CHARLOTTE

Charlotte City Council

Environment Committee

Meeting Summary for June 7, 2010

COMMITTEE AGENDA TOPICS

I. **Subject:** **Proposed Revisions to the Tree Ordinance**

Action: Recommend staff create a hybrid of Options B and C under the first non-consensus item "Address tree save requirements for 'additions to existing sites'." Motion passes 3-1 (Peacock, Dulin, Howard – for; Carter against).

II. **Subject:** **Next Meeting – Special Called**

Action: Monday, June 21 at 4:00 p.m. in Room 280

COMMITTEE INFORMATION

Present: Edwin Peacock, Nancy Carter, Andy Dulin, David Howard, and Susan Burgess (via telephone)

Time: 11:00 a.m. to 12:20 p.m.

ATTACHMENTS

1. Agenda Package
2. Presentation: Proposed Tree Ordinance Revisions
3. Payment in Lieu Research Results for Various Cities in the U.S.

DISCUSSION HIGHLIGHTS

Committee Discussion:

Committee Chair Edwin Peacock welcomed everyone to the meeting and asked those around the table to introduce themselves. He also welcomed all the members of the stakeholders committee and subgroup in attendance.

I. Proposed Revisions to the Tree Ordinance

Chair Peacock said he wanted to start the meeting by responding to a recent *Letter to the Editor* by a member of the Tree Advisory Committee that this meeting is not the final part of the process. This meeting is to try and finalize the work of the Committee and move this on to the full Council with a dinner presentation. Then, the full Council may have enough questions to refer it back to this Committee. We have tried to get as close to the line as possible without a formal cost study. We have had a talented group of professionals look at how this might be implemented and have had a lot of engagement. We are bringing something forward that has been thoroughly vetted. This is not a knee-jerk reaction to an issue, but something that has been thought through. We have heard from pro-tree and pro-developer. There are still two non-consensus items but there has been a lot of compromise to get us to this point. We are still working through those issues. This is what it looks like to make sausage.

Chair Peacock recognized Mayor Pro Tem Burgess and asked if she had any comments or questions before the formal presentation. Mayor Pro Burgess indicated she understood and had no major issues. Chair Peacock then turned the meeting over to Julie Burch.

Ms. Burch called attention to the agenda package which include answers to the questions that were raised at the last meeting [copy attached]. She indicated staff planned to walk through the highlights with some examples of how the options apply and then answer any other questions. She then turned the meeting over to David Weekly and Tom Johnson.

Mr. Weekly advised the Committee the agenda package was very similar to what they received at the last meeting but has a little more information. He advised that if there were no questions, they would immediately go to the non-consensus items, which are located on page 7 [copy attached]. Mr. Weekly also reminded the Committee there were initially 22 proposed changes and only 2 were non-consensus. Staff has made some recommendations, but ultimately City Council will decide.

1) Address tree save requirements for "additions to existing sites"

A footnote was added "the term 'redevelopment' is not used because it is not referenced in the tree ordinance language and it can be interpreted in different ways." The wording has been changed to "additions to existing sites."

The Ordinance is enacted if any of the following criteria is met:

1) Adding 5% to a building or 1,000 sq. ft. impervious area
2) Adding 10 or more new parking spaces
3) Façade change of 10% or more to any one wall

The second footnote clarifies this criteria is currently in the Tree Ordinance Guidelines. The Stakeholder Committee agreed it should be moved into the ordinance.

There are three options:

Option A – Incorporate the 15% tree save requirement.
Option B – Protect trees 8 inches and larger in diameter in the setbacks along public frontage as required in the current ordinance.
Option C – Protect all trees outside of the existing impervious area footprint up to 15% of the total site.

All three options include the tree planting requirements, but those requirements may be altered due to "hardship." A hardship occurs when there is potential conflict with existing regulatory requirements. For example, not removing required parking spaces to plant trees.

Staff did not select Option A. It would be difficult to meet.

Staff did not select Option B. In the future if sites are developed under the revised ordinance they will have a 15% tree save. If they are added on, staff believes the original 15% tree save should be maintained.

Staff did not select Option C. It will be difficult to administer and enforce.

Staff recommends a combination of A and B. Option B protects trees in the setback and Option A will protect the 15% tree save in the future. Staff also recommends providing various options to aid in compliance including green roofs, off-site mitigation and payment in lieu.

[Carter arrives]

The justification is this recommendation provides relief for owners/developers who wish to make additions to their sites that were originally developed under the current ordinance. However, it requires owners/developers who wish to make additions to their sites to preserve the tree save already established for sites that were developed under the revised ordinance.

Basically, this grandfathers existing sites that will be added-on in the future.

Under notes …

1) Developed sites that are completely cleared and rebuilt upon are not considered "additions to existing sites." The tree save requirements for this scenario will be based upon Section 21.94 (i) (ii) and (iii).

The Upton's site discussed at the last meeting would fall under this. They cleared the site, so the tree save will have to be added. We wanted to make it clear the difference.

Dulin: We did talk about Upton's last time. What if they clear the building, but want to re-use the pad? That would not be a complete restart.

Weekly: I don't know that anyone would do that. If they cleared the building, they would be starting new.

Dulin: Is that in writing?

Weekly: Yes, it is in the ordinance.

Dulin: Good. I don't want to leave that up to interpretation.

Peacock: You described the 5% was already in the guidelines and you are now moving it to the ordinance. Why are you requiring redevelopment? Was there any discussion or just part of the matrix?

Weekly: There was discussion; it was not just a given, particularly the façade. We felt it was the best balance. There was a desire to eliminate existing parking lots especially big box sites with no trees on the property. We turned down bringing <u>all</u> sites into compliance by a certain date requirement. So, when sites start to redevelop, including façade, we will slowly get everyone in compliance.

Peacock: I understand preventing parking lots without trees, but a 5% façade change triggers the ordinance?

Burch: It's 10% façade.

Johnson: 5% to an existing building.

Peacock: Option C got the most votes, but staff says it will be difficult to enforce. Should there be some compromise with the committee to work through that option?

Weekly: What we are proposing is similar, but less burdensome. The combination keeps tree preservation in the setback. It is consistent with checkups. If there is a change made anywhere on the site, you have the plans to make sure they are still in compliance. On a majority of the sites, the trees are in confined areas. Option C is protecting trees outside and they could be

scattered. If they are saving 10%, they could be scattered throughout the site, which means each tree would have to be platted on a survey. That is difficult for the developer and difficult for staff to monitor, particularly 20 years from now. If a tree goes down in part of the tree save and you have a different owner, that owner might say they didn't know it was part of the tree save.

Peacock: Option B "protect trees 8 inches and larger in diameter in the setbacks along public frontage as required in the current ordinance." If Option B isn't working, then why choose A and B? Can you explain?

Weekly: That is what drove the ordinance. It is mandated in the setback, but the owner might say that blocks the view, so the owner wants the tree save in an area other than the setback. This allows them to maybe save existing trees somewhere else on the property and use that for the tree save versus planting new trees.

[Howard arrives]

Mr. Weekly suggested going through the examples in the PowerPoint presentation [copy attached].

Carter: In the first instance, would the developer/owner have to maintain or control the trees?

Weekly: They would be required to partner with Park and Rec or a land conservancy.

Carter: So, it would be tied to the land if it were sold?

Weekly: Yes.

Howard: So, in the first the developer has responsibility for the land?

Carter: There's a continuation of responsibility.

Howard: But, the property owner has to work with Park and Rec or the land conservancy. We'll make sure?

Johnson: That would be the function of the land conservancy or part of the deed with Park and Rec.

Howard: I don't want to just give it to them, it has to be preserved.

Johnson: It would be owned by the land conservancy.

Blackwell: Yes, they have to do it with somebody. The owner can't just own it himself; we have to make sure it stays safe.

Howard: It's either us or them, they can't just keep it?

Johnson: The definition of off-site mitigation is on page 2 (just above payment-in-lieu) and it reads "requirement of the developer to convey at no cost an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group. The land shall be conveyed subject to either a permanent conservation easement or deed restrictions for the purpose of preserving tree canopy. The conveyance and its terms must be: (1) approved by the city; (2) be acceptable to either Mecklenburg County or a land conservation group; and (3) comply with the tree ordinance guidelines."

Howard: A permanent easement to the City doesn't require a third party though?

Blackwell: Correct. We want to make sure if it is not us, it is protected by a land conservancy or Park and Rec and the easement is not consumed.

Howard: Thanks. I don't want to take us off on a tangent here.

Carter: Is an off-site donation tax deductible?

Johnson: If it goes to a land conservancy the development rights would be moot, so it could be tax exempt.

Howard: Would it count if it came to us at the City? Would that be the same situation with a payment in lieu to us?

Johnson: No.

Howard: In the last slide, is that an example of redevelopment?

Weekly: Now termed "additions to existing site."

Howard: So, it is not a rehab?

Weekly: If it is cleared, they have to meet the requirements. We used Upton's earlier as an example. They were required to save trees in the setback. Since the property is cleared, they now have the 15% tree save enacted, which means they might need to plant trees. If it had been a tear town, they could apply the trees.

Howard: Is there disagreement on this?

Weekly: Not in the cost analysis examples.

Blackwell: If property was developed under the old ordinance, they had to protect trees in the setback. If the property is developed under the new ordinance, they will have the 15% tree save. If they want to add on five years from now, we want them to save what has already been saved. We want to protect trees under the new ordinance.

Howard: So, that's in addition to the 15% when they develop years later if they have to make additions?

Blackwell: It's to save the 15%.

Weekly: It is to maintain what you have, but there are other options to help you stay in compliance.

Howard: So, in five years or fifteen years after if you start over that still holds?

Weekly: If you clear the whole site, you start over.

Blackwell: The first development is proposed, then fifteen years later if there are changes, we want to protect the trees that are already there or provide other options.

Peacock: So, we need to make decisions here. Are we voting on A, B, or C? What is your best guidance?

Burch: We need to know where you are on staff's recommendations or if you want to look at other options.

Dulin: Staff is recommending a hybrid of A and B, but I like a hybrid of B and C. A is not an option to me. B is okay if we are just talking about B only, but if we are trying to protect the 15%, I like B by juicing it up with C.

Peacock: Did the stakeholder's group consider B and C?

Weekly: There was disagreement on A and B, but no agreement on C.

Carter: I appreciate your concerns, Council member Dulin, but I am concerned about in-fill development and I'm concerned that by combining B and C we eliminate flexibility. A is a blanket. I think options are important. Staff has already told us that C is difficult to enforce. I don't want us putting something out there we can't enforce.

Dulin: The problem is if you look at something like installing a green roof. That is difficult for a small business. It could jack up the cost of a strip

shopping center. If you have a Subway restaurant, you are adding 15 jobs, but if we make this cumbersome, the franchise doesn't rent the space. We have gotten intrusive in the "American Way." We are trying to do right. Developers love trees, sites do better with trees. You can't even count the number of trees at Lake Pointe. Green sells, but if we make it too difficult, they will drive to Lancaster. I do not like Option A, I like a hybrid of B and C.

Howard: I apologize when I shoehorned this meeting in that I was going to arrive late and need to leave early, but what happens next? Are we recommending this to City Council for a public hearing?

Burch: Not immediately. Page 10 details the **Path Forward**. Because of the complexity of this subject, we suggest making a recommendation to the full Council for a dinner briefing. The rest of Council is going to need a briefing on this, then the full Council will set a date for the public hearing and hold the public hearing. It could then come back to Committee or go to the next meeting for a vote. There's a good chance it could come back here.

Howard: I'm opposed to us trying to figure out every detail. A hybrid of B and C makes sense to me.

Peacock: So, do we take a vote on the staff recommendation?

[Burgess – offline]

Carter: I still think A is the most flexible and the most reasonable for redevelopment and staff.

Dulin: Makes a motion for a hybrid of B and C.

Howard: Second.

Motion passes 3-1 (Peacock, Dulin, Howard – for; Carter – against)

Weekly: I would mention that C can include B because it includes the setback.

Howard: Does that get to the spirit?

Weekly: C remains now.

Dulin: If you take out of C the difficulty of large sites and identifying individual trees, some might not be in the tree save.

Blackwell: You'd have the information and next February you would have the data on the protected trees. Developers are surveying now.

Dulin: Trees die, they get sick.

Weekly: It will get less and less burdensome.

Peacock: I think because it is embedded it speaks to that.

Blackwell: It depends on how quickly this is developed how we administer B and C.

Carter: I like the phrasing to protect and replace on C. If a tree goes down or dies, does it have to be replaced?

Weekly: If it is an existing development, it does have to be replaced as written.

Peacock: Any comments on Payment in Lieu?

Howard: I like a hybrid here too. I understand the percentage strategy of replacing trees by purchasing but I've also talked to industry folk about the need for a ceiling. And, I agree with both. For a small development project, $40,000 is a big nut. I disagree with a floor, but a % up to blank should be considered. Staff's recommendation is percentage of tax value. I think it should be a serious enough amount that it's not the first option they select. The first option should be to put trees back. But, it should also be a reasonable amount. So, I would say I agree with staff's recommendation with a cap. And, staff can come back with what that might be. Where $40,000 might be a big nut to a small project, $1,500,000 could be significant on a large project. If they are going with Park and Rec, what are the logistics of buying here or there – it doesn't make sense. I think there should be a cap, but not a floor.

Peacock: So, you are asking for a cap?

Howard: Yes, a percentage up to …

Weekly: We discussed that. Our recommendation is still as written. The cap is possible. We were looking at payment in lieu based on the tax value not to exceed the average cost of land in Mecklenburg County outside of the Center City.

Howard: That takes care of it in the future.

[Howard leaves]

Weekly: Based on the tax value, if you have 10 acres, the 15% is 1.5 acres. So, you have the tax value of that as payment in lieu with a ceiling not to exceed blank based on the average cost of land in Mecklenburg County minus the Center City.

Dulin: The average of all land?

Weekly: Right.

Peacock: Is that what Mecklenburg County uses? That same matrix?

Blackwell: Yes, for buying park land.

Peacock: Is that a good measure or too low?

Blackwell: Sometimes the number is higher.

Peacock: But, the County number could be lower? Is there more on Payment in Lieu?

Weekly: The examples were already reviewed in the PowerPoint.

Peacock: What about references to other cities?

Weekly: We have just handed that out [copy attached]. We looked at the cities we were given reports on and overall if they used payment in lieu it was based per tree. Only one city had an example similar to ours and that was Tallahassee. They use 1.18 times the assessed value. The other cities were provided by the Institute of Government or were model communities and we looked at other cities in North Carolina. None use this except Chapel Hill, and it is per tree.

Peacock: I noticed there is no mention of Cleveland or Chicago?

Weekly: Chicago has a good green roof program.

Peacock: We need guidance. Are we looking at payment in lieu or a flat number? Council member Howard suggested a percentage and a cap. My first reaction is no payment in lieu particularly if Institute of Government Best Practices cities aren't using it. I would think you could google information on Cleveland or Chicago?

Carter: We want to preserve trees and develop land. I think this is an aggressive way to look and an option we could put into effect.

Weekly: It bears mentioning these are just options. They are to be used as exceptions in cases of hardship or other challenges. We prefer trees to be saved on site.

Dulin: The best case is someone can save 15% on their property and build. It seems funny to buy land, clear it, and then buy more land to put trees back.

Carter: The community places a value on those trees.

Dulin: When you break it down, it just seems funny.

Peacock: Mayor Pro Tem, do you have any questions?

Burgess: I'd like to think about it a little more. It seems reasonable.

Dulin: I think Council member Howard made some good points on the cap.

Burgess: I want to make sure we are being reasonable. It seems like a good approach.

Peacock: Are we ready for a dinner presentation or does this come back to us on June 28? Council member Dulin won't be at that meeting and as we go into summer it is going to be more difficult. Do we vote now to move to Council? I've already received some questions from Council member Cooksey and he heard part of this discussion while it was in Committee. We owe it to the stakeholders and subgroup to schedule no more meetings.

Carter: I like Council member Howard's suggestion.

Peacock: So, we have an Option C for payment in lieu.

Dulin: We have a B and C hybrid for the first non-consensus item and if you want to move forward that's okay but I don't like the idea of taking work we haven't seen to the full Council. We're asking for a hybrid of B and C and an Option C. It will be hard for me to take that to the full Council.

Peacock: It is a challenging subject. We are struggling to come out on the right side.

Dulin: I think this Committee is good at reading and I'd like to see the wording on B and C. It will be hard to take to Council. I can't go to Council member Barnes or Cannon and say I recommend this. I haven't seen it.

