintained in a way that does not obstruct sight distances at roadways and drive intersections, obstruct traffic signs or devices, and/or interfere with the use of sidewalks or pedestrian trails (see Appearance Specification Manual). **Healthy plants, whether located within undisturbed buffers, vegetation protection areas, or within planted areas (required by the development plan)** shall not be **removed, damaged,** cut, or severely pruned so that their natural form is impaired (shrubs within **existing** vehicle use areas, streetscapes and streetfronts may be pruned, but ~~no less than~~ **must maintain at least** three feet in height).
- (6) **In the event that existing required vegetation located within any required buffers, streetscapes, vehicular use or other landscape areas, poses an immediate or imminent threat to improved structures on private or public property, severe pruning and/or removal of the vegetation is**

allowable provided prior approval from the Planning Director is obtained, and the performance standard of the landscape area is maintained consistent with this Ordinance. Unapproved severe pruning and/or removal of vegetation in non-emergency situations will result in the assessment of fines consistent with Section 14.1.5 (c).

(b) *Replacement of disturbed and damaged vegetation.* The disturbance **or damage of vegetation within any required buffers, streetscapes, vehicular use areas, or other landscape areas** any landscaped area or vegetation required by this Part or Chapter 10. Part 1. **Ordinance**, or by zoning condition shall constitute a violation of this Ordinance.

(1) The natural death of existing vegetation within the ~~buffer~~ **any required landscape** area does not constitute a violation and would not require revegetation to replace the ~~tree(s)~~ **plant material** unless ~~it~~ **the required landscape area** no longer achieves the required performance standards of this Ordinance.

(2) All disturbed **or damaged** landscaped areas and natural vegetation shall be replanted so as to meet the standards of this ~~Section and/or Chapter 10. Part 1.~~ **Ordinance** as well as the approved development plans, if applicable. A replacement-planting plan for review and approval by the Town shall be submitted prior to replacement. This plan will ensure proper replacements are made.

(3) **In situations where existing required vegetation on a developed site or vacant site with an approved development plan has been removed or damaged in violation of this Ordinance, the Planning Director may require that the entire site be reviewed and revegetated consistent with the current provisions of this Ordinance in addition to any applicable fines.**

(c) *Fines and replacement of existing, original **or installed** vegetation.* Where the vegetation that has been disturbed or damaged existed on the site at **prior to** the time **of approval of a Tree Clearing Certificate, or** the time **a development plan** was approved, or **was** installed at a later date, **the owner shall be fined and shall replace the disturbed or damaged vegetation in accordance with the standards set forth as listed below or as required in other parts of this** ~~Section and/or Chapter 10. Part 1 and Part 3~~ **Ordinance** taking into account any unique site conditions and significant vegetation remaining within the landscaped area. This Section shall also apply to all stream or riparian buffers, **required vegetation protection areas**, and vacant, undeveloped properties that due to zoning conditions and/or requirements of the ~~Thoroughfare Corridor Buffer District~~ **this Ordinance** have protective **protected** vegetated **areas (including but not limited to vegetation in the Thoroughfare Corridor Buffer)** and all requirements of Chapter 14, Part 1, Building Design, preservation of Existing Natural Areas and Installation of New Landscape Areas.

(1) Where the size (caliper, height, spread) and quantity of damaged vegetation can be documented, an equal amount of new vegetation (“inch for inch”) shall be used to quantify replacement vegetation. Replacement vegetation shall meet or exceed the current requirements of this Chapter. Fines and replacement shall consist of item (i) ~~and a~~ **any** combination of any of the measures **listed** in items **(ii) through (iv).**

- (i) A base fine between \$2.00 and \$4.00 for every square foot area used by the of damaged vegetation ~~damaged~~ within any areas required to be protected under this Ordinance including but not limited to: vegetation protection areas, riparian buffer zones on undeveloped sites, buffers, streetscapes, vehicular use areas, and other landscape areas on developed sites. The base fine shall not exceed a total of \$40,000. Penalties for excessive or severe pruning to trees allowed to be pruned shall be assessed based upon Section 14.1.15(c)(1)(ii) below. In determining the amount of the fine, the Director shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, whether the violation was committed willfully. Payment of fines shall be made to the Town of Cary at a time deemed appropriated by the Director of ~~Development Services~~ Planning.
- (ii) In cases of severe or excessive pruning of required existing trees on developed sites or vacant sites with an approved development plan, a base fine of two hundred dollars (\$200) per caliper inch of any tree severely or excessively pruned shall be applied.
- (iii) Developed sites or vacant sites with an approved development plan shall rRevegetate according to the requirements of Section 14.1.15(c)(3). Vegetation protection areas on undeveloped sites shall be required to be revegetated at the time of development plan approval according to the provisions in Chapter 14 of this Ordinance.
- (iv) Replace damaged significant vegetation in both buffers and interior areas and native ornamental species in buffers only with an equal amount of new vegetation according to the size of vegetation removed (also called "inch for inch" replacement, see below).

PRINCIPLES OF INTERPRETATION

- Most or all street/canopy trees and small trees (i.e., Crape Myrtle) used on-site are intended to grow naturally and not be pruned. These trees should not be pruned so as to prevent the natural growth of the tree as was intended to meet any streetscape and buffer requirements. However, some pruning is allowed to remove limbs in order to allow visibility on non-residential properties in accordance with Chapter 14, Streetscape Landscaping.

