



P.O. Box 2430

Indian Trail, North Carolina 28079

**PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT**

**Zoning Staff Report**

<b>Case: ZT 2015-003 Heritage Tree Protection</b>		
<b>Reference Name</b>	Amendment of UDO Chapters 1640.260, 830.040(E) and 880.040(A)	
<b>Applicant</b>	Town of Indian Trail	
<b>Submittal Date</b>	July 21, 2015	
<b>Location</b>	Town-wide	
<b>Tax Map Number</b>	N/A	
<b>Plan Consistency</b>	Town of Indian Trail Comprehensive Plan	Consistent With Goals of the Adopted Comprehensive Plan
<b>Recommendations &amp; Comments</b>	Planning Staff	Recommends Approval of Proposed Text Amendment.

**Project Summary**

This is a request to amend Chapters 1640.260, 830.040(E) and 880.040(A) of the Unified Development Ordinance (UDO) to amend the definition of Heritage trees, amend the requirements of the Heritage Tree Protection provision within the UDO, as well as provide for mitigation alternatives when strict adherence to the UDO is not feasible.

**Staff Recommendation-** Staff recommends, based on the guidance of the adopted plans, that the text amendment be supported by recommending its approval to the Town Council.

**Background**

UDO Chapter 1640.260 defines any tree with a diameter of 12 inches or greater as a Heritage Tree. UDO Chapter 830.040(E) requires any Heritage tree to be protected, and any removal of Heritage trees is subject to 1) Being removed only when certain criteria is met and 2) Planting of additional trees mitigating the removal of the Heritage Tree(s) removed.

UDO Chapter 880.040(A) provides for alternative landscape plans to be approved where strict adherence to the UDO is not feasible.

**Analysis/Overview**

Since adoption of the Heritage Tree ordinance, staff and the Indian Trail Tree Board has observed certain non-residential sites have not been able to meet the required Heritage Tree Protection provision of the UDO. These sites have several characteristics in common: they are undeveloped, fully wooded sites; they have non-residential uses/zoning intended to locate within them; and they are typically a small site (i.e., between approximately 1 and 8 acres, on average). In order to develop sites that are not able to meet the Heritage Tree requirements of the UDO, a developer must propose a mitigation plan to

be considered by the Tree Board and approved ultimately by the Planning Director. This process can add several weeks to the permit review process and creates uncertainty for the development community when considering locations to invest in.

The intent of this text amendment is to amend the definition of what is a Heritage Tree as well as provide additional options and/or direction for alternative mitigation strategies when strict adherence to the UDO is infeasible. The text amendment aims to provide standards which are more reasonable to comply with while maintaining suitable preservation of Indian Trail's community forest.

Based on staff's findings, we offer the following modifications for the Board's consideration. For ease of reference, proposed changes are written below as they would appear in the UDO if approved. Attachment 2 references the ~~strike through~~/underlined version of the text changes.

## **UDO Section 1640.260 Definitions**

### **Heritage Tree**

- A) A **deciduous** tree that is 14 inches in diameter or larger measured at 4.5 feet above grade (i.e., diameter at breast height). Deciduous trees include but are not limited to oak, hickory, elm, crepe myrtle, etc.
- B) An **evergreen** tree that is 18 inches in diameter or larger measured at 4.5 feet above grade (i.e., diameter at breast height). Evergreen trees include but are not limited to pines, cedars, etc.
- C) Specific tree species that shall not be considered Heritage Trees, regardless of the diameter size, are as follows: Bradford Pear, Magnolia, Mimosa, Mulberry, Silver Maple, and Sweet Gum.

## **UDO Section 830.040(E) Heritage Tree Protection**

### **E. Heritage Tree Protection**

#### **1. Applicability**

To the maximum extent feasible, heritage trees located on any site subject to tree preservation requirements of this Chapter must be preserved. Where a project saves heritage trees and is subject to the canopy tree requirements of this Chapter, 150 percent of the heritage tree canopy area shall count toward the required canopy tree requirements. Anyone who removes a heritage tree without plan approval is subject to one or more of the civil penalties in Section 880.050A. Standard for plans representing the removal of heritage trees shall meet the requirements listed in Section (3), Heritage Tree Removal, below.

#### **2. Exemptions**

This Chapter shall not apply to the removal of heritage trees under the following circumstances.

##### **a. Diseased, Dying or Dead Trees and Dangerous Trees**

Diseased, dying or dead trees or trees causing a probable safety hazard to buildings, utilities, and/or pedestrian or vehicular travel paths may be removed with written approval from the Planning Director, unless deemed an emergency, as described in subsection (2) below. The removal request shall include the number, location, species, and diameter of the trees to be removed along with the condition of the tree and reason for the proposed removal. The Planning Director shall review all heritage tree removal proposals and consider the following:

- 1. The condition of the tree or trees with respect to their health, danger of falling, proximity to existing structures or utilities, and their location near pedestrian or vehicular travel paths and the probability of implementing tree maintenance techniques as an alternative to heritage tree(s) removal.