Burgess: If the wording reflects the discussion, we take it, but if it generates questions, perhaps a brief meeting before the dinner?

Carter: If we meet on June 28, we still make the timeline.

Burch: I think it would be most helpful to have this as refined as possible to help the rest of Council. It would also help staff shape the presentation. We could take the time to the June 28 meeting and come back with more information on B and C and payment in lieu with a cap. I think you are narrowing down the field of inquiry. Your next meeting is June 28, but there is currently nothing scheduled in July. You might want to consider setting a different meeting time.

Next Meeting – Special Called

The Committee agreed to call a special meeting with the Tree Ordinance as the only subject for **Monday, June 21 at 4:00 p.m. in Room 280**. If a recommendation can be reached, the June 28 meeting will be cancelled.

Meeting Adjourned

Environment Committee

Monday, June 7 at 11:00 a.m.
Charlotte-Mecklenburg Government Center
Rooms 270/271

Committee Members:	Edwin Peacock, Chair Nancy Carter, Vice Chair Susan Burgess Andy Dulin David Howard
Staff Resources:	Julie Burch

AGENDA

I. <u>Proposed Revisions to the Tree Ordinance</u>

Staff Resources: David Weekly and Tom Johnson, Engineering and Property Management

Final stakeholder and staff recommendations for changes to the ordinance will be presented for consideration by the Committee. <u>Attached</u> is the revised summary reflecting Committee discussion on May 24.

II. <u>Next Meeting</u>

Monday, June 28, 2010 at 3:45 p.m. in Room 280

Distribution:	Mayor/City Council Mac McCarley	Curt Walton, City Manager Stephanie Kelly	Leadership Team Environmental Cabinet

Environment Committee Meeting
June 7, 2010

Urban Ecosystem Analysis:

Review highlights……. Page 2

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Proposed Revisions to the Tree Ordinance
2007 stakeholder consensus items (13)…… Page 4
2010 stakeholder consensus items (6)……. Page 5
Grandfathering consensus item (1)…….. Page 6
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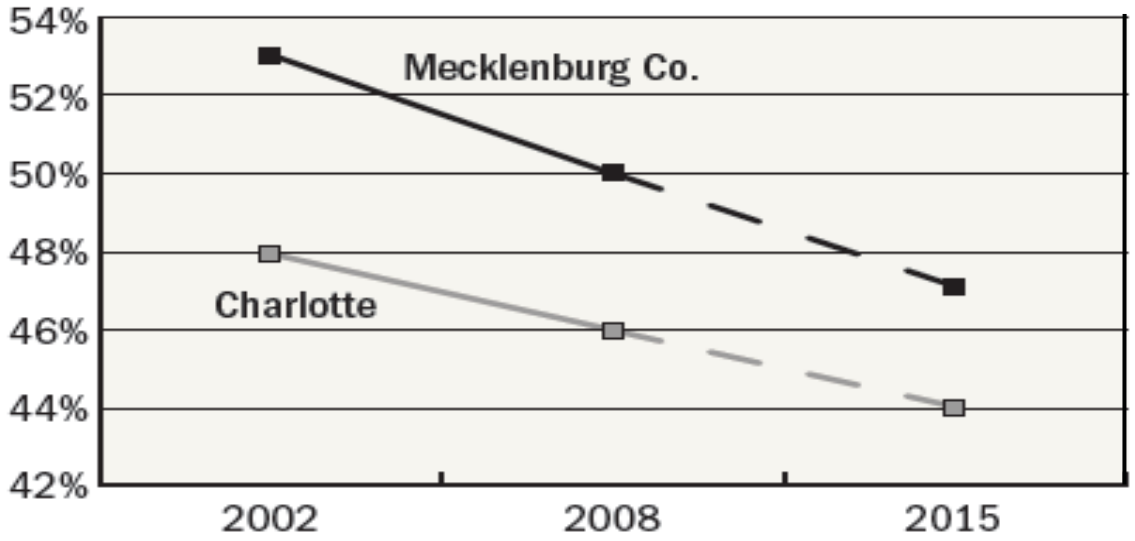
Attachment 1: Draft of Revised Ordinance Language (still under review by the Attorney's Office)

Attachment 2: Chart explaining Section 21.94

Note: This package, with exception of Attachment 1, has been revised to make corrections and add clarifications based on comments at the Environment Committee meeting held May 24, 2010.

Urban Ecosystem Analysis - Highlights

Figure 1) Percent tree canopy for Mecklenburg County and the City of Charlotte, NC



2002

	Total Acres	Canopy Acres	Population
Mecklenburg County	349,000	184,000 **(53%)**	746,427
Charlotte	183,000	88,000 **(48%)**	579,684

2008

	Total Acres	Canopy Acres	Population
Mecklenburg County	349,000	175,000 **(50%)**	902,803
Charlotte	183,000	85,000 **(46%)**	695,995

<u>What do these results tell us?</u>

- The County is within the tree canopy range recommended by American Forests (50-55%)
- The City has been effective in minimizing the loss of trees during a period of heavy development through various means including:
    - Developers preserving and planting trees in accordance with the existing Tree Ordinance
    - The City Planting and maintaining trees in the City's right-of-way including
        - Ongoing maintenance by Landscape Maintenance
        - Tree planting in CIP projects
        - The City Manager's recommended budget includes $483,192 for additional street tree plantings.
    - Volunteer programs including:
        - Creek Releaf
        - Charlotte Public Tree Fund
- Data for 2002 and 2008 reveal there was an overall net loss in tree canopy during this period. The proposed revisions to the tree ordinance will aid in reducing and possibly eliminating this downward trend.

History of Tree Ordinance &
Proposed Revisions to the Tree Ordinance
Chronology of Events

History:

1975	Enabling Legislation granted
1978	Tree Ordinance adopted Chapter 21 City Code
1989	Revised to add commercial tree protection in the front building setback
2000	Revised to include UMUD and MUDD zones
2002	Revised to add Single Family tree save and street tree planting

Proposed Revisions to the Tree Ordinance – Chronology of Events:

Dec. 1, 2005	Stakeholder Committee formed
Aug. 9, 2007	**Stakeholder Committee reaches consensus on proposed revisions (see page 4 for list of 2007 consensus items)**
June ’08 – Jan ’09	Staff meets with Environment Committee, Stakeholder Committee, NAIOP, REBIC to address concerns
Feb. 16, 2009	Environment Committee requests Stakeholder Committee to complete a cost/ benefit study
Mar. 27, 2009	Stakeholder Committee engages Subgroup (development and design community) to conduct a cost/benefit analysis
Dec. 2009	Subgroup completes cost/benefit analysis and reports to Stakeholder Committee
Jan. 19, 2010	Staff meets with Environment Committee for a status update on Cost/ Benefit Analysis and Urban Ecosystem Analysis
Jan. -April 2010	Stakeholder Committee reconvene to discuss subgroup’s report and to reach consensus on outstanding items
April 26, 2010	**Final Stakeholder Committee meeting. Consensus reached on six proposed revisions plus grandfathering (see pages 5 and 6). Consensus not reached on two proposed revisions. Stakeholders understand that staff will be making a recommendation on these two items (see pages 7-9).**

Proposed Revisions to the Tree Ordinance
2007 Consensus Items

1. **Require 15% minimum tree save in commercial development with flexible options for compliance. This is needed to continue efforts of maintaining an appropriate tree canopy. *(Applicable Section 21.94)***

2. Increase the number of trees in parking lots or increase growing space for trees. This is needed to continue efforts of maintaining an appropriate tree canopy, and to shade parking lots and reduce urban heating. (*Applicable Section 21.96(f)(2)(a)(1))*

3. Ensure that tree save tree save areas are free of invasive species (kudzu, etc.). This protects trees from impacts of invasive plants and vines. (*Applicable Section 21.93 (a))*

4. Require specific distance between trees and site lighting for long term growth and public safety. Ensuring both survivability of trees and lighting for safety. (*Applicable Section 21.96(d))*

5. Require 50% of new trees to be native species and specify diversity within guidelines document. Mono-culture in trees is not sustainable. (*Applicable Section 21.96(c))*

6. Create a minimum distance between tree save areas and the footprint of buildings to ensure trees can be preserved during construction. Tree save is allowed within single family lots and can create conflicts if it is too close to the building footprint. (*Applicable Section21.93 (e))*

7. Allow tractor trailer and bus parking lots to plant the required parking lot trees around the perimeter of parking lots. This measure will resolve conflicts between large vehicles and landscaped areas. (*Applicable Section 21.96(f)(2)(a)(2))*

8. Define distance from utility rights of way and tree save areas. This prevents protected trees from being removed by utility companies after plan approval. *(Applicable Section 21.93(g)&(h))*

9. Define activities allowed in tree save areas such as installation of paths, removal of dead trees and invasive species. Currently those areas are off limits and guidance is needed.(*Applicable Section 21.93(c))*

10. Specify what the tree ordinance triggers are for redevelopment and when compliance is required. *(Applicable Section 21.4 (ii))*

11. Amend the penalties section of the ordinance to include single family property because this was overlooked with the last revision in 2002. *(Applicable Section 21.124 (b)(4))*

12. Include incentive limits for single family development in section 21-95 for clarification so designers don't have to refer to another document for the details. *(Applicable Section 21.95 (f))*

13. Require field verification of tree save areas less than 30 ft in width on first plan submittal to allow staff ability to inspect sites to ensure trees within narrow tree save areas can be expected to survive. *(Applicable Section 21.93(d))*

Proposed Revisions to the Tree Ordinance
2010 Consensus Items

The following are proposed revisions to the tree ordinance as a result of the reconvening of the Stakeholder committee in 2010 in response to the cost/benefit study prepared by the subgroup. These revisions elaborate on item 1 of the 2007 consensus items (Require 15% minimum tree save in commercial development with flexible options). These are additional revisions and do not conflict with other proposed revisions.

1. Allow Mecklenburg County Parks and Recreation Greenway trails to be used as tree save areas
   Tree save areas may be allowed to contain Mecklenburg County Park and Recreation Greenway trails. Trail placement must be coordinated with City so that the effective tree save area required is maintained *(Applicable Section 1 – Sec. 21.93 (e)).*

2. Allow trees in utility easements to count towards the tree save requirement for commercial development
   Existing tree canopy which overhangs existing underground utility easements may satisfy the tree save requirement at the discretion of City pursuant to the tree ordinance guidelines *(Applicable Section 1 – Sec. 21.93 (f)).*

3. Allow small maturing trees to be planted beneath over head power lines to satisfy the tree save requirement for commercial development
   Redeveloping sites may plant approved small maturing trees based on Duke Energy's approved planting list beneath or within 20 feet of the centerline of an overhead (roadside) power distribution easement that are accessible by mechanical equipment for maintenance. This placement may be used to satisfy the tree save requirement when no other viable tree save areas exists as agreed upon by City. To be placed into guidelines: When the same lines are located along the side and rear property lines and do not permit vehicular access for maintenance, small maturing trees may be planted within 20 feet of the distribution centerline. There will be no tree save designated within transmission easements. *(Applicable Section 1 – Sec. 21.93 (g)).*

4. Allow options for tree save requirements for Neighborhood Services zoned sites
   Neighborhood Services zoned sites less than or equal to 12 acres are to have the same options as transit station areas and mixed use centers. *(Applicable Section 1 – Sec. 21.94 (ii) / See also chart in Attachment 2).*

5. Allow options for tree save requirements for Industrial zoned sites
   Industrial zoned sites are to have the same options as transit station areas and mixed use centers. *(Applicable Section 1 – Sec. 21.94 (ii) / See also chart in Attachment 2).*

6. The following triggers for redevelopment (additions to existing sites) would require compliance with the tree ordinance:
   - Adding 5% to a building or 1,000 sq. ft. impervious area
   - Adding 10 or more new parking spaces
   - Façade change of 10% or more to any one wall by adding doors, windows, closing or openings, and or increasing walls

   Façade – any building wall facing a vehicular way intended for public travel regardless of ownership. *(Applicable Section 1- Sec. 21.4)*

Proposed Revisions to the Tree Ordinance
Consensus on Grandfathering

Exempt existing subdivision plans and rezonings from proposed revisions.
The stakeholder committee reached consensus on the proposed language regarding applicability and, more specifically, what projects shall be exempted from the new requirements of the tree ordinance. The item discussed most was the vesting rights for a conditional zoning district. See Section 2 of the revised ordinance (Attachment 1) for the specific language.

Proposed Revisions to the Tree Ordinance
2010 Non-consensus Staff Recommendations

There were two items where the stakeholder committee was unable to reach consensus. The following lists the two issues, the options considered, the final vote by the stakeholder committee, and staff's recommendations and justification:

1) Address tree save requirements for "additions to existing sites"* :
For additions to existing sites that meet one or more of the following criteria**:

- Adding 5% to a building or 1,000 sq. ft. impervious area
- Adding 10 or more new parking spaces
- Façade change of 10% or more to any one wall

The tree save requirements shall be met by one of the following options:
Option A***: Incorporate the 15% tree save requirement. **(1 vote)**
Option B***: Protect trees 8 inches and larger in diameter in the set-backs along public frontage as required in the current ordinance. **(2 votes)**
Option C***: Protect all trees outside of the existing impervious area footprint up to 15% of the total site. **(5 votes)**

***** The term "redevelopment" is not used because it is not referenced in the tree ordinance language and it can be interpreted in different ways.

**This criteria enacts the tree ordinance for additions to existing sites. This criteria is currently in the Tree Ordinance Guidelines. The Stakeholder Committee agreed that it should be moved into the ordinance.

***Options A, B and C include the tree planting requirements (perimeter and parking lot trees). The tree planting requirements may be altered due to City approved hardship. A City approved hardship occurs when there is a conflict with existing regulatory requirements. In these cases modifications to tree planting requirements would be allowed. An example would be a site with a parking space count less than current zoning ordinance standards. The tree ordinance would not require removal of parking spaces to plant trees.

Staff's recommendation and Justification:

Staff did not select option A because findings from the cost/benefit study reveal in many cases it is difficult to meet the 15% tree save requirement for additions to existing sites.

Staff did not select option B because in the future there will be situations where there will be sites that were originally developed under the revised ordinance that will have the 15% tree save area. When these sites are added upon, it is staff's belief that the existing 15% tree save area should be maintained.

Staff did not select option C because it will be difficult to administer and enforce. Additionally, this would increase the owner's costs for minor site additions.

Recommendation:
A combination of options A and B:

- Require option B, protect trees in the setback, for additions to existing sites approved prior to the effective date of the revised ordinance (Staff is proposing an ordinance revision effective date of January1, 2011).
- Require option A, the 15% tree save requirement, for additions to existing sites approved after the effective date of the revised ordinance. Sites approved after this date will have existing 15% tree save areas. This will require these existing 15% tree save areas to be maintained. If the additions to the site encroach on the 15% tree save area, staff also recommends providing the various options to aid in compliance including green roofs, off-site mitigation, and payment in lieu.

Applicable Section 1 – Sec. 21-4 / See also chart in Attachment 2

Justification:
This recommendation provides relief for owners/developers who wish to make additions to their sites that were originally developed under the current ordinance. However, it requires owners/developers who wish to make additions to their sites to preserve the tree save already established for sites that were developed under the revised ordinance. The later requirement will aid the City in meeting its tree canopy goal.

Notes:
1. Developed sites that are completely cleared and rebuilt upon are not considered "additions to existing sites." The tree save requirements for this scenario will be based upon Section 21.94 (i) (ii) & (iii).
2. Related examples from the Cost/ Benefit Analysis will be provided at the June 7th meeting.

2) Address how to calculate payment in lieu:
Option A: The requirement of the developer to contribute to a City administered tree preservation fund a dollar amount equal to a percentage of the tax value of property being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii) (3) or (iii) (3). **(4 votes)**

Option B: Payment in lieu – requirement of the developer to contribute to a City administered tree preservation fund a dollar amount equal to a percentage of the property being developed at the time of plan approval based on $40,000-$50,000 per acre. This percentage will be determined in accordance with Sections 21-94(ii) (3) or (iii) (3). **(4 votes)**

Staff's recommendation and Justification:

Recommendation:
Option A
Applicable Sections 21-2 Definitions and 21.94 (ii) (C) & (iii) (B) & (iv) (B). See also chart in Attachment 2.