- (2) Inch for inch replacement. Any tree with a caliper of at least six inches which is damaged or removed shall be replaced with one or more trees which have a caliper of at least two and one-half inches and a cumulative caliper equal to or greater than the original tree.
- (3) For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be of the type and amount that is necessary to provide the type of landscaped or natural buffer required under this Part or interior save area (outside of perimeter buffers) identified on the landscape plan or as required by ~~Chapter 10 Part 1. (Thoroughfare Corridor Buffer District)~~ this Ordinance. This shall require one or more of the following for each 2,000 square feet of disturbed area (if area is less than 2,000 square feet, then a revegetation plan that meets the general

intent of the requirements below may be approved by the Director of ~~Development Services~~ **Planning**):

- (i) Two canopy trees of at least two- (2) inches caliper and approximately 8 feet tall;
- (ii) Two native ornamental trees of at least one and one-half (1 1/2) inches caliper and at least seven feet high above ground level at the time of installation;
- (iii) Two evergreen trees of at least two (2) inches caliper and at least eight feet high above ground level at the time of installation;
- (iv) Seven evergreen shrubs of at least 24" or 18" high x 15" wide ~~inches in height~~ and three-gallon container size at the time of installation;
- (v) Eight deciduous shrubs of at least 24" or 18" high x 15" wide ~~inches in height~~ and three-gallon container size at the time of installation;
- (vi) On slopes equal to or greater than a ratio of two and one-half to one (2 1/2:1), 22 ground cover plants with a container size of one gallon at the time of installation.

The specific quantities of plants listed above may be adjusted by the Director of ~~the Department of Development Services~~ **Planning** in order to meet the standards for the required buffer type or protected area based upon location, topography, and other site features.

- (4) Location of replacement trees: Revegetation should be located within the vicinity of the violation. If revegetation is not practical within the vicinity, a more suitable location on the site may be selected. If no suitable location can be found, a monetary payment may be required. This monetary payment will be based on the current market price for any replacement tree(s) and/or shrubs. This payment shall be used to fund plantings on public properties.
- (5) Fines and stop work orders. Fines and/or stop work orders shall also apply for damaging and/or destroying significant vegetation, interior specimen significant vegetation, buffers or tree save areas. The requirements of Chapter 18 apply.
- (6) Appeals of this Section may be made to the Town Council within 10 days of the letter of violation or related correspondence from the Town.

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**CHAPTER 14.
PART 6.
STORMWATER MANAGEMENT PLAN FOR NEW DEVELOPMENT.**

14.6.3. Protecting Riparian Buffers.

- (a) *Establishment of Buffer.* All perennial and intermittent streams including lakes, ponds, and other bodies of water as indicated on the most recent version of the 1:20,000 scale (7.5 minutes) quadrangle topographic maps prepared by the United States Geological Survey (USGS) shall have a 100-foot wide riparian buffer directly adjacent to such surface waters, excluding wetlands. All other surface waters as indicated by

the most recent version of the Soil Survey of Wake or Chatham County, North Carolina shall have a 50 foot-wide riparian buffer adjacent to such waters. In the Neuse River Basin, where obvious conflicts between actual field conditions and USGS and Wake county Soil Survey maps exist, appeals may be made to the North Carolina Division of Water Quality. All other appeals for obvious conflicts may be made to the Town Manager or his designee. Appeals to the 100-foot wide riparian buffer may be made as allowed by Section 14.6.8(a).

(b) *Delineation of Buffer Zones.* There are hereby established three zones of the riparian buffer as follows:

- (1) Zone 1 (30' landward adjacent to streambank, severe development restrictions)
- (2) Zone 2 (20' landward adjacent to) zone 1, strict development restrictions)
- (3) Zone 3 (50' landward adjacent to zone 2, moderate development restrictions)

The buffers must be measured horizontally from the edge of the water body, i.e. from top of bank.

(c) *Activity within Buffer.* **Prior to the approval of a development plan, all existing healthy vegetation which does not pose an immediate or imminent threat to public or private property located within a riparian buffer shall be maintained pursuant to the requirements contained in Chapter 5 part 12 of this Ordinance. Removal or damage to this existing vegetation shall result in the assessment of fines and/or penalties associated with Chapter 5 Part 12 and Chapter 14 Part 1.** Activity may take place within any stream buffer zone as defined by 15A NCAC 2B.0233. Likewise, those activities are also allowed within Zone 3.

Within the Neuse River Basin development activity within Zone 1 and Zone 2 of the may take place within a riparian buffer provided that the landowner has one of the following:

- (1) An authorization certificate that documents that the NC Division of Water Quality has approved an allowable use.
- (2) An opinion from the NC Division of Water Quality that vested rights has been established for that activity.
- (3) A letter from the NC Division of Water Quality documenting that a variance has been granted for the proposed activity.

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**CHAPTER 2.
DEFINITIONS.**

SEVERE OR EXCESSIVE PRUNING: The pruning, cutting, or otherwise damaging the natural form of a tree, whether existing or planted, such that a significant or noticeable portion of the crown system is removed (i.e. 25 % of crown removed or the continued cutting of trees previously pruned illegally or pruning of trees that must grow naturally to meet landscape

requirements), and/or if more than one-third (1/3) of the overall circumference of a tree is exposed by pruning cuts.

ADOPTED: 6/13/02
EFFECTIVE: 7/1/02