2. The emergency removal of trees that pose an immediate public health and safety hazard, as determined by a Town, County, and/or State emergency services professional, may be removed without first obtaining written approval from the Planning Director. Written documentation of the removed tree(s) shall be provided to the Planning Director and include the tree species, diameter, location and a description or photographic evidence of the emergency condition.

b. **Trees Within ROW and Utility Easements**

All reasonable efforts shall be made to minimize the removal of heritage trees located within public Right-of-Way (ROW) and within public utility easements. Heritage trees located within existing public ROW or within existing public utility easements or heritage trees located in future public ROW or utility easements being dedicated as part of an active land development permit are exempt from this chapter once it has been demonstrated to the Town that all reasonable efforts to minimize removal have been implemented. For purposes of this exemption, public ROW shall consist of ROW associated with public roads, sidewalks, and trails/greenways. Public utility easements shall consist of easements associated with water, sewer, electric, and natural gas infrastructure.

**3. Heritage Tree Removal**

Plans associated with an active land development application that represent the removal of heritage trees will be granted only where:

- a. The tree(s) is located within the portion of the site where buildings or related improvements are permitted. The applicant should demonstrate that there is no other reasonable location for the building or improvement and that preservation would unreasonably restrict use of the property.
- b. Removal is necessary to allow construction of a road or drive that is essential for access to the site.
- c. Where removal of healthy heritage trees is approved as part of an approved site plan, subdivision plat or tree removal approval, new trees will be planted according to the Mitigation Planting standards in Section (4), Mitigation Planting, below (also refer to Chapter 870, Tree Planting Standards).

**4. Mitigation Planting**

The Mitigation Planting standards below are a cumulative caliper inches approach to tree mitigation and replanting. For example, for every caliper inch of heritage tree(s) removed, a percentage of those caliper inches must be replaced with a tree or trees equal to that total percentage of caliper inches. Each replacement tree shall be at least 2.5” caliper at the time of replanting. See below for the respective percentages to be replaced based on the type of development.

Where removal of healthy Heritage trees is approved as part of an approved site plan or subdivision plat, new trees shall be planted according to the following in addition to Chapter 870, Tree Replanting Standard:

- a. **Single-Family Residential Use Replanting Ratio** - replacement for residential development, excluding single-family lots not developed as part of a subdivision, shall be at a 50% ratio. (e.g., 18” caliper tree X 50% = 9” caliper replacement tree or trees equivalent to that cumulative caliper)
- b. **Non-Single Family Residential Use Replanting Ratio** – replacement for all non-single family development shall be at a 25% ratio.

(18" caliper tree X 25% = 4.5" caliper replacement tree or trees equivalent to that cumulative caliper)

## 5. Alternative Mitigation Options

In the event the project site does not have sufficient area to accommodate the required heritage tree mitigation planting described in subsection (4), Mitigation Planting, above, one or more of the alternative mitigation measures listed in this section may be proposed.

Alternative Mitigation Plans shall include the number, location, species, and diameter of the trees to be removed, and the number, species and diameter of trees with which they are being replaced. The review shall evaluate the appropriateness of the Alternative Mitigation Plan by considering the individual development site, the development intensity along with the surrounding uses and any other relevant site features. The plans shall be reviewed by Tree Board and a recommendation made to the Planning Director, who makes final decision. Approved Alternative Mitigation Plans shall be integrated into the associated site plan application unless otherwise approved as part of a Conditional Zoning Permit and may include one or more of the following:

- a. In-Lieu-Fees - Where the Planning Director in consultation with the Tree Board determines that on-site replanting is not feasible and/or appropriate, the Director may require that a payment of equal value to the cost of replanting replacement trees be made to a tree planting fund. Funds will be used for tree planting and maintenance of planted trees on public sites within the Town of Indian Trail such as parks, schools, municipal facilities, and similar locations. Replacement value shall be determined utilizing a professional source and by the Town. Fee Recovery as stated in Section (6), Fee Recovery, below may apply.
- b. Alternative Planting Plan - The developer shall submit a heritage tree alternative mitigation plan.
  1. Such plan must include a scope of work to be reviewed by the Planning Department.
  2. The scope of work shall include, at a minimum, the number, location and specifications of the trees to be removed as well as alternative mitigation or conservation measures through which trees or tree areas will be saved or replaced.
  3. Fee Recovery as stated in Section (6), Fee Recovery, below may apply.
- c. Off-site Planting - An alternative site(s) may be identified for additional tree planting. Off-site plantings may include local parks, schools or other public facilities to the satisfaction of the Planning Director.
- d. Other method(s) may be considered as deemed appropriate by Planning Director.