Justification:

1. It is City staff's intent that the majority of tree save be on-site and that the off-site mitigation option and the payment-in-lieu option be used in situations of hardship as an exception, not a rule. If the payment-in-lieu value were set at $40,000 - $50,000 then in many cases the value would be less than the tax value (sometimes significantly less). It is staff's belief that a payment-in-lieu value established less than tax value will result in the payment-in-lieu option being used the majority of the times.
2. In cases where the payment-in-lieu option is used, it is staff's desire to seek to purchase land for tree preservation in similarly zoned land; otherwise, there are the following concerns:
    a. A significant tree canopy loss in certain areas such as corridors and transit station areas.
    b. The creation of a "doughnut" effect (i.e. the purchase of the remaining undeveloped land primarily along the perimeter of Mecklenburg County).

    These concerns will be difficult to avoid if the payment-in-lieu value is less than the tax value.

Notes:
1. Staff researched how other municipalities address payment in lieu options. The results of this research will be provided at the June 7th meeting.
2. Related examples from the Cost/ Benefit Analysis will be provided at the June 7th meeting.

Proposed Path Forward

June 7, 2010	Finalize discussion with Environment Committee for recommendation to full Council
July 2010	Dinner briefing
July 2010	Authorize publication of notice and set public hearing on an amendment to the City Code to amend the Tree Ordinance
August 2010	Hold a Public Hearing on amending the Tree Ordinance
September 2010	City Council adoption of revised ordinance
January 1, 2011	Effective date

Attachment 2) Tree Save Requirements and Exceptions for Commercial Development

(Section 21.94)

Zoning designation	*Requirement*	*Requirement*	*Requirement*		
Commercial zonings: B1, O2 etc	Minimum 15% of the site protected as tree save	If less than 15% of the site has existing trees, additional trees shall be planted at a rate of 36/trees per acre	If any portion of the tree save area is removed, trees shall be re-planted at 150%		
Exceptions	***Option***	***Option***	***Option***	***Option***	***Option***
UMUD & UMUD-O within I-277 loop and any TOD, MUDD or UMUD in transit station areas	EXEMPT	N/A	N/A	N/A	N/A
Transit station areas or mixed-use centers, NS 12 acres or less , I1 and I2	Provide tree save on site (entire or in combination)	Plant or replant trees at 36 trees/acre on site (entire or in combination)	Install a green roof (entire or in combination)	Under take off site mitigation (entire or in combination; may not be used with payment in lieu)	Provide payment in lieu (entire or in combination; may not be used with off-site mitigation)
Corridors outside of transit station areas	Provide tree save on site (entire or in combination)	Plant or replant trees at 36 trees/acre on site at 150% (entire or in combination)	Install a green roof at 150% (entire or in combination)	Under take off-site mitigation at 150% (entire or in combination; may not be used with payment in lieu)	Provide payment in lieu at 150% (entire or in combination; may not be used with off-site mitigation)
Additions to existing sites per Section 21-4 (ii) (for sites originally approved prior to January 1,2011)	Maintain tree save in setback	N/A	N/A	N/A	N/A
Additions to existing sites per Section 21-4 (ii) (for sites originally approved after January 1, 2011)	Provide tree save on site (entire or in combination)	Plant or replant trees at 36 trees/acre on site at 100% or 150% (based on land use) (entire or in combination)	Install a green roof at 100% or 150% (based on land use) (entire or in combination)	Under take off-site mitigation at 100% or 150% (based on land use) (entire or in combination; may not be used with payment in lieu)	Provide payment in lieu at 100% or 150% (based on land use) (entire or in combination; may not be used with off-site mitigation)

***in all cases internal and perimeter tree requirements must be met.**

ORDINANCE NUMBER:_____ AMENDING CHAPTER 21

AN ORDINANCE AMENDING CHAPTER 21 OF THE CHARLOTTE CITY CODE ENTITLED "Trees"

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that:

Section 1. Chapter 21 of the Charlotte City Code is amended as follows:

"ARTICLE I. IN GENERAL

Sec. 21-1. Short title.

This chapter will be known and may be cited as the "Charlotte Tree Ordinance."

Sec. 21-2. Definitions.

Words and phrases used in this chapter that are not specifically defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caliper- ~~means~~ the diameter measurement of the trunk taken six inches above ground level for trees up to and including four-inch caliper size. Measurement shall be taken 12 inches above the ground level for larger trees.

City- ~~means~~ the city engineer, the city arborist or the senior urban forestry specialist, or their designated agent.

Commission- ~~means~~ the city tree advisory commission.
d~~D~~bh- (diameter at breast height)- ~~means~~ the diameter of a tree 4 1/2 feet above the average ground level.

Corridors - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Designated mixed-use centers - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map.

Drip line- ~~means~~ a vertical line running through the outermost portions of the tree crown extending to the ground.

Existing tree canopy- ~~means~~ tree canopy that has existed for at least two years prior to development as evidenced by city or county aerial photographs, or a tree survey of trees one-inch caliper and larger.

Heritage tree- ~~means~~ any tree that is listed in the North Carolina Big Trees List, the American Forest Association's Champion Tree list or any tree that would measure 80 percent of the points of a tree on the North Carolina Big Trees List.

Homeowner - ~~means~~ a tenant or owner of an existing single-family or duplex residence.

Impervious cover- ~~means~~ buildings, structures and other paved, compacted gravel or compacted areas which by their dense nature do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Internal planting area- ~~means~~ a planting area located on private property outside the public right-of-way.

Invasive plant species-invasive plant species are those plant species that spread rapidly with little or no assistance from people. For the purposes of this chapter the following plant species are considered invasive: Bushkiller-*Cayratia japonica*, Chinese wisteria-*Wisteria sinensis*, English ivy- *Hedera helix* Japanese wisteria-*Wisteria floribunda*, Japanese honeysuckle- *Lonicera japonica*, kudzu-*Pueraria montana*.

Land conservation group – a nonprofit land trust or similar organization approved by City that permanently protects land, water, trees and wildlife habitat to enhance quality of life in Charlotte and Mecklenburg County.

Off-site mitigation- requirement of the developer to convey at no cost an equal amount of land in Mecklenburg County with a mature tree canopy to Mecklenburg County or to a land conservation group. The land shall be conveyed subject to either a permanent conservation easement or deed restrictions for the purpose of preserving tree canopy. The conveyance and its terms must be: (1) approved by the city; (2) be acceptable to either Mecklenburg County or a land conservation group; and (3) comply with the tree ordinance guidelines.

Paved area- ~~means~~ any ground surface covered with concrete, asphalt, stone, compacted gravel, brick, or other paving material.

Payment in lieu – requirement of the developer to contribute to a city administered tree preservation fund a dollar amount equal to a percentage of the ~~appraised~~tax value of the land ~~property~~ being developed at the time of the plan approval. This percentage will be determined in accordance with Sections 21-94(ii)(3) or (iii)(3).

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Pedestrian scale lighting- lighting that is specifically intended to illuminate the sidewalk, as opposed to vehicular travel ways, and shall not exceed 15 feet in height.

Perimeter planting strip~~ means~~- a planting strip that abuts a public street or transportation right-of-way.

Person-~~ means~~ a public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Planting strip~~ and~~ and -*planting area*- ~~ mean~~ ground surface free of impervious cover and/or paved material which is reserved for landscaping purposes.

Renovation-~~ means~~ any construction activity to an existing structure which changes its square footage, changes its footprint or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root protection zone- ~~ means,~~ generally, 18 inches to 24 inches deep and a distance from the trunk of a tree equal to one-half its height or its drip line, whichever is greater.

Specimen tree- ~~ means~~ a tree or group of trees considered to be an important community asset due to its unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the city arborist or urban forestry specialist. Examples include large hardwoods (*e.g.*, oaks, poplars, maples, etc.) and softwoods (*e.g.*, pine species) in good or better condition with a dbh of 24 inches or greater, and smaller understory trees (*e.g.*, dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of ten inches or greater.

Streetscape plan- ~~ means~~ a plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within the city. Such plans are effective following approval by the city council.

Suburban commercial zones- ~~ means~~ all zoning districts other than single-family development and urban zones as defined in this section.

Topping- ~~ means~~ any pruning practice ~~that results~~that result in more than one-third of the foliage and limbs being removed. This includes pruning that leads to the disfigurement of the normal shape of the tree.

Transit station area – high density area within approximately ½ mile of an existing or planned rapid transit station as designated by the city planning department

Tree, large maturing- ~~, means~~ any tree the height of which is 35 feet or greater at maturity.

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Tree, large maturing shade- ~~, means~~ any tree the height of which is 35 feet or greater at maturity and has a limb spread of 30 feet or more at maturity.

Tree, small maturing- ~~, means~~ any tree the height of which is less than 35 feet at maturity.

Tree evaluation formula- ~~means a~~ formula for determining the value of trees and shrubs as published by the International Society of Arboriculture.

Tree ordinance guidelines~~ means~~ --instructions~~the guidelines~~ and specifications of tree planting as published by the city.

_____*Tree protection zone* a distance equal to the designated zoning district setback or 40 feet from the front property line, whichever is less, or from the side lot line on a corner lot. For urban zones, the tree protection zone shall be the same as the planting strip required for the associated zoning district or as designated in a streetscape plan. This definition does not apply to single-family development.

Tree save area - ~~means~~ an area containing existing healthy tree canopy in a single-family subdivision ~~development~~ or an area containing existing or mitigated off site healthy tree canopy in a commercial development measured in square footage. The area may include up to 5 feet beyond the drip line. ~~measured in square footage to the drip line plus five feet for a stand-alone tree, or to the perimeter drip line plus five feet for a group of trees.~~

Urban zones – ~~means a zoning district~~ zoning districts within the city as listed in the tree ordinance guidelines and as may be amended from time to time.

Wedges - are those shown on the centers and corridors map as part of the transportation action plan (adopted in 2006), or any adopted updates to this map."

Sec. 21-3. Purpose and intent.

(a) It is the purpose of this chapter to preserve, protect and promote the health, safety and general welfare of the public by providing for the regulation of the planting, maintenance and removal of trees located on roadways, parks and public areas owned or controlled by the city and on new developments and alterations to previous developments on private property.

(b) It is the intent of this chapter to:

(1) Protect, facilitate and enhance the aesthetic qualities of the community to ensure that tree removal does not reduce property values.

(2) Emphasize the importance of trees and vegetation as both visual and physical buffers.

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(3) Promote clean air quality by reducing air pollution and carbon dioxide levels in the atmosphere, returning pure oxygen to the atmosphere and increasing dust filtration.

(4) Reduce the harmful effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights.

(5) Minimize increases in temperatures on lands with natural and planted tree cover.

(6) Maintain moisture levels in the air of lands with natural tree cover.

(7) Preserve underground water reservoirs and permit the return of precipitation to the groundwater strata.

(8) Prevent soil erosion.

(9) Provide shade.

(10) Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of stormwater drainage problems.

(11) Conserve natural resources, including adequate air and water.

(12) Require the preservation and planting of trees on site to maintain and enlarge the tree canopy cover across the city.

Sec. 21-4. Applicability and exemptions.

This chapter shall apply to all developers and/or owners of real property involved with the erection, repair, alteration or removal of any building or structure as well as the grading in anticipation of such development. Compliance with this chapter will be required in the following circumstances: (i) new development and (ii) in the case of the following cumulative (since July 1 2010) additions or changes: (a) additions to existing sites that are equal to or greater than 5% of the site's existing building square footage or the addition of 1,000 sq. ft. or more of building; (b) or when ten (10) or more parking spaces are added to the site with no building,; or (c) Façade changes to 10% or more of any building wall facing a vehicular way intended for public travel regardless of ownership (e.g., adding or eliminating doors, windows, closings, openings, or increased wall area) The following are excluded from section 21-94 of this chapter:

(1) The homeowner of a single-family or duplex residence.

(2) Property which as altered requires no addition of square footage or exterior wall modification to an existing structure on that property.

ARTICLE II. ADMINISTRATION

Sec. 21-31. Tree advisory commission.

(a) The city council may establish a tree advisory commission. This commission may from time to time make recommendations relative to trees to the city manager or his authorized representative and perform other duties as designated in this chapter.

(b) The tree advisory commission shall be composed of 12 members, a majority of whom shall be residents of the city. Seven of the members shall be appointed by the city council, and three of the members shall be appointed by the mayor. The remaining two members shall be representatives of the city engineering and property management department and shall be ex officio members.

(c) Those members appointed by the mayor and city council shall serve three years, and no member appointed by the mayor and city council shall be eligible to serve more than two consecutive full terms. Member terms shall be appointed on a staggered basis so that no more than five of the ten appointed seats become vacant at one time.

(d) Any member who fails to attend the requisite number of meetings as set out in the boards and commissions attendance policy adopted by the city council shall be automatically removed from the commission. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided in this section. The chair of the commission will notify the proper appointing authority if a member is absent the requisite number of the meetings, and appointment will be made by the appointing authority to fill that vacancy.

Sec. 21-32. City jurisdiction and authority.

(a) The city shall have the jurisdiction, authority, control, supervision and direction over all trees planted or growing in the city, except where exempted in this chapter.

(b) The city shall prepare and publish guidelines and specifications for tree planting, care, maintenance, removal and landscape design in a document entitled "Tree Ordinance Guidelines" for reference and use by property owners, developers, consultants and the general public in furtherance of the requirements and intent of this chapter. This document shall be reviewed periodically by the city's engineering department and the tree advisory commission.

(c) The city shall review all applications for permits for any planting, removal and/or trimming or cutting of trees subject to this chapter and shall have the authority to grant or deny permits and to attach reasonable conditions to the granting of a permit.

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ARTICLE III. MAINTENANCE AND PROTECTION OF TREES

Sec. 21-61. Trees on public property.

(a) No person shall spray, fertilize, remove, destroy, cut, top, or otherwise severely prune, including the root system, or treat any tree or shrub having all or any portion of its trunk in or upon any public property without first obtaining a written permit from the city and without complying strictly with the provisions of the permit and this chapter.

(b) No person shall plant any tree or shrub on any public street right-of-way or public property without first obtaining a permit from the city and without complying strictly with the provisions of the permit and the provisions of this chapter.

(c) No person shall damage, cut, or carve any tree or shrub having all or any portion of its trunk in or upon any public property; attach any object, including, but not limited to, rope, wire, nail, chain or sign, to any such tree or shrub or attach any such object to the guard or stake intended for the protection of such tree.

(d) No person shall place, store, deposit, or maintain, upon the ground in any public street or public place, any compacted stone, cement, brick, sand or other materials which may impede or obstruct the free passage of air, water and fertilizer to the roots of any tree or shrub growing in any such street or place without written authorization from the city.

(e) No person shall change the natural drainage; excavate any ditches, tunnels, or trenches; or lay any drive within the root protection zone of any tree having all or any portion of its trunk in or upon any public property without obtaining a permit from the city and without strictly complying with the provisions of the permit and provisions of this chapter.

(f) No person shall perform, or contract with another to perform, excavation or construction work within the drip line of any tree having all or any portion of its trunk in or upon any public property without first installing a fence, frame or box in a manner and of a type and size satisfactory to the city to protect the tree during the excavation or construction work. All building materials, equipment, dirt or other debris shall be kept outside the root protection zone. The tree protection fence, frame or box shall not be removed unless or until the city authorizes it to be removed.

(g) Liability for damages or injuries to any tree or shrub having all or any portion of its trunk in or upon public property resulting from a violation of this article shall be determined by the city in accordance with section 21-124 of this chapter. The person performing the work and the person contracting for the performance shall be jointly and severally liable for any penalties or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this article. However, no claims shall be made more than five years after damage can be proven to have occurred.

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Sec. 21-62. Trees on private property.

(a) Any person owning or occupying real property bordering on any street where trees have branches, limbs, trunks, or other parts projecting into the public street or property shall prune such trees or keep them trimmed in such a manner that they will not obstruct or shade the streetlights, obstruct or interfere with the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct views of any street or alley intersection.

(b) Any person owning or occupying real property bordering on any street, park or other public property, on which there may be trees that are diseased or insect infested, shall remove, spray or treat any such trees in a manner that will not infect or damage nearby public vegetation or cause harm to the community or citizens therein.

(c) No tree equal to or larger than ~~eight~~ 2 inches caliper ~~dbh~~ may be trimmed, pruned, or removed from the ~~tree protection zone~~ tree save area without a permit. No grading, demolition, trenching, or other activity which may adversely affect trees in this zone may proceed prior to approval and issuance of necessary permits by the city.

(d) It shall be the duty of the property owner to maintain all trees planted pursuant to, or protected by, this chapter in a healthy condition in accordance with this section and the tree ordinance guidelines developed by the city. Trees shall be allowed to grow to their natural height and form. Topping is prohibited.

