

TOWN OF PINE KNOLL SHORES

AN ORDINANCE AMENDING RELEVANT PORTIONS OF CHAPTER 74, ZONING, OF THE TOWN OF PINE KNOLL SHORES CODE OF ORDINANCES

WHEREAS, the Town of Pine Knoll Shores has a public policy of protecting the maritime forest; and

WHEREAS, in order to achieve that public policy goal, the Town's Code of Ordinances establishes procedures and standards for the removal of trees under the authority granted to the Town by House Bill 2317, Chapter 921, of the 1987 session, which permitted the Town to regulate trees; and

WHEREAS, some confusion has arisen from some portions of the Town's existing tree regulations, particularly regarding oceanfront pruning; and

WHEREAS, the Town recognizes that trees grow more slowly on the oceanfront than on non-oceanfront parcels due to the influence of salt the environment and the effects of salt air on plant life; and

WHEREAS, the Town desires to clarify confusing elements and differentiate for oceanfront and non-oceanfront regulations; and

WHEREAS, the Pine Knoll Shores Planning Board has considered the ordinance amendments and has recommended to the Town Board approval of the amendments and has included in its report to the Town Board a statement of consistency with the Town's comprehensive plan and a written recommendation pursuant to the North Carolina General Statute §160A-383; and

WHEREAS, the ordinance amendment is reasonable and in the public's interest and is consistent with the Town's Core CAMA Land Use Plan because the Plan states that:

1. "The Town supports the preservation of its maritime forest and tree canopy"
2. "The Town will maintain and enforce its regulations regarding tree removal"
3. "The Town will maintain a permit review process for tree removal and oceanfront pruning. The Town will also monitor tree removal through its landscape permit processes"; and

WHEREAS, the Town Board has conducted a public hearing on the amendments after giving notice required by law on December 13, 2017;

NOW, THEREFORE, BE IT ORDAINED by the Pine Knoll Shores Board of Commissioners that:

Section 74-2, Definitions, is hereby amended in relevant part:

Clear-cut means the removal of the majority of shrubs and ~~trees with a trunk diameter of three inches or greater measured 3.5 feet above grade~~ regulated trees from a parcel of land or an area on a parcel of land.

Diameter breast height (DBH) means diameter is measured over the outside bark using a diameter tape at the point forester's call "breast height". Breast height is specifically defined as a point around the trunk at 4.5 feet (1.37 meters in metric using countries) above the forest floor on the uphill side of the tree. For the purposes of determining breast height, the forest floor includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.

Landscape plan means a scaled representation of the property that is to be developed, redeveloped or altered, showing the location of all existing trees with a trunk diameter of six inches or greater measured 3.5 feet above grade, ~~proposed location of new trees to be planted, location of existing or proposed buffer plantings, street trees, the location of existing trees to be removed regardless of size at diameter breast height for non-oceanfront lots or 3.5 feet above grade on oceanfront lots, proposed location of new trees to be planted, location of existing or proposed buffer plantings, street trees, the location of existing trees to be removed regardless of size,~~ replacement trees and any buildings or proposed land disturbance. See Section 74-86.

Measurement Height: The point on a tree for measuring diameter to determine if a tree is a regulated tree. For trees on non-oceanfront properties the Measurement Height is DBH; for trees on ocean-front properties the Measurement Height is 3.5 feet above natural grade; or, regardless of location, if a tree has a characteristic specified in the definition of Alternate Height Measurement, the Measurement Height for that tree is determined as specified in the definition.

Alternative Height Measurement. Trees within the following categories will be measured as described herein to determine if they are regulated trees:

Forked Tree: Where the trunk of a tree forks below Measurement Height, the tree diameter will be measure just below the fork.

Measuring trunk/stem: Where there are multiple trunks or stems of a tree extending from grade, measure the diameter of each trunk or stem at Measurement Height.

Straight tree on a slope: Measure at Measurement Height on the upper side of the slope.

Leaning tree: Where a tree leans at more than a 22.5 degree angle to the horizontal plane, regardless of location, measure the diameter at 4.5 feet natural grade.

Regulated tree means any tree three inches in diameter or greater at ~~3.5 feet above natural grade~~ Measurement Height.

Site plan means a scale drawing of a lot showing the topography thereof, the exact location of any structures, drives, and parking areas to be built thereon, the location of all trees six inches or more in diameter measured ~~3.5 feet above grade~~ at diameter breast height (DBH) on non-oceanfront lots, and at 3.5 feet above natural grade on oceanfront lots and other mature decorative trees such as holly and dogwood, and any other unusual characteristics.