**Note: Alternative site plantings and payments in-lieu-of may not be used together to meet the total replanting requirement.**

## 6. Fee Recovery

The Town may retain the services of a consultant to evaluate technical submittals by the applicant and seek an independent judgment on the appropriateness of the heritage tree alternative mitigation plan. The Planning Director shall be responsible for selecting the technical expert hired for the review of the proposed mitigation plan. The Town may seek reimbursement for any technical review undertaken.

The technical expert must make investigations consistent with all the terms and conditions of this ordinance. The fees charged for the technical expert's review will be customary fees for plan review and for the evaluation/preparation of a technical report. Charges for such consulting services will be fixed in advanced of the processing of applications and will be incorporated into the overall site plan/subdivision/conditional zoning application fee.

## **UDO Section 880.040(A) Modifications, Denials, Inspections and Emergencies**

### **A. Modifications**

Alternate tree protection/planting plans, plant material, planting standards or reforestation may be used where it would be unreasonable or impractical to strictly apply the tree protection/planting requirements. Such situations may be the result of streams, natural rock formations, topography, or other physical conditions; utility easements, a unified development design or unusual site conditions. An alternate plan may be approved as part of a Conditional Zoning or when:

### **Required Consistency Findings**

The Planning Board is required to make two consistency findings, one for consistency with Town adopted plans and another regarding the benefit of the public. Staff is of the opinion the following findings can be made:

1. The proposed UDO amendment is consistent with the following goals of the Comprehensive Plan:
  - *Open Space and Natural Environment Goal #5:* Because it will enable responsible growth and development while preserving and protecting the natural environment and features.
2. This UDO ordinance amendment is in the best interest of the public because it helps further responsible land development while maximizing the community forest environment.

Staff recommends that the Planning Board make the required consistency findings and recommend adoption of this UDO Text Amendment ZT2015-003 as presented.

#### **Staff Contact**

Gretchen Coperine  
704-821-5401  
[gcoperine@planning.indiantrail.org](mailto:gcoperine@planning.indiantrail.org)

Attachment 1: Draft Ordinance

Attachment 2: Strikethrough/Underline Version

**PB Attachment 1: Draft Ordinance**

STATE OF NORTH CAROLINA )

TOWN OF INDIAN TRAIL ) ORDINANCE #

AN ORDINANCE AMENDING CHAPTERS 1640.260, TREE AND LANDSCAPING DEFINITIONS AND CHAPTER 830.040(E), HERITAGE TREE PROTECTION, AND CHAPTER 880.040(A), MODIFICATION, DENIALS, INSPECTIONS AND EMERGENCIES, OF THE INDIAN TRAIL UNIFIED DEVELOPMENT ORDINANCE (UDO) RELATED TO HERITAGE TREES, NORTH CAROLINA

WHEREAS, the Town is the applicant for ZT 2015-003 requesting to amend Chapters 1640.260, Tree and Landscaping Definitions, Chapter 830.040(E), Heritage Tree Protection, and Chapter 880.040(A), Modifications, Denials, Inspections and Emergencies, amending the definition of a Heritage Tree; and providing and amending the requirements of the Heritage Tree Protection provision; and

WHEREAS, this Zoning Amendment (ZT 2015-003) was duly noticed in compliance with North Carolina General Statutes; and

WHEREAS, the amendment was heard by Planning Board on August [redacted] 2015 in a public meeting; and

WHEREAS, the Planning Board after hearing the amendment and deliberations made the following findings and recommended approval to the Town Council:

1. The proposed UDO amendment is consistent with the following goals of the Comprehensive Plan:
  - *Open Space and Natural Environment Goal #5:* Because it will enable responsible growth and development while preserving and protecting the natural environment and features.
2. This UDO ordinance amendment is in the best interest of the public because it helps further responsible land development while maximizing the community forest environment.

WHEREAS, the Town Council received the Planning Board transmittal for a recommendation of [redacted] in the required public hearing held on September [redacted], 2015, and after receiving the transmittal, public comment, and deliberation, [redacted] with the required findings and amendment recommendation as transmitted by the Planning Board.

NOW THEREFORE, BY THE TOWN COUNCIL OF THE TOWN OF INDIAN TRAIL, NORTH CAROLINA HEREBY TAKES THE FOLLOWING ACTION:

**Section 1 – UDO CHAPTER 1640.260, UDO Chapter 830.040(E) and UDO Chapter 880.040(A) is hereby Approved as shown in Exhibit A of this Ordinance;**

**Section 2-** This ordinance shall be effective immediately upon adoption.

SO ORDAINED THIS      DAY OF September, 2015. THE TOWN COUNCIL OF INDIAN TRAIL

By \_

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Honorable Michael L. Alvarez, Mayor

Attest:

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Kelley Southward, Town Clerk

APPROVED AS TO FORM:

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TOWN ATTORNEY

# ZT2015-003 EXHIBIT A

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