(e) When trees that are subject to or protected by this chapter die, are missing, or are otherwise deemed unhealthy by the city, they shall be removed and replaced by the property owner to comply with any existing streetscape plan or as directed by the city, normally during the next planting season which is November through March. New owners of properties already in compliance must maintain that compliance. Trees of the same, approved species as those existing may be used to replace dead, missing or unhealthy trees. The property owner is encouraged to use large maturing shade trees as replacements when possible. Nothing in this section is intended to impose a requirement that the property owner maintain more trees than those required for the site even if he has voluntarily done so in the past.

(f) If the owner or occupant of such property does not perform the duties set out in subsections (a), (b) and (e) of this section, the city may order the pruning, removal or treatment of trees on private property that cause obstructions, present insect or disease problems or otherwise present a danger to public health or safety. The order shall be in writing to the owner or occupant responsible for such condition and shall be acted upon within 30 days from the time of the receipt of the order. If, after 30 days, the owner or occupant has not responded or acted to prune, remove or treat the trees, the city shall have the authority to enter upon the property to perform the work necessary to correct the condition and bill the owner or occupant for the actual costs incurred. In situations deemed necessary to the public health, safety, or welfare, the city may act without prior notification to the property owner or occupant.

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Sec. 21-63. Permits.

(a) Persons requesting to do any planting, removal, trimming, or cutting of trees subject to this chapter, or any of the activities prohibited by this article, shall secure a permit for tree work from the city engineering and property management department before the activities commence. For purposes of this subsection, a landscape plan approved by the city constitutes a permit.

(b) The city shall have the authority to review all requests for permits and to grant or deny permits or attach reasonable conditions to the permits.

(c) Individual permits will not be required for city and state department of transportation projects so long as tree preservation and protection requirements are included in the project plans.

Sec. 21-64. Utilities.

(a) Public and private utilities which install overhead and underground utilities, including CATV installations and water and sewer installations by or at the direction of the Charlotte-Mecklenburg Utilities, shall be required to accomplish all work on property subject to this article in accordance with the company's written pruning and trenching specifications or as mutually agreeable to the property owner, the city and the utility.

(b) Public and private utilities shall submit written specifications for pruning and trenching operations to the city for approval. Specifications shall be reviewed periodically by the city and the tree advisory commission for necessary improvements and as required by modifications in this chapter. Upon approval of its specifications, a utility shall not be required to obtain a permit for routine trenching and pruning operations affecting a tree having all or any portion of its trunk in or upon any public property so long as such work is done in strict accordance with the approved specifications. Requests for the removal of trees shall be handled on an individual permit basis. Failure to comply with the approved specifications is a violation of this chapter.

(c) Refer to Section 21-96 for light pole location requirements.

Sec. 21-65. Tree protection and/or planting required on public property.

This chapter shall apply to public entities and owners of public property, and it shall be unlawful for such owners to fail to comply with all sections of this chapter unless specifically exempted there from.

Secs. 21-66--21-90. Reserved.

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ARTICLE IV. GENERAL LAND DEVELOPMENT REQUIREMENTS

Sec. 21-91. Tree survey.

Tree save area boundaries shall be required and described in meets and bounds and be recorded on the final plat.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family development shall require a tree survey. The survey shall identify all trees of eight-inch dbh or greater and all planted trees of two inch caliper or greater and six feet in height that grow partially or wholly within the city right-of-way.

All applications for grading, building, demolition, land use, change of use or rezoning permits on all property, except single-family development, subject to 21.94 (iv) A) shall require a tree survey. The survey shall identify all trees of eight-inch dbh or greater within the tree protection zone.

Sec. 21-92. Tree protection plan.

(a) All applications for grading, building, demolition, land use, change of use, or rezoning shall include a tree protection plan of all tree save areas and tree protection zones. On sites where less than one acre is being graded, tree protection is still required and may be incorporated in the tree planting plan submitted in accordance with section 21-94. A tree protection plan shall include the following:

(1) A tree and root protection zone plan for any existing trees having all or any portion of their trunks in or upon any public property, which are:
a. All trees of eight-inch dbh or larger; and
b. Any planted trees of two-inch caliper or larger.

(2) A tree and root protection zone plan for the following:
a. Existing trees of two ~~eight~~ inch caliper~~dbh~~ and larger in the tree protection zone and tree save area; and
b. Any trees of two-inch caliper or larger being saved for credit toward planting requirements.

(b) All applications for single-family development shall include a tree and root protection zone plan for the following:

(1) Heritage trees;

(2) Specimen trees; and/or

(3) Tree save areas being protected for credit toward the tree save requirement for single-family development.

Sec. 21-93. General tree save requirements.

(a) Tree save areas shall be free of invasive plant species unless approved otherwise by the city. If an area proposed for tree save contains invasive plant species at the time of such proposal, such invasive plant species shall be removed prior to the issuance of final certificate of occupancy for commercial and multi-family properties or at final plat approval for subdivisions. Invasive plant species are considered removed if they are no longer living in the tree canopy. Subsequent property owners are required to maintain this condition for compliance with the chapter.

(b~~a~~) Tree removal in a tree save area will require a permit from the city pursuant to section 21-63 of this chapter and may require mitigation. Invasive plant species and hazardous trees can be removed without city approval.

(c~~d~~) Per the tree ordinance guidelines, any alterations to the tree save area must be accomplished without mechanized equipment and made of organic, environmentally friendly materials, unless approved otherwise by the city.

(d) Any tree save area less than 30 feet in width must have boundary and property lines delineated on site by a surveyor prior to the first submittal of plans.

(e) No structure will be allowed within 10 feet of the tree save area. A building restriction must be noted on the record plat in accordance with the tree ordinance guidelines.

(f) Tree save areas may include Mecklenburg County Park and Recreation Greenways. Trail placement must be coordinated with the City so that the effective tree save area required is maintained.

(g) Tree save areas on commercial properties may include existing tree canopy which overhangs existing underground utility easements based upon adherence to the tree ordinance guidelines and approval by the City.

(h~~g~~) On commercial properties in cases where no other viable tree save areas exist and based upon adherence to the tree ordinance guidelines and approval by the City, tree save areas may include the planting of small maturing trees in accordance with Duke Energy's approved planting list and within 20 feet of the centerline of power distribution easements that are accessible for maintenance by mechanical equipment.

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Sec. 21-94. Tree save requirements for commercial development.

A minimum of 15% of the overall commercial site must be preserved as tree save area (for purposes of this Section, "commercial tree save area"). If less than 15% of the site has existing trees, additional trees shall be planted at a rate of 36 trees per acre to meet the commercial tree save area requirement. If any portion of the commercial tree save area is removed, trees will be re-planted at 150% of the area removed.

The following exceptions to this requirement apply:

(i) UMUD & UMUD-O within the I-277 loop and any TOD, MUDD or UMUD zoned parcels in transit station areas, as designated in a transit station area plan, are exempt. If no transit station area plan has been adopted, the transit station area will be designated as the property within 1/2 mile of an existing or proposed station location identified on the approved Metro Transit Commission (MTC) System Plan.

In all cases a~~A~~ny perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

(ii) In transit station areas, designated mixed-use centers, NS zoning districts (for sites of twelve acres or less), and I-1 and I-2 zoning districts, the following measures may be chosen, individually or in combination, such that the measures are equal to 100% of any portion of the commercial tree save area not preserved as required above:

A) Plant or replant trees at a rate of 36 trees per acre on-site

B) Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report per the tree ordinance guidelines.

C) Undertake either off-site mitigation, or payment in lieu. Off-site mitigation and payment in lieu may not be used together to met this requirement.

In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

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~~(i)~~(iii) In corridors that are outside of transit station areas, and existing commercial sites or additions to existing commercial sites in wedges, the following measures may be chosen, individually or in combination, such that the measures are equal in area to 150% of any portion of the required commercial tree save area not preserved as required above:

A) Install and maintain a living green roof on the project to be maintained in perpetuity. The owner shall submit an annual inspection and maintenance report per the tree ordinance guidelines.

B) Undertake either off-site mitigation or payment in lieu. Off-site mitigation and payment in lieu may not be used together to meet this requirement.

In all cases, any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

(iv) Additions to existing sites that meet the criteria in Section 21-4 (ii), shall have the following tree save requirements:

A) Protect all trees of 8 inch dbh or greater within the tree save area which shall be the designated zoning district setback or 40 feet from the front property line, whichever is less. If the site is on a corner lot the tree save area shall be the designated zoning district setback(s) or 40 feet from the side lot lines fronting a street, whichever is less; or

B) Maintain existing tree save areas for sites developed in accordance with this ordinance as revised on "*implementation date*".

Any perimeter tree and parking area planting requirements must still be met in accordance with Section 21-96.

Sec. 21-~~93~~95. Tree save requirements for single-family development.

(a) *Percentage of area required.* Whenever the existing tree canopy of a single-family development site is at least ten percent of the total property area, a tree save area equal to ten percent of the total property area must be saved during development of the site. If the existing tree canopy of the site is less than ten percent but more than five percent, a tree save area equal to ten percent of the total property area must be achieved by saving the entire existing tree canopy and planting new trees to reach the required percentage area. Single-family development sites with an existing tree canopy of less than five percent of the total property area must have a tree save area equal to five percent of the total property area, which may be achieved by saving the existing tree canopy and planting new trees.

~~(b) *Method of calculation for area.* Square footage for existing and dedicated road rights-of-way and utility easements and for existing ponds and lakes will be subtracted from the total site~~

~~area before the required percent of the tree save area is calculated. Where there are groups of trees that have areas within the group that are not expected to fill in with time, additional trees can be planted, per staff review, so that the entire area can qualify as a tree save area. A planted shade tree shall be equivalent to 2,500 square feet of saved area, and new trees must be planted at a rate of 18 per acre. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area. Credit received for trees designated as heritage or specimen trees will be 1 1/2 times the actual square footage of the drip line. City staff may adjust applicable land development standards to protect and preserve heritage or specimen trees.~~

(b)Tree Save Area Method for calculation.

(1) Square footage for existing and dedicated road rights-of-way and utility easements and for existing ponds and lakes will be subtracted from the total site area before the required percent of the tree save area is calculated. Where there are groups of trees that have areas within the group that are not expected to fill in with time, additional trees can be planted, per city approval, so that the entire area can qualify as a tree save area. A planted shade tree shall be equivalent to 2,500 square feet of saved area and new trees must be planted at a rate of 18 per acre. If root disturbance or construction activities occur within the drip line of any tree designated as protected in the tree protection plan, only the area actually being protected will be included in the calculated tree save area. Credit received for trees designated as heritage or specimen trees will be 1½ times the actual square footage of the drip line. The city may adjust applicable land development standards to protect and preserve Heritage or Specimen Trees.

(c) *Criteria for new trees.* New trees planted in common open spaces to satisfy the requisite tree save area requirement must be at least three-fourths-inch-caliper shade trees. New trees planted within individual lots to satisfy the requirement must be at least 1 1/2-inch-caliper trees. Trees planted for mitigation where the existing tree canopy must be removed due to conflicting design criteria or hardship approved by the city must be planted in accordance with this section to obtain the required percentage.

(d) *Heritage trees.* A person requesting to remove a heritage tree must obtain a permit from the city engineering and property management department before the activities commence. Owners and persons who remove a heritage tree without a permit are subject to the civil penalties set out in section 21-124. For purposes of this subsection, a landscape plan approved by the city constitutes a permit. Permits for the removal of heritage trees will be granted only where:

(1) The tree is located in the buildable area or yard area where a structure or improvement may be placed and there is no other reasonable location and/or preservation would unreasonably restrict use of the property.

(2) The tree is diseased, injured, in danger of falling, creates unsafe sight distance or conflicts with other sections of this Code or provisions of other ordinances or regulations.

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(3) One five-inch-caliper tree or three two-inch-caliper trees are planted in mitigation for the removal of each healthy tree under this subsection.

(e) *Incentives for increasing area.* Incentives for increasing tree save areas are designed to achieve the specific objective to:

(1) Enhance the city's tree canopy in residential settings.

(2) Improve the overall quality of life within the larger residential areas.

(3) Further the land use policies of the city, including encouragement of open spaces and the preservation of wooded sites.

(4) Discourage clearcutting of sites before and during construction of single-family development.

(f) *Incentive limits.*

(1) Reduced Yards. For single family residential lots requiring a tree save area, setback requirements as specified in Sections 12.805(3)(a), (b), and (c) of the Zoning Ordinance are reduced as follows:

(a) Front setbacks can be reduced to a minimum of 15 feet for all lots; front loaded garages must maintain a minimum setback of 20 feet.

(b) Rear yards can be reduced to 30 feet on all internal lots. Rear yards forming the outer boundary of a project must conform to the minimum rear yard of subsection 9.025(1)(g) for the zoning district in which the development is located.

(c) Internal side yards can be reduced to a minimum of 3 feet provided all fire code requirements are satisfied.

(2) Density Bonus. Single-family development projects may be granted a density bonus provided the entire tree save area is dedicated to common open space. Such dedication must be to a homeowners' association or a public or private agency that agrees to accept ownership and maintenance responsibilities for the space. The density bonus is calculated as follows: the entire dedicated tree save area in acres multiplied by the maximum residential density number of the underlying zoning district.

(3) Reduced Lot Sizes. A development need not meet the minimum lot area and lot width requirements set forth in table 9.205 of the zoning ordinance if it complies with one of the following incentives:

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(a) Sites with more than 10%, and up to 25% of tree save area or areas in common open space may apply the cluster provisions for lot size and lot width of that zoning category.

(b) Sites with greater than 25% of tree save area or areas in common open space may apply the cluster provisions for lot size and with of the next lower zoning category as shown in the following table and in accordance with section 9.205(5) of the zoning ordinance.

	R-3	**R-3 Cluster**	**R-4**	**R-4 Cluster**	**R-5**	**R-5 Cluster**	**R-6**	**R-6 Cluster**
Min. Lot Area	10,000	8,000	8,000	6,000	6,000	4,500	4,500	3,500
Min. Lot Width	70’	60’	60’	50’	50’	40’	40’	40’

(g) *New supplemental plantings.* If the existing tree canopy is insufficient to meet the desired incentive level, new supplemental plantings may be used to reach the desired level. This only applies for sites that have less than ten percent existing tree canopy prior to development or for sites that have more than ten percent existing tree canopy and the entire canopy is being saved.

Sec. 21-9~~4~~6. Tree planting requirements.

(a) *Tree planting plan.* All applications for building permits or land use permits shall include a tree planting plan. The tree planting plan shall be submitted in written/design form and shall conform with the general provisions of this section and all specifications set out in the applicable tree ordinance guidelines as issued by the city.

(b) *Tree and soil specifications.* All trees planted pursuant to this article must be planted in amended soils as specified in the tree ordinance guidelines. The trees also must be from an approved list supplied by the city. Trees not on the list may be approved by the city ~~staff~~ on a case-by-case basis. Where trees are specified to be two-inch caliper, the minimum height shall be eight feet. If multistem trees are used, they must have three to five stems and be eight to ten feet tall at the time of planting. Where three-inch-caliper trees are specified, the minimum height shall be ten feet tall, and multistem trees shall be ten to 12 feet tall. All trees must comply with the American Standard for Nursery Stock, published by the American Association of Nurserymen.

(c) A minimum of 50% of new trees must be native species, and sites with more than twenty trees required will have to install multiple species per the tree ordinance guidelines.

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(d) Site lighting must be a minimum 30 feet away from a tree. If pedestrian scale lighting is being used, then lighting must be a minimum of 15 feet away from a tree, unless approved otherwise by the city.

(e) ~~(c)~~ *Perimeter planting requirements.* Requirements for perimeter planting are as follows:

(1) *Single-family development zones.* Trees of a minimum two-inch caliper must be planted within 20 feet of the back of the curb on new streets, and any existing streets with lot frontage, in new single-family developments. Trees may be planted between the sidewalk and the curb if a minimum six-foot planting strip is provided. Spacing will be an average of 40 to 50 feet apart for large maturing shade trees, and 30 to 40 feet apart for small maturing shade trees. Where single-family development is directly across the street from multifamily development, the spacing between trees will be an average of 40 feet. Existing two-inch caliper or greater large maturing shade trees preserved within 20 feet of the back of the curb may be counted towards the street tree requirement if they are adequately protected during construction. The city ~~staff~~ may grant a modification for other existing trees on a case-by-case basis.

(2) *Suburban commercial zones.* A continuous perimeter planting strip, located on private property abutting the public right-of-way, with a minimum width of eight feet, shall be required. If large maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, the same conditions apply, but the increment drops to 30 feet.

(3) *Urban zones.* Planting requirements for urban zones are as follows:

a. *Planting strip.* A continuous perimeter planting strip, located between the street and sidewalk, with a minimum width of eight feet, shall be required. If large maturing trees are planted, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof.

b. *Urban retail sites.* The following options are available for urban retail developments:

1. *Relocation of trees.* The number of perimeter trees required in subsection (e~~c~~)(2) of this section may be reduced by up to 50 percent if the same quantity of trees reduced are planted elsewhere on the site and at least one perimeter tree is installed.

2. *Tree pits.* The perimeter trees required in subsection (e~~c~~)(2) of this section may be installed in tree pits with irrigation and sub-drainage as specified in the tree ordinance guidelines in lieu of a continuous perimeter planting strip. If large maturing trees are planted in the pits, each tree shall have a minimum three-inch caliper. One such tree shall be planted for every 40 feet of frontage or fraction thereof. If small maturing trees are planted in the pits, each tree shall have a minimum two-inch caliper. One such tree shall be planted for every 30 feet of frontage or fraction thereof and as long as at least one perimeter tree is installed.

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(4) *Renovated sites.* When a building permit is requested for renovation of a previously developed site where the required perimeter planting strip does not exist, trees are still required. However, in lieu of a minimum eight-foot-wide planting strip, a pavement cutout equal to 200 square feet and with a minimum width of five feet may be substituted.

(5) *Railroad or utility rights-of-way.* When a railroad or utility right-of-way separates the perimeter planting strip from a city right-of-way, the perimeter planting strip and tree planting requirements must still be met.

(6) *Large shade trees required.* In locations without overhead power distribution lines that obstruct normal growth, 75 percent of the trees required under subsections (e~~c~~)(1), (2), and (3) of this section shall be large maturing shade trees.

(7) *Streetscape plans.* In applicable cases where the city council has approved a streetscape plan, its provisions shall supersede those set forth in subsections (e~~c~~)(2), (3) and (5) of this section.

(f) ~~(d)~~ *Internal planting requirements, excluding single-family development.* Requirements for internal planting, excluding single-family development, are as follows:

(1) *Planting areas.* Whenever the impervious cover exceeds 10,000 square feet, a planting area equal to ten percent of the total impervious surface must be provided for landscape purposes and tree planting. Internal tree planting is required at the rate of one large maturing shade tree per 10,000 square feet of impervious cover or fraction thereof. This planting area must be located on private property and in urban zones shall be in addition to any perimeter planting requirements. In the mixed use development district (MUDD) and the uptown mixed use district (UMUD) outside the I-277/I-77 loop, the planting area may equal five percent of the total impervious surface. The planting requirements for UMUD zoned sites within the I-277/I-77 expressway loop are set out in subsection 9.906(4)(e) of the zoning ordinance in appendix A to this Code.

(2) *Parking areas.* Internal planting requirements for parking areas are as follows:

a. *Suburban commercial zones.* Planting in suburban commercial zones shall be in accordance with the following:

1. Trees must be planted so that each parking space is no more than ~~60~~ 40 feet from a tree trunk, unless the parking lot has continuous islands running the length of the parking lot with minimum 8 feet width; then the requirement will increase to 60 feet.

2. Bus and tractor-trailer lots will be required to plant trees 40 feet apart around the perimeter of the parking lot in a minimum 10 foot wide planting strip. If there is parking on the perimeter of the bus and tractor-trailer lots, bollards or wheel stops are required.

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3.~~–~~. Seventy-five percent of the trees planted must be large maturing shade trees except as provided in subsection (f~~d~~)(2)a.~~2~~4 of this section. Minimum planting area per tree shall be 274 square feet with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.

4.~~ 2.~~ Where small maturing shade trees are used, the minimum planting area shall be 200 square feet, with a minimum width of eight feet. The entire planting area must contain amended on-site soil or a soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches. Small maturing shade trees may be planted where overhead power distribution lines would interfere with normal growth (normally within 25 feet of overhead power distribution lines or within the Duke Power right-of-way for overhead transmission lines).

b. *Urban zones.* Planting in urban zones shall be in accordance with the following:

1. Trees must be planted so that each parking space is no more than 4~~6~~0 feet from a tree trunk. Trees planted must be large maturing shade trees except as provided in subsection (~~d~~f)(2)b.2 of this section.

i. Minimum planting area per large maturing shade tree shall be 274 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.

ii. Minimum planting area per large maturing shade tree may be reduced to a minimum 200-square-foot surface area and a minimum dimension of eight feet, if the entire planting area contains an approved soil mix, as specified in the tree ordinance guidelines, to a depth of 18 inches.

2. Small maturing trees may be planted where overhead power distribution lines would interfere with normal growth. Minimum planting area per small maturing tree shall be 200 square feet with a minimum dimension of eight feet. The entire planting area must contain amended on-site soil, as specified in the tree ordinance guidelines, to a depth of 18 inches.

(3) *Renovated sites.* When a building permit is requested for the renovation of a site previously developed, internal tree planting is still required, and the minimum planting area shall be 200 square feet per tree. However, only five percent of the total impervious cover must be set aside for landscape purposes.

(4) *Existing trees.* In meeting these internal planting requirements, credit may be given for existing trees if the following are met:

a. The property owner must include in the tree survey referenced in section 21-91 all existing trees of two-inch dbh or greater which he proposes to satisfy these planting requirements.

b. Only healthy trees and those that have been protected during the entire development period, beginning prior to the commencement of site work and continuing through to issuance of the

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certificate of occupancy in accordance with approved tree protection requirements, may satisfy these tree planting requirements.

c. If the minimum protection standards are not met, or if trees are observed by the city to be injured or threatened, they may be deemed ineligible for meeting these requirements.
The city shall have the authority to modify the planting requirements of this subsection to preserve existing trees.

Secs. 21-965--21-120. Reserved.

ARTICLE V. MODIFICATION, INSPECTION, ENFORCEMENT AND APPEAL

Sec. 21-121. Modifications.

(a) If strict compliance with the standards of this chapter conflict with existing federal or state statutory or regulatory requirements, or when planting is required by this chapter and the site design, topography, natural vegetation, or other special considerations exist relative to the proposed development, the developer may submit a specific alternate plan for planting to the city for consideration. This plan must meet the purposes and standards of this chapter, but may suggest measures other than those in article IV of this chapter. In addition, if the developer seeks a modification of planting requirements based upon a contention that the planting required by this chapter would pose a threat to health and safety due to a conflict with existing federal or state statutory or regulatory requirements, a modification will only be considered upon receipt of a written explanation of the alleged conflict created by the planting requirement and a copy of the statute or regulation that creates the conflict. The city shall review the alternate proposal and advise the applicant of the disposition of the request within 15 working days of submission by the applicant. Any appeals by the applicant shall be in accordance with section 21-126.

(b) Requests for a delay in complying with this chapter due to poor weather conditions for planting will be considered following a written request directed to the city's engineering and property management department. Certificates of occupancy will be issued upon approval of a request for planting delay. Such request for a delay will not change the timeframe during which the planting will be completed. Failure to comply will result in penalties provided for in section 21-124 of this article.

Sec. 21-122. Inspections and investigations of sites.

(a) Agents, officials or other qualified persons authorized by the city are authorized to inspect the sites subject to this chapter to determine compliance with this chapter or rules or orders adopted or issued pursuant to this chapter.

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(b) No person shall refuse entry or access to any authorized city representative or agent who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.

(c) If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with this chapter or rules or orders issued pursuant to this chapter, the city will serve a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation and shall set forth the measures necessary to achieve compliance with this chapter. The notice shall inform the person whether a civil penalty will be assessed immediately or shall specify a date by which the person must comply with this chapter. The notice shall advise that failure to correct the violation within the time specified will subject that person to the civil penalties provided in section 21-124 or any other authorized enforcement action.

(d) The city shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites subject to this chapter.

Sec. 21-123. Emergencies.

In an emergency such as a windstorm, ice storm, fire or other disaster, the requirements of this chapter may be waived by the city during the emergency period so that the requirements of this chapter will in no way hamper private or public work to restore order in the city. This shall not be interpreted to be a general waiver of the intent of this chapter.

Sec. 21-124. Penalties.

(a) *Generally.* Any person who violates any of the sections of this chapter, or rules or orders adopted or issued pursuant to this chapter, shall be subject to any one, all or a combination of the civil penalties prescribed by this section. Penalties assessed under this chapter are in addition to and not in lieu of compliance with the requirements of this chapter. The person performing the work and the person contracting for the performance shall be jointly and severally liable for any penalty or other enforcement action imposed pursuant to this chapter or other provisions of law on account of work performed in violation of this chapter.

(b) *Civil penalties.* Civil penalties for violations of this chapter shall be assessed pursuant to the following:

(1) Failure to plant original or replacement trees in accordance with sections 21-~~62~~93- and 21-9~~3~~6 shall be $50.00 for each tree not planted. No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 21-122. If the

site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to plant each individual tree shall constitute a separate, daily and continuing violation.

(2) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that result in the total loss of the tree or shrub shall be assessed in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum civil penalty for each tree injured, damaged or destroyed shall not exceed $20,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(3) Injury or damage to, or destruction of, trees and shrubs protected by sections 21-61 and 21-62 that do not result in the total loss of the trees shall be assessed for each tree or shrub in accordance with the tree evaluation formula or other generally accepted industry evaluation methods. However, the maximum amount of the penalty shall not exceed $1,000.00. No notice of violation is needed prior to the assessment of a civil penalty issued pursuant to this subsection.

(4) Failure to install or maintain required tree protection measures in accordance with section 21-92 shall be $1,000.00. No civil penalty shall be assessed until the person has been notified of the violation as provided in section 21-122. If the site is not brought into compliance within the time specified in the notice of violation, a civil penalty may be assessed from the date the notice of violation is received. The failure to install the required tree protection measures shall constitute a separate, daily and continuing violation. Injury or damage to, or destruction of, trees in the tree protection zone and tree save area resulting from inadequate or omitted tree protection measures constitutes a separate violation which may subject the violator to any other applicable penalty set forth in this section.

(5) Any other action that constitutes a violation of this chapter may subject the violator to a civil penalty of $50.00, and each day of continuing violation shall constitute a separate violation. However, the maximum amount of the penalty shall not exceed $1,000.00.

(c) *Nonmonetary penalty.* A nonmonetary penalty, in the form of increased or additional planting requirements, may be assessed in addition to or in lieu of any monetary penalties prescribed under this section.

(d) *Notice.* The city shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, rule 4, and shall direct the violator to either pay the assessment or contest the assessment as specified in section 21-126. If payment of assessed penalties is not received within 30 days after it is due, or if no request for a hearing has been made as provided in section 21-126, the assessment shall be considered a debt due and owing to the city, and the matter shall be referred to the city attorney for institution of a civil action to recover the amount of the debt. The civil action may be brought in the county superior court or in any other court of competent jurisdiction.

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(e) *Civil action for unpaid assessment.* A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(f) *Use of civil penalties collected.* Civil penalties collected pursuant to this chapter shall be credited to the general fund as a nontax revenue and shall be used to further the purposes, intent and requirements of this chapter. The tree advisory commission shall be consulted with regard to use of collected funds.

(g) *Criminal penalties.* Any person who knowingly or willfully violates any section of this chapter shall be guilty of a class 2 misdemeanor and may, upon conviction thereof, be subject to punishment as provided in section 2-21. This remedy is in addition to any civil penalties that may be assessed.

Sec. 21-125. Injunctive relief.

(a) Whenever the city has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition or provision of an approved permit, it may, either before or after the institution of any other action or proceeding authorized by this chapter, authorize the city attorney to institute a civil action in the name of the city for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the county superior court or any other court of competent jurisdiction.

(b) Upon determination of a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this chapter.

Sec. 21-126. Hearings and appeals.

(a) *Requests for variance.* Procedures for a request for a variance from this chapter are as follows:

(1) The decision of the city arborist or senior urban forester to deny an application for a variance from the requirements of this chapter shall entitle the person submitting the application (petitioner) to a public hearing before the tree advisory commission if such person submits a written request for a hearing to the chair of the commission within ten working days of receipt of the decision denying the variance. As soon as possible after the receipt of the request, the chair of the tree advisory commission will set a date, time and place for the hearing and notify the petitioner of the hearing by mail. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon

thereafter as practical, or at a special meeting. The chair may appoint a three-member board selected from the appointed members of the tree advisory commission to act as an appeal board and hear the request of the petitioner. The hearing shall be conducted by the commission in accordance with subsection (d) of this section.

(2) The tree advisory commission or its designated appeal board may grant a variance from the requirements of this chapter upon a finding that:

a. Practical difficulties or unnecessary hardship would result if the strict letter of the law were followed; and

b. The variance is in accordance with the general purpose and intent of this chapter.

(b) *Appeals of ~~for~~ decisions, notices of violation and assessments of civil penalties.* Any party dissatisfied with a decision of the city adversely affecting such party in the application or enforcement of this chapter, including notices of violations and assessments of civil penalties, may request a public hearing before the commission. Procedures for such hearings ~~appeals of notices of violation and assessments of civil penalties~~ are as follows:

(1) The issuance of a decision, including a notice of violation or assessment of a civil penalty by the city, shall entitle the person subject to the decision or responsible for the violation~~violator of this chapter~~ (petitioner) to a public hearing before the commission if such person submits a written request for a hearing to the chair of the commission within 30 days of the receipt of ~~the~~ a decision, notice of violation or assessment of a civil penalty.

(2) As soon as possible after the receipt of the request, the chair shall set a time and place for the hearing and notify the petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the commission from the submission of the request, as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to subsection (d) of this section.

(c) *Petition for review of commission's decision.* Any party aggrieved by the decision of the commission ~~with regard to the issuance of a variance, a notice of violation or an assessment of civil penalties~~ shall have 30 days from the receipt of the decision ~~of the commission~~ to file a petition for review in the nature of certiorari in superior court with the clerk of the county superior court.

(d) *Hearing procedure.* The following shall be applicable to any hearing conducted by the commission pursuant to subsection (a) or (b) of this section:

(1) At the hearing, the petitioner and the city shall have the right to:

a. Be present and be heard;

b. Be represented by counsel; and

c. Present evidence through witnesses and competent testimony relevant to the issues before the commission.

(2) Rules of evidence shall not apply to a hearing conducted pursuant to this section, and the commission may give probative effect to competent, substantial and material evidence.

(3) At least seven days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the commission.

(4) Witnesses shall testify under oath or affirmation to be administered by the court reporter or another duly authorized official.

(5) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the city and for the petitioner shall have the right to cross examine witnesses.

(6) At the conclusion of the hearing, the commission shall render its decision on the evidence submitted at such hearing and not otherwise.

a. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions ~~with regard to issuing a notice of violation, assessing a civil penalty or ordering replanting~~ are true and substantiated, the commission shall, as it sees fit, uphold the city's action ~~on the part of the city engineer~~.

b. If, after considering the evidence presented at the hearing, the commission concludes by a preponderance of the evidence that the grounds for the city's actions are not true and substantiated, the commission may, as it sees fit, reverse or modify any order, requirement, decision or determination of the city. The commission bylaws will determine the number of concurring votes needed to reverse any order, requirement, decision or determination of the city.

(7) The commission shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the commission shall be based on findings of fact and conclusions of law to support its decision.

(8) The commission shall send a copy of its findings and decision to the petitioner and the city engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at his own cost, a transcript of the proceedings.

(9) The decision of the commission shall constitute a final decision."

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Section 2. These amendments shall apply to all development and redevelopment within the corporate limits of this city and its extraterritorial jurisdiction, unless one of the following exemptions applies as of the effective date:

(1) Residential and nonresidential development and additions to existing sites submitted and accepted for review;

(2) Zoning use application submitted and accepted for review for uses that do not require a building permit;

(3) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or

(4) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved, provided formal plan submission has been made and accepted for review prior to the date that the vested rights for the conditional zoning district expire pursuant to G.S. 160A-385.1 and Sec. 1.110 of the Charlotte Zoning Ordinance.

