

Review by P&Z Commission: 12/20/17

Sponsor: Councilwoman White

First Reading: 02/05/18

Ord. No.: 014-17

**AN ORDINANCE TO AMEND APPENDIX B (“SUBDIVISION AND LAND DEVELOPMENT ORDINANCE”) OF THE TOWN CODE OF THE TOWN OF SMYRNA TO MAKE HOUSEKEEPING AMENDMENTS TO SECTION 5.17 (“TREE PLANTING STANDARDS AND REQUIREMENTS”) AND TO CLARIFY THAT TREE PLANS MUST COMPLY WITH THE STANDARDS FOUND IN ARTICLE III (“TREES”) OF CHAPTER 74 (“VEGETATION”)**

WHEREAS, the Town Council of the Town of Smyrna is authorized by section 15 of the Town Charter to regulate the subdivision and development of land within the boundaries of the Town;

WHEREAS, the Town Council of the Town of Smyrna has adopted regulations governing the subdivision and development of land within the Town, including standards and requirements for planting trees;

WHEREAS, in the opinion of the Town Council, it is necessary to clarify that tree plans must comply with the standards found in Chapter 74 (“Vegetation”), Article III (“Trees”) and to make other housekeeping amendments;

WHEREAS, the Planning Commission considered this ordinance at a duly noticed meeting held on December 20, 2017, and recommended to the Town Council that this ordinance be approved subject to certain modifications that have been made;

WHEREAS, the Town Council held a public hearing on February 5, 2018, notice for which was published in the Smyrna/Clayton Sun Times on January 10, 2018 and posted at Town Hall on January 10, 2018, at which time all interested members of the public were given an opportunity to comment on this ordinance; and

WHEREAS, after considering the recommendation of the Planning Commission and the comments presented at the public hearing, in the opinion of the Town Council it is necessary to amend the tree planting requirements to further the public health, safety, and welfare.

NOW THEREFORE, BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that Section 5.17 (“Tree planting standards and requirements”) of Appendix B (“Subdivision and Land Development Ordinance”) of the Town Code of the Town of Smyrna be and hereby is amended as follows:

**Section 1.** Amend Section 5.17 (“Tree planting standards and requirements”), subsection e (“Recommended trees for new planting”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- e. *Recommended trees for new planting:* The following characteristics shall be considered in selecting new trees to plant: size, tolerance to pollution, pest and disease resistance, non-invasiveness, ability to withstand drought and soil conditions, ~~as well as~~ and landscape and ornamental value. It is recommended that ~~individuals~~ new trees be selected from the tree list provided by the Delaware

Urban and Community Forestry website (<http://delawaretrees.com/publications-2/recommended-trees/>). Individuals should contact the ~~Delaware Forest Service~~ Smyrna Shade Tree Commission at [ShadeTreeCommission@smyrna.delaware.gov](mailto:ShadeTreeCommission@smyrna.delaware.gov) for assistance in identifying which tree species would be most appropriate for the area.

**Section 2.** Amend Section 5.17 (“Tree planting standards and requirements”), subsection g (“Tree plan specifications”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- g. *Tree plan specifications.* A tree plan, prepared by or in conjunction with a design professional, shall be shown on a copy of a preliminary plat, sketch, or site plan, as appropriate to the proposed development, drawn to the same scale and covering the same area as the other plan documents prepared for town review. The plan may be combined with a required buffer and landscape plan for the project, at the option of the developer. The plan shall comply with the requirements found in Chapter 74 (“Vegetation”), Article III (“Trees”) of the Town Code and shall provide sufficient information and detail to clearly demonstrate that all applicable requirements and standards of this section and Chapter 74, Article III will be fully satisfied. The plan shall contain, but need not be limited to, the following:
- (1) Project name, zone, parcel number, north arrow and scale.
  - (2) Developer’s name, address and telephone number.
  - (3) Name, address, and telephone number of the design professional responsible for the preparation of the plan.
  - (4) Delineation of all lot lines, minimum yard areas, buffers, and landscape areas as required by the zoning ordinance.
  - (5) Total acreage of the site and total lot area for each lot delineated.
  - (6) Delineation of all wetlands and woodlands.
  - (7) Designation and delineation of all lots in areas expected to retain existing trees to meet the tree density requirement.
  - (8) Designation of any tree(s) having an historic value, as determined by the state historic preservation officer, or that are of an outstanding nature due to type or species, age, or other criteria as determined by the Delaware Forest Service, if applicable.
  - (9) The location, spacing, caliper, and species of new trees proposed to meet tree density requirements.
  - (10) A summary table of the number of new trees to be planted and minimum number of existing trees to be retained to meet the tree density requirement, if any, along with calculations showing that the tree density requirement has been achieved. Groupings of trees may be keyed to the summary table by area rather than having each tree individually labeled on the plan.
  - (11) There shall be a note on the plan indicating that a one-year full price replacement guarantee on all new trees planted is held by the applicant.

**Section 3.** Amend Section 5.17 (“Tree planting standards and requirements”), subsection h (“Council waiver”) by making insertions as shown by underlining and deletions as shown by strike through as follows:

- h. *Council Commission waiver.* ~~Council may waive~~ The Smyrna Shade Tree Commission may grant up to a ten (10%) percent waiver of the provisions of section 5.17(c), Tree Density, when doing so will

mitigate the removal of existing trees located within the non-residential or residential subdivision plan, and allow tree mitigation efforts to occur on-site within the submitted non-residential site or residential subdivision plan. A waiver request shall be heard and decided by the Smyrna Shade Tree Commission prior to a subdivision plan being presented to the Planning and Zoning Commission for consideration.

**Section 4. Severability.** The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that Town Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Town Council’s intent.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon its adoption by the Town Council.

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### SYNOPSIS

This ordinance amends the Subdivision and Land Development Ordinance of the Town of Smyrna to clarify the characteristics that should be considered for new trees and how individuals can receive guidance in selecting new trees. This ordinance authorizes the Smyrna Shade Tree Commission to grant waivers to the tree density requirements and clarifies the standards for granting waivers. This ordinance clarifies that tree plans must comply with the requirements found in Article III (“Trees”) of Chapter 74 (“Vegetation”) of the Town Code.

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This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
Council Secretary

\_\_\_\_\_  
Mayor

This shall certify that the title and synopsis of this Ordinance was published in the “Smyrna/Clayton Sun Times” on \_\_\_\_\_, 2018 and posted at the Town Hall on \_\_\_\_\_, 2018.

So Certifies:

\_\_\_\_\_  
Town Clerk