25 Gallon Tree means any tree in a container that is the equivalent of 25 gallons in size with a container width of 18 to 20 inches and a container depth of 16 to 18 inches.

Section 74-28, Enforcement and Penalties, Subsection (a)(2) is hereby amended in relevant part:

(2) A person or entity that violates Section 74-64 ~~shall be liable to the town for a civil penalty in the amount not to exceed \$5,000.00.~~ or removes a *regulated tree* without a permit issued in accordance with Section 74-84, or in violation of a permit issued in accordance with Section 74-84, shall be liable to the town for a civil penalty in the amount not to exceed \$5,000.00. The unauthorized removal of each ~~each tree with a trunk three inches in diameter or greater measured at 3.5 feet above natural grade, shall be deemed a separate violation. In the event that the tree has been removed such that the diameter of the tree at 3.5 feet above natural grade cannot be determined, a violation shall have occurred if the tree equals or exceeds 3.5 inches in diameter at the stump.~~ *regulated tree*, shall be deemed a separate violation. In the event that the tree has been removed such that the diameter of the tree at DBH or 3.5 feet above natural grade, as applicable, cannot be determined, a violation shall have occurred if the tree equals or exceeds 3.5 inches in diameter at the stump for oceanfront lots or 4 inches at diameter at the stump on non-oceanfront lots.

Section 74-62.1, Consequences of failure to complete work, is hereby amended in relevant part:

If the holder of a landscape permit issued pursuant to Subsection 74-59(2) and/or other provisions of the Town Code, shall in whole or in part disturb his land or remove vegetation pursuant to the landscape permit but thereafter fail to fully complete the work authorized by the building permit issued in conjunction with the landscape permit, he shall be subject to the following enforcement action, notwithstanding the provisions of Section 74-28:

(1) For willful failure to complete the work authorized by the building permit the permit holder is subject to:

- a. All penalties and enforcement actions provided in Section 1-12 of the Pine Knoll Shores Town Code; and
- b. For each *regulated tree* removed ~~with a trunk three inches in diameter or greater measured at 3.5 feet above natural grade,~~ a civil penalty of up to \$5,000.00 assessed according to Subsection 1-12(a) of the Town Code. In addition to this amount, which shall be payable to the town in the nature of a debt, the violator shall pay all court costs, and all reasonable attorney's fees required to produce a

civil judgment to enforce this provision, this provision being enacted in accordance with the provisions of N.C.G.S. 160A-175(b).

(2) Regardless of whether failure to complete the work authorized by the building permit was willful, the holder of the permit shall fully restore the property, including all vegetation and topography, to its condition prior to performing the work authorized by the landscape permit within 60 days of notice from the Building Inspector. If the permit holder fails to perform such restoration, he will be in violation of this section and will be subject to all of the civil penalties and enforcement actions under Section 1-12 of the Town Code. Further, if the holder of the permit cannot practically replace trees removed pursuant to a landscape permit because of the size of the trees, in lieu of complete restoration of the trees he is permitted to mitigate the loss as follows:

a. For each regulated tree ~~whose trunk exceeded 1.5 inches in diameter at 3.5 feet above natural grade he will replace the same with a tree of the same species with a trunk diameter of at least 1.5 inches; he shall replace the same with a tree from the list of trees of special concern set forth in Section 74-64 of 25 gallons or an equivalent on the oceanfront as specifically approved by the Community Appearance Commission. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees shall be replaced and replacement shall occur at the earliest suitable planting season as determined by the Town;~~ and

b. Pay to the town a civil penalty, and related costs, for each regulated tree ~~whose trunk exceeded three inches in diameter at 3.5 feet above natural grade~~ in an amount between \$1,000.00 and \$5,000.00 calculated as follows: \$1,000.00 for each inch, or part thereof, of the diameter of the trunk of the original tree up to a maximum of \$5,000.00. In addition to this amount, which shall be payable to the town in the nature of a debt, the permit holder shall pay all court costs, and all reasonable attorney's fees required to produce a civil judgment to enforce this provision, this provision being enacted in accordance with the provisions of N.C.G.S. 160A-175(b).

Section 74-64, Tree preservation, protection and replacement, Subsections (d)(2-4) are hereby amended in relevant part:

(2) On each property for which a major landscape plan is required, the landscape plan must specify that new and existing trees that meet the standard of regulated trees of three inches in diameter or greater that do not survive the development process must be replaced by new trees of special concern of 1½ inches (