Section 3. This ordinance shall be effective January 2011

Approved as to form:

_____

City Attorney

DRAFT

CHARLOTTE.
ENGINEERING & PROPERTY MANAGEMENT

Environment Committee

Proposed Tree Ordinance Revisions

June, 7 2010

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CITY OF CHARLOTTE

Chart describing Section 21.94

Attachment 2) Tree Save Requirements and Exceptions for Commercial Development

(Section 21.94)

Zoning designation	*Requirement*	*Requirement*	*Requirement*		
Commercial zonings: B1, O2 etc	Minimum 15% of the site protected as tree save	If less than 15% of the site has existing trees, additional trees shall be planted at a rate of 36/trees per acre	If any portion of the tree save area is removed, trees shall be re-planted at 150%		
Exceptions	*Option*	*Option*	*Option*	*Option*	*Option*
UMUD & UMUD-O within I-277 loop and any TOD, MUDD or UMUD in transit station areas	EXEMPT	N/A	N/A	N/A	N/A
Transit station areas or mixed-use centers, NS 12 acres or less , I1 and I2	Provide tree save on site (entire or in combination)	Plant or replant trees at 36 trees/acre on site (entire or in combination)	Install a green roof (entire or in combination)	Under take off site mitigation (entire or in combination; may not be used with payment in lieu)	Provide payment in lieu (entire or in combination; may not be used with off-site mitigation)
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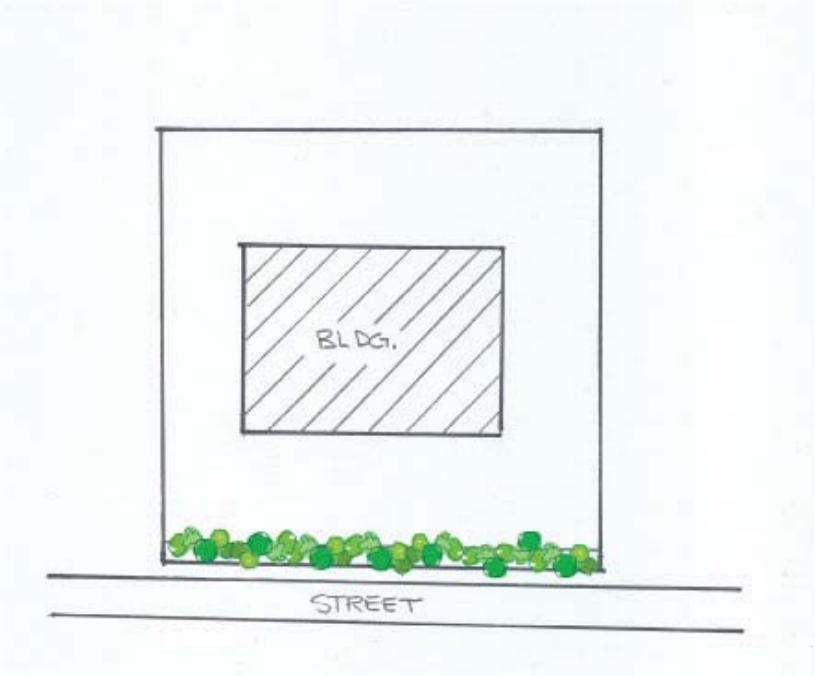
Example of Application

10 Acre Industrial Site

Current Tree Save Requirements:

- Tree Save Area in Setback

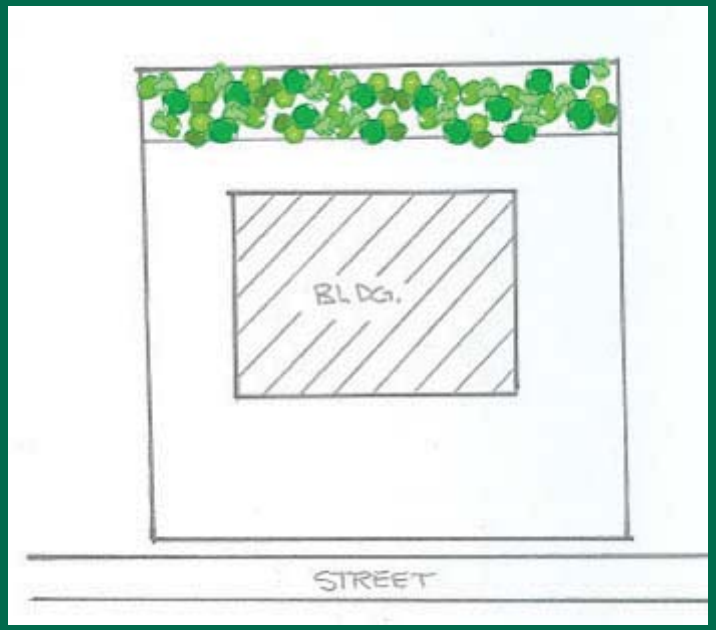


Example of Application

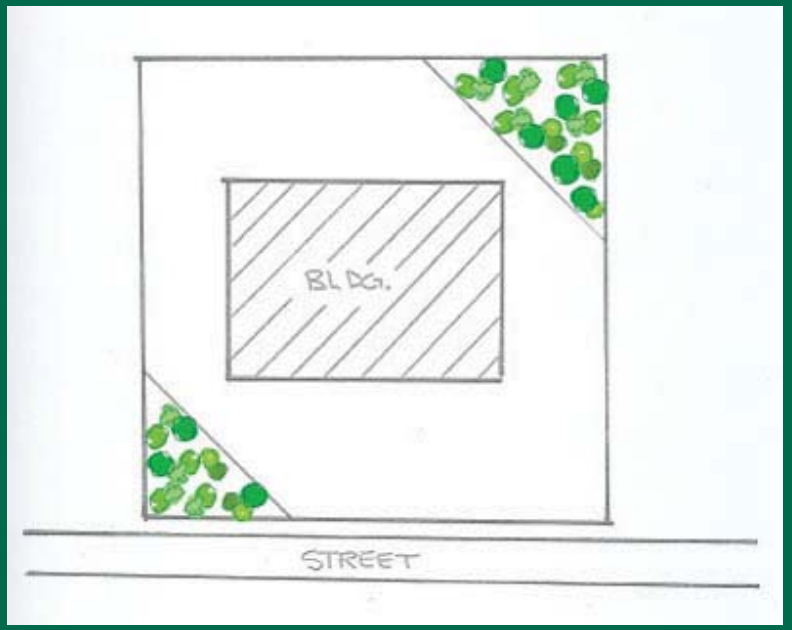
10 Acre Industrial Site

Proposed Tree Save Requirements:

- 15% Tree Save (1.5 Acres)



OR

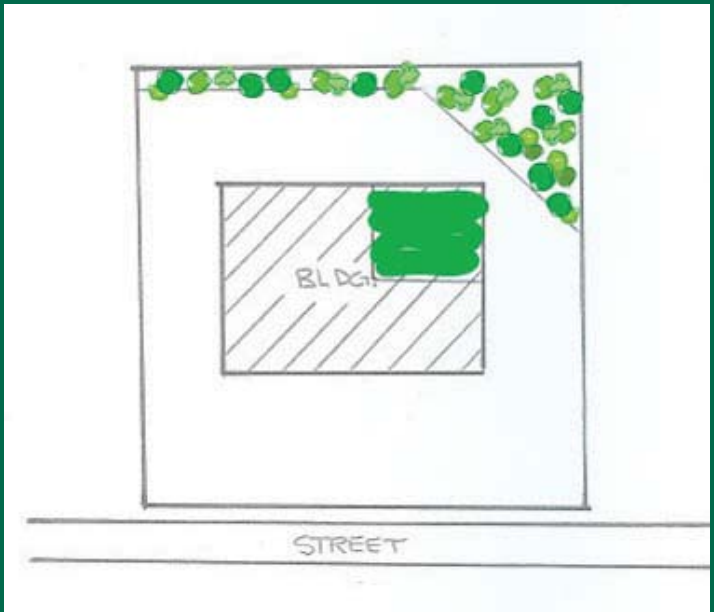


Example of Application

10 Acre Industrial Site

Proposed Tree Save Requirements

- Options



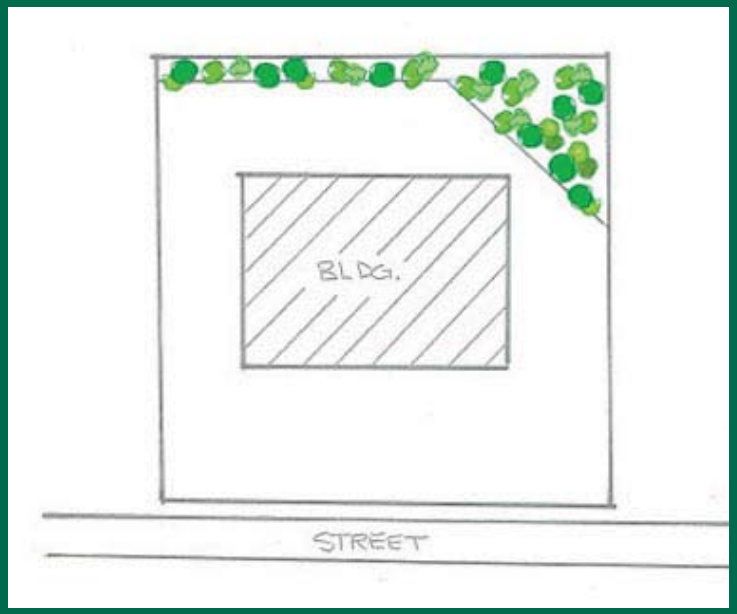
10% tree save (1 ac.), plus
5% green roof (0.5 ac)

Example of Application

10 Acre Industrial Site

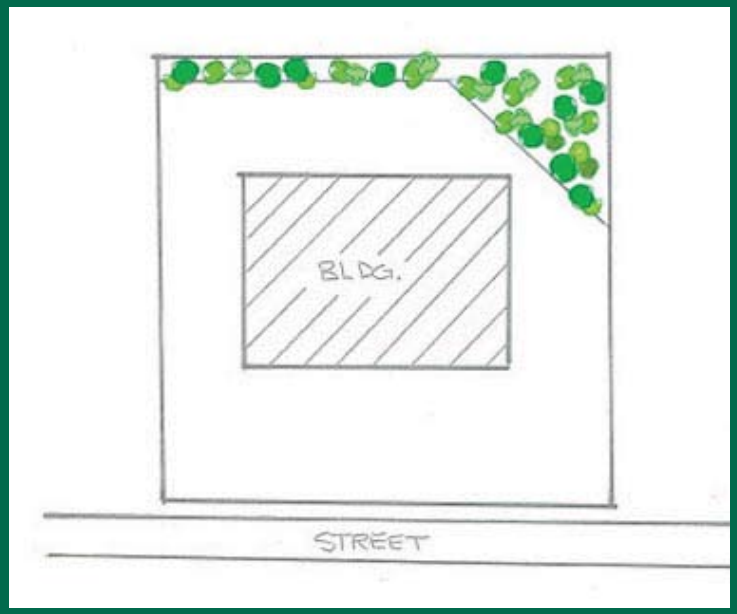
Proposed Tree Save Requirements

- Options



10% tree save (1 ac.), plus
5% off-site mitigation (0.5 ac)

OR



10% tree save (1 ac.), plus
5% payment in lieu (0.5 ac)

Example of Application

10 Acre Industrial Site

- Calculation of off-site mitigation

  Estimated cost of land to purchase for mitigation = $50,000 / ac.

  Off-site mitigation cost = $50,000/ac. X 0.5 ac. = $25,000

  Responsibility is upon the developer/owner to find and purchase land

- Calculation of payment in lieu

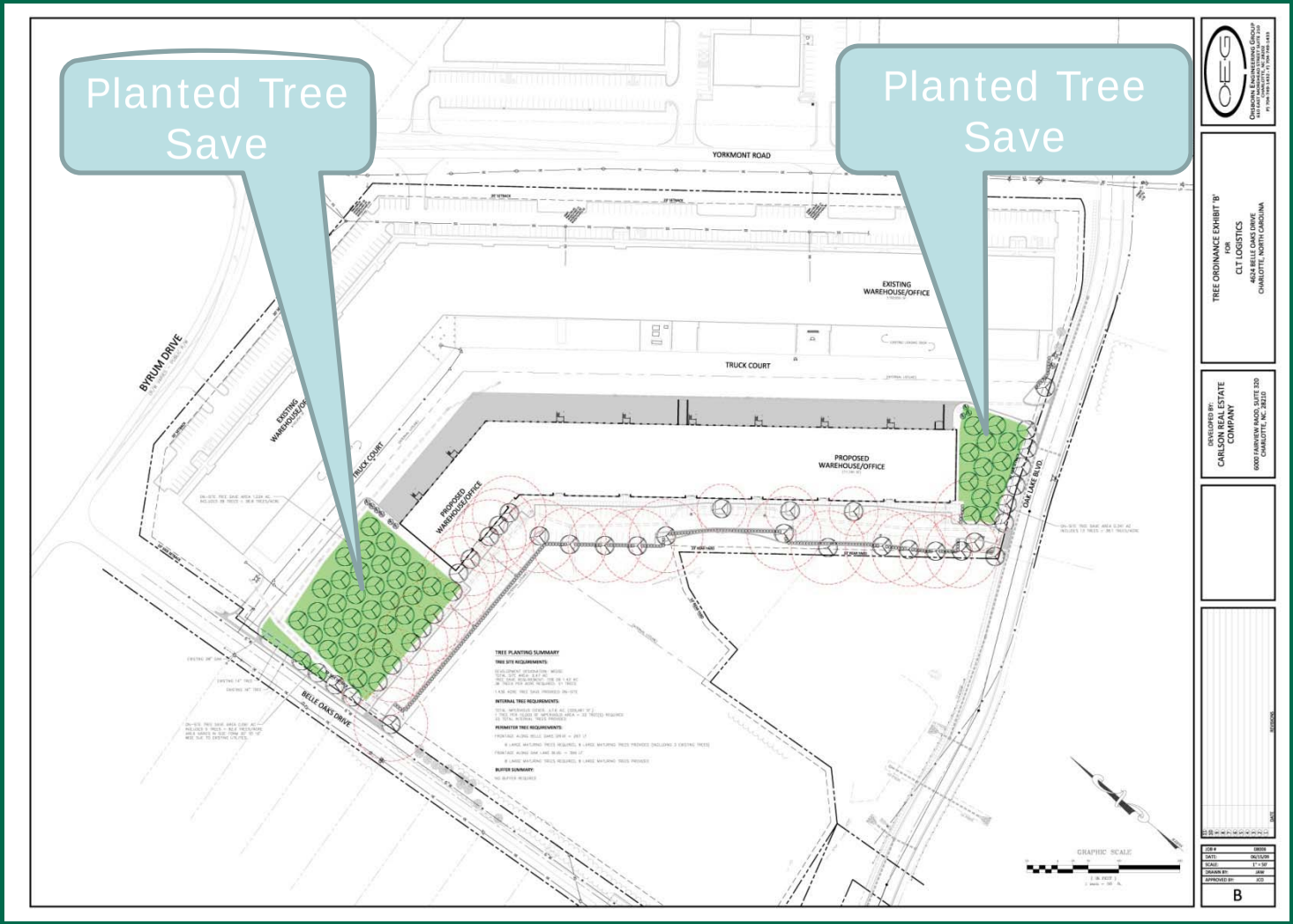
  Tax value of land = $1,000,000 or $100,000 / ac.

  payment in lieu cost = $100,000/ac. X 0.5 ac. = $50,000

  Responsibility is upon the City to find and purchase land

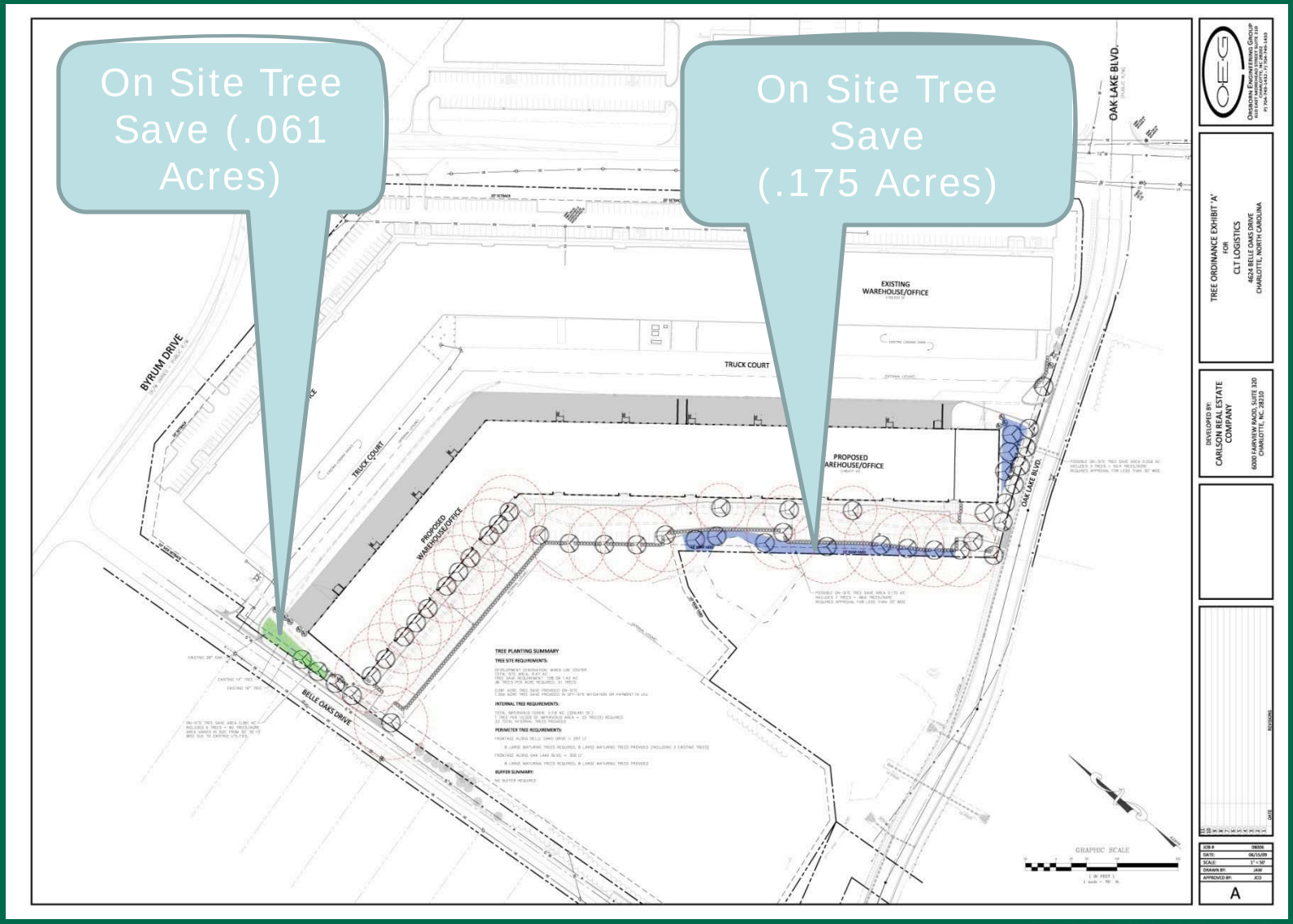
CITY OF CHARLOTTE

Industrial, CLT Logistics (No Existing Trees)
On Site Planted Tree Save Area (1.42 acres)



CITY OF CHARLOTTE

Industrial, CLT Logistics
On Site and Off Site Tree Save (1.42 acres)



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Industrial, CLT Logistics

Total tree save required = 1.42 acres
Tree save available on site = 0.24 acres
Remaining tree save required = 1.42 ac. – 0.24 ac. = 1.18 ac.

- Calculation of off-site mitigation
  Estimated cost of land to purchase for mitigation = $50,000/ acre
  Off-site mitigation cost = $50,000 / ac. x 1.18 ac. = $59,000

- Calculation of payment in lieu
  Tax value of land = $818,900 or $ 87,117/ ac.

  Payment in lieu cost $87,117/ac. x 1.18 ac. = $102,800

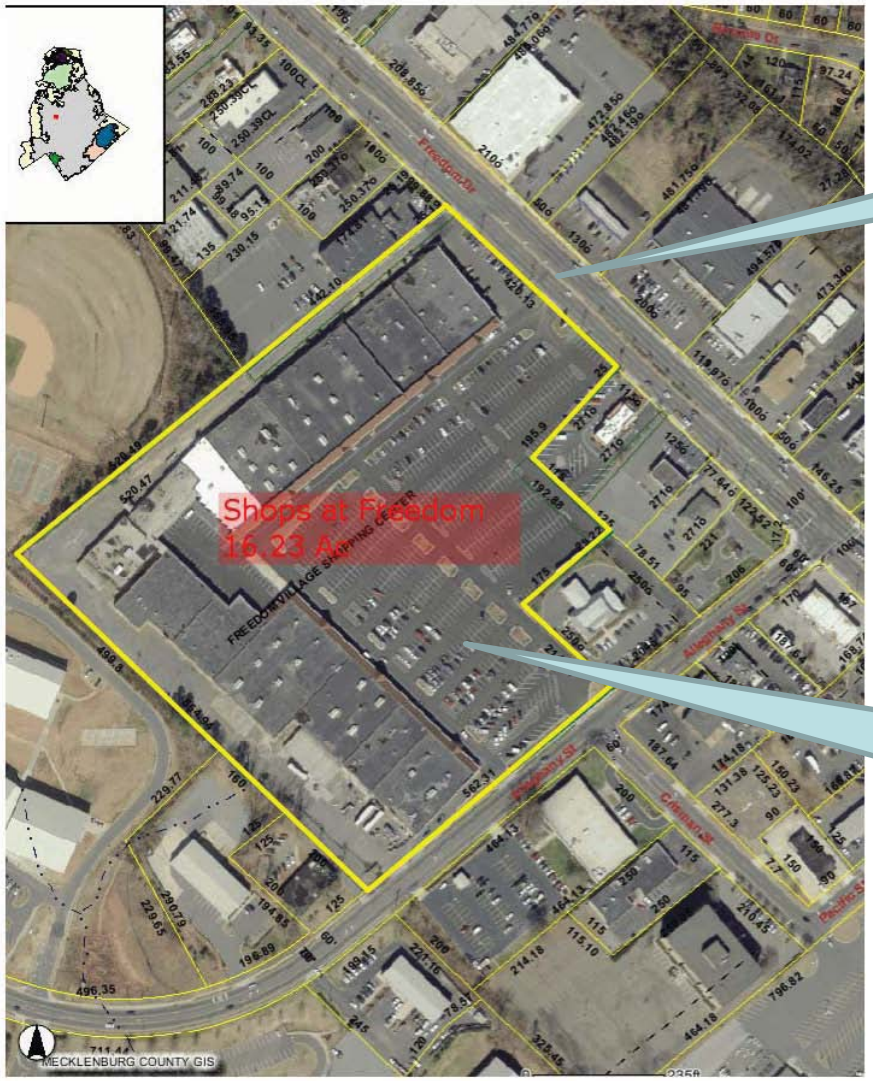
Chart describing Section 21.94

Additions to existing sites per Section 21-4 (ii) ***(for sites originally approved prior to January 1,2011)***	Maintain tree save in setback	N/A	N/A	N/A	N/A
Additions to existing sites per Section 21-4 (ii) ***(for sites originally approved after January 1, 2011)***	Provide tree save on site (entire or in combination)	Plant or replant trees at 36 trees/acre on site at 100% or 150% (based on land use) (entire or in combination)	Install a green roof at 100% or 150% (based on land use) (entire or in combination)	Under take off-site mitigation at 100% or 150% (based on land use) (entire or in combination; may not be used with payment in lieu)	Provide payment in lieu at 100% or 150% (based on land use) (entire or in combination; may not be used with off-site mitigation)

***in all cases internal and perimeter tree requirements must be met.**

CITY OF CHARLOTTE

Shops at Freedom Existing conditions

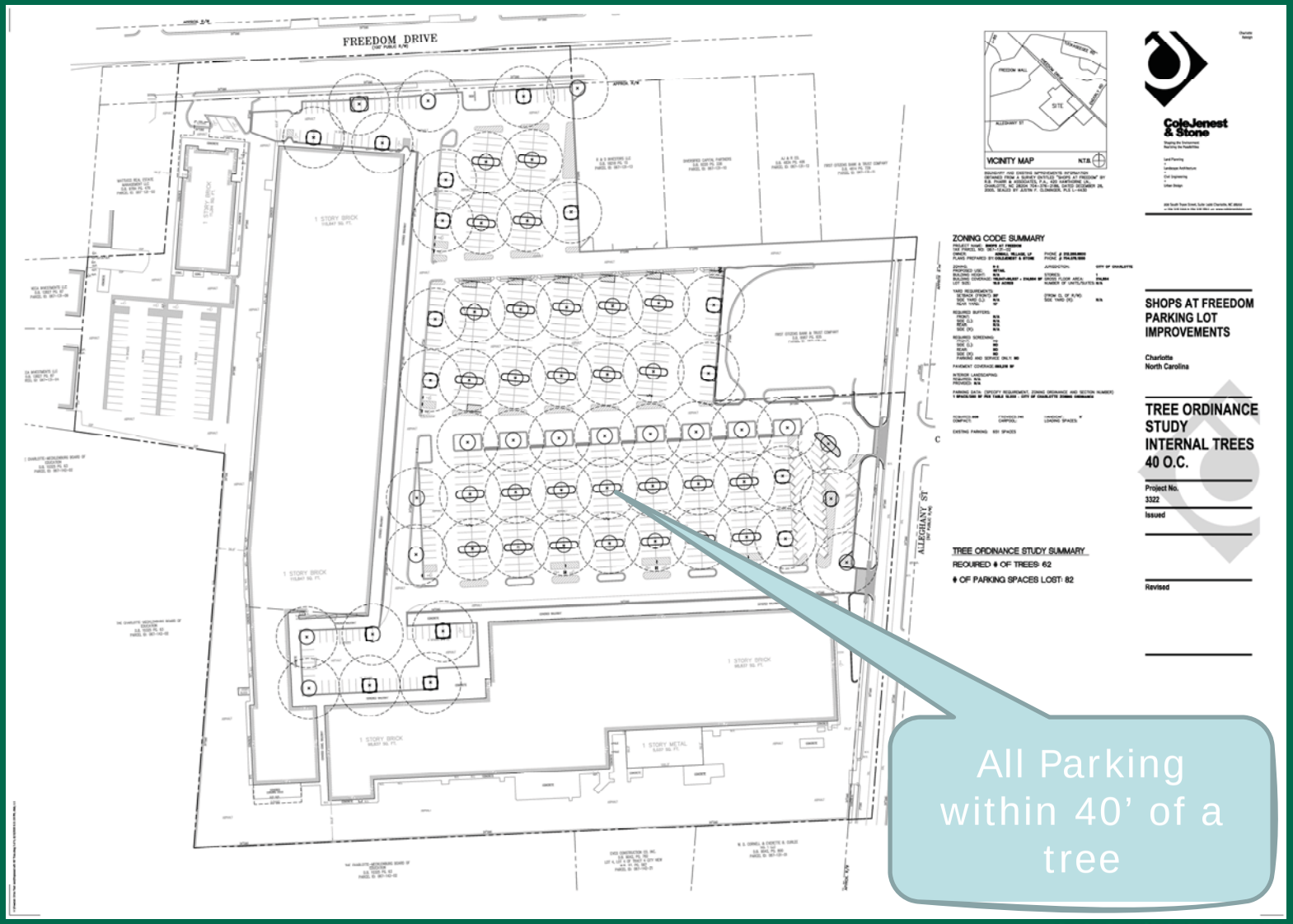


Freedom Drive

Existing parking Lot Without Trees

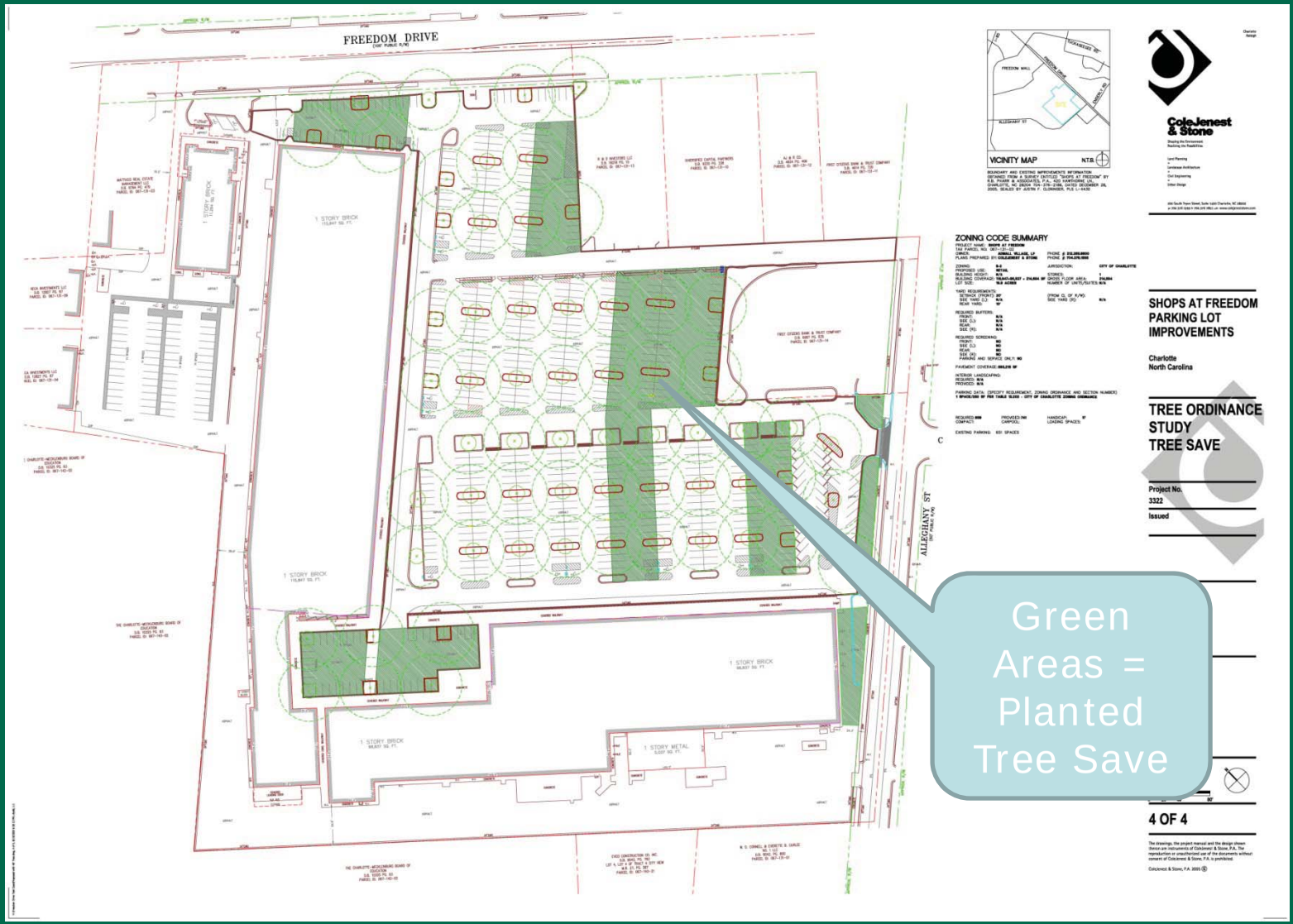
CITY OF CHARLOTTE

Additions to an Existing Site: Shops at Freedom Parking Lot Tree Planting



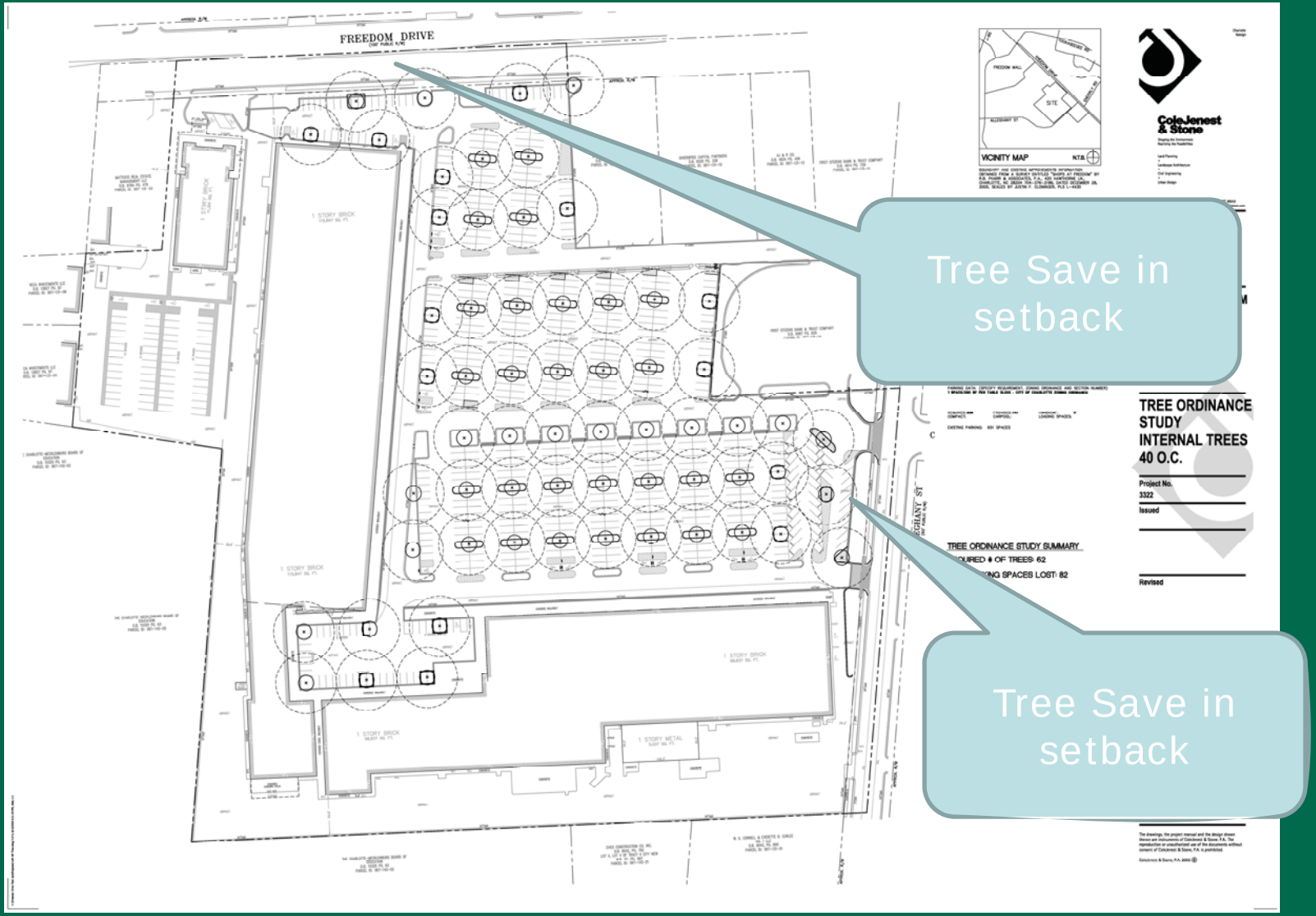
CITY OF CHARLOTTE

Additions to Existing Site: Shops at Freedom Parking Lot Tree Planting and Tree Save (No Existing Trees On Site)



CITY OF CHARLOTTE

Additions to an Existing Site: Shops at Freedom Parking Lot Tree Planting



Tree Save in setback

Tree Save in setback

Recent Municipalities analyzed by American Forest	
San Antonio, TX	Single Family: About 20 to 35% of the significant and heritage trees may be cleared for streets and utilities. In addition, 2/3 of the significant trees may be removed from the lots. If more than 2/3 of significant trees are removed from lots, a $200 per diameter-inch fee must be paid for the excess removal Non-residential developments (malls, warehouses, apartments, etc.): About 5% of the significant and heritage trees may be cleared for easements and rights-of-way 60% of the significant trees may be removed If more than 60% of significant trees are removed, a $200 per diameter-inch fee is charged for the amount in excess of 60%
Albuquerque, NM	Future plans to implement a system
Bellevue, WA	No payment in lieu policy
Cities Indentified by the Institute of Government at Chapel Hill for Best Practices for Permitting	
Henderson, NV	No payment in lieu policy
San Diego, Ca	No payment in lieu option
Tallahassee, FL	10% of site needs to meet the urban forest requirement. Payment of a fee into the city's off-site mitigation trust fund in an amount equivalent to 1.18 times the assessed value of the mitigated portion of the development site for the intended land use at the time of permit application, or if an applicant owns property designated as greenways, dedication of the applicable land to the city's greenways program in an amount equivalent to 1.18 times the assessed value of the mitigated portion of the development site for the intended land use at the time of permit approval
North Carolina Cities	
Asheville, NC	No payment in lieu policy
Chapel Hill, NC	If the applicant chooses not to place replacement canopy trees, payments to the Town of Chapel Hill Tree Mitigation Fund will be calculated as follows:

	Single family and Two-family residential properties: a. $200 per tree where there is not sufficient space on the site for required replanting; b. $400 per tree if the permit is applied for after work has begun or if a property owner chooses to provide payment in lieu of planting when there is otherwise sufficient space on the subject property to accommodate tree planting; c. $800 per tree if an after-the-fact permit is issued and the property owner chooses to provide payment in lieu of tree planting. For multi-family and mixed use properties: a. $1,000 per tree (plus application fees) for all development subject to the provisions of this section; b. $2,000 per tree (plus application fees) if the permit is applied for after the work has begun or if a property owner chooses to provide payment in lieu of tree planting where there is sufficient space to accommodate tree planting; c. $4,000 per tree (plus application fees) if an after-the – fact permit is issued and the property owner chooses to provide payment in lieu of tree planting.
Concord, NC	No payment in lieu option
Hickory, NC	No payment in lieu option
High Point, NC	No payment in lieu option
Greensboro, NC	No payment in lieu option

CHARLOTTE
ENGINEERING & PROPERTY MANAGEMENT

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CITY OF CHARLOTTE

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CHARLOTTE

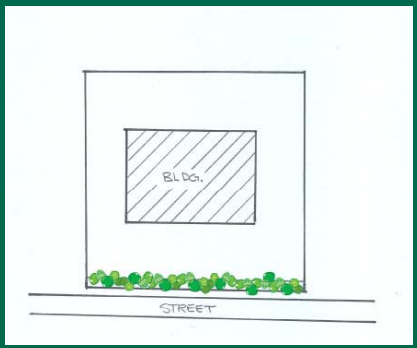
CITY OF CHARLOTTE

Example of Application

10 Acre Industrial Site

Current Tree Save Requirements:

- Tree Save Area in Setback



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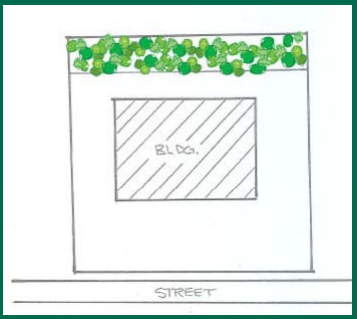
CITY OF CHARLOTTE

Example of Application

10 Acre Industrial Site

Proposed Tree Save Requirements:

- 15% Tree Save (1.5 Acres)



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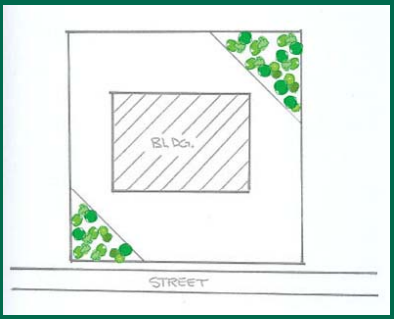

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CHARLOTTE

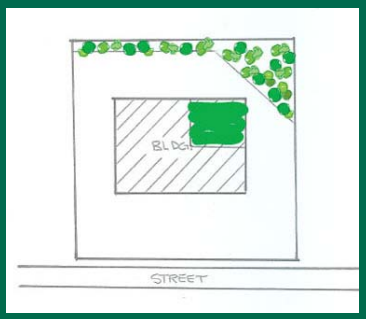
CITY OF CHARLOTTE

Example of Application

10 Acre Industrial Site

Proposed Tree Save Requirements

- Options



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CITY OF CHARLOTTE

Example of Application

10 Acre Industrial Site

Proposed Tree Save Requirements

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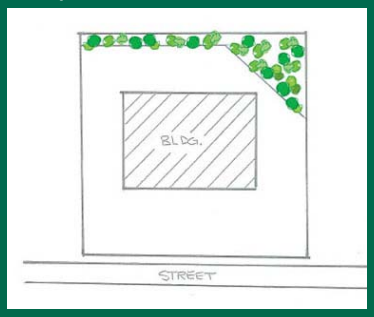

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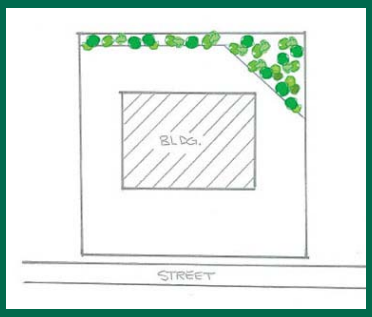

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CHARLOTTE.

CITY OF CHARLOTTE

Example of Application

10 Acre Industrial Site

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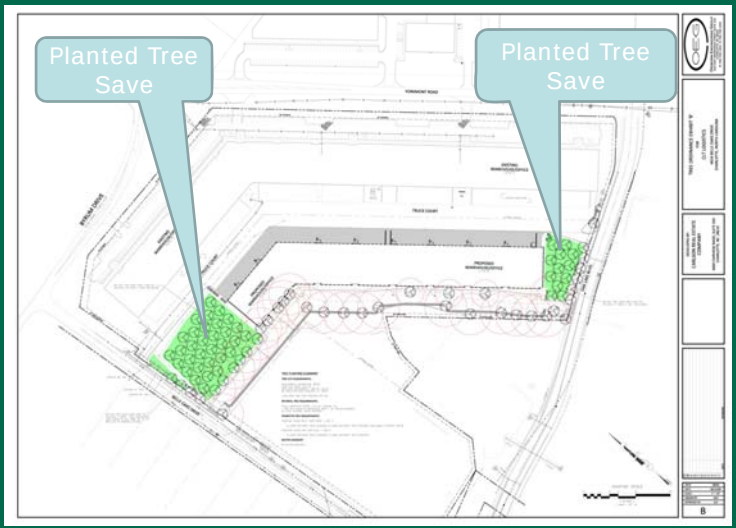
CITY OF CHARLOTTE

Industrial, CLT Logistics (No Existing Trees)
On Site Planted Tree Save Area (1.42 acres)



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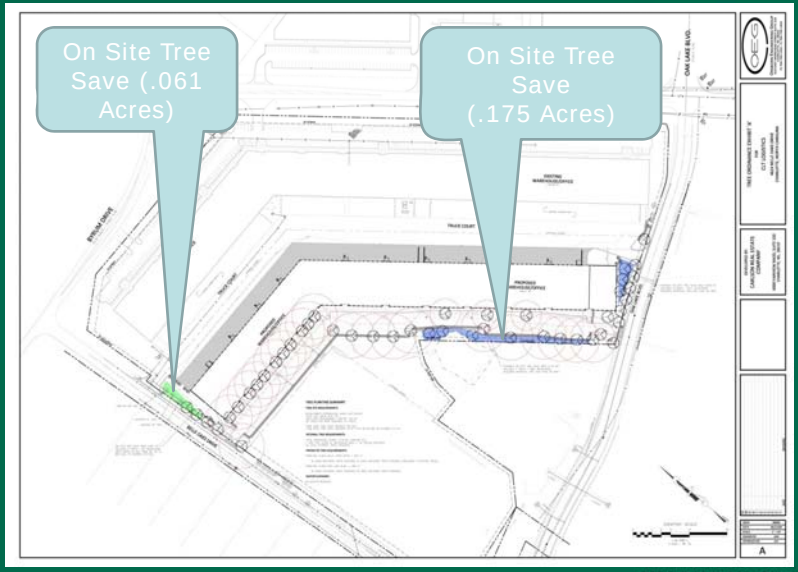
CHARLOTTE

CITY OF CHARLOTTE

Industrial, CLT Logistics
On Site and Off Site Tree Save (1.42 acres)



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CITY OF CHARLOTTE

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CHARLOTTE

CITY OF CHARLOTTE

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CITY OF CHARLOTTE

Shops at Freedom Existing conditions

Freedom Drive

Existing parking Lot Without Trees

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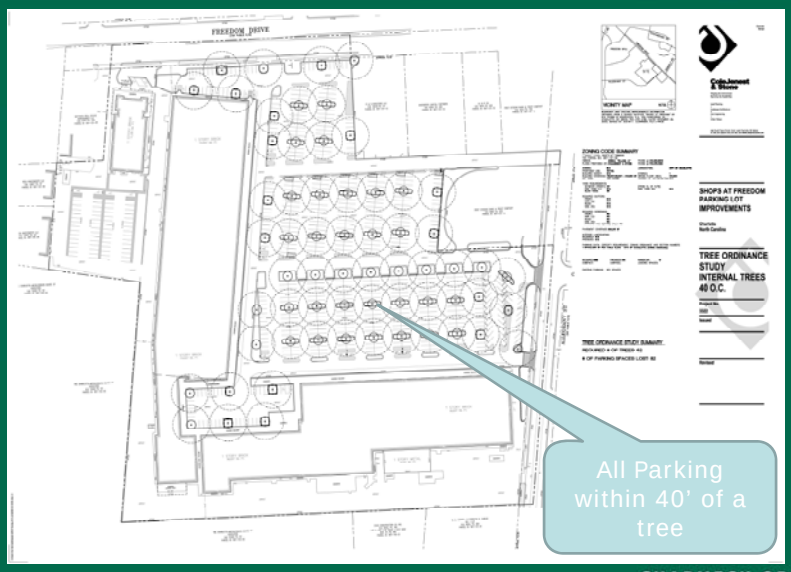
CITY OF CHARLOTTE

Additions to an Existing Site: Shops at Freedom Parking Lot Tree Planting



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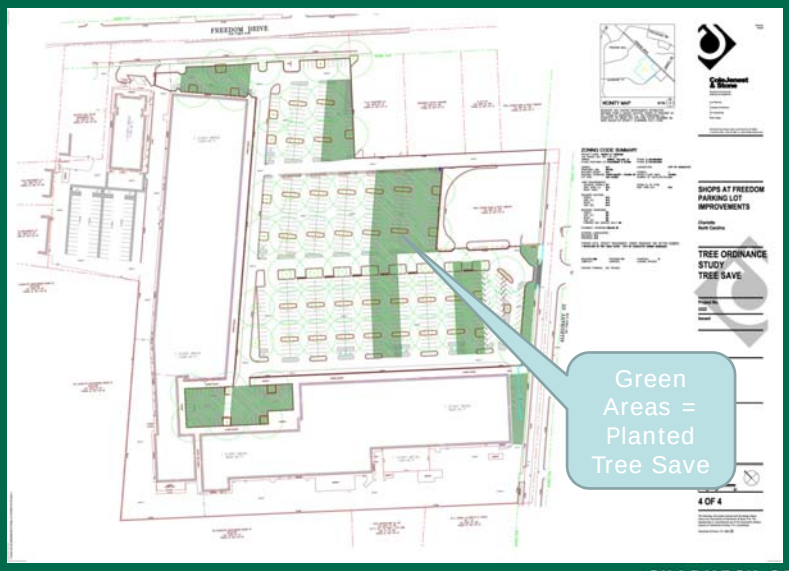
CITY OF CHARLOTTE

Additions to Existing Site: Shops at Freedom Parking Lot Tree Planting and Tree Save (No Existing Trees On Site)



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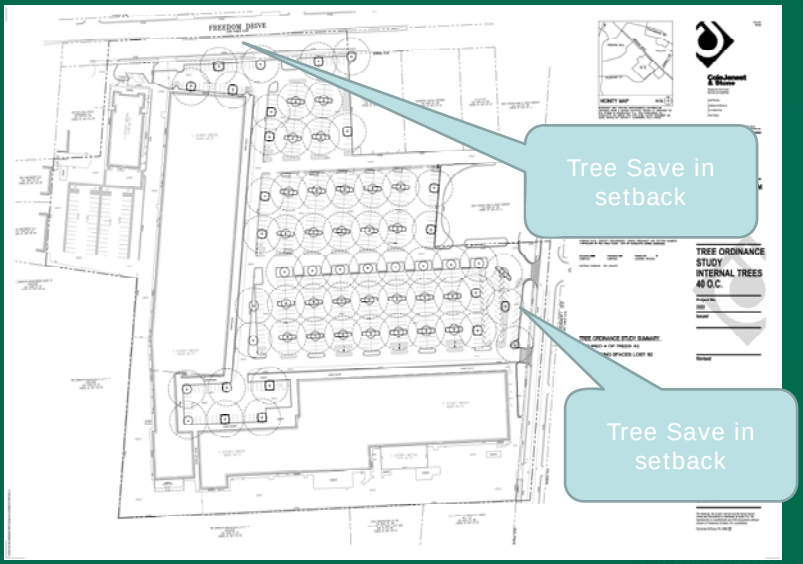
CITY OF CHARLOTTE

Additions to an Existing Site: Shops at Freedom Parking Lot Tree Planting



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Uptons Site on Albemarle Road

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Uptons Site on Albemarle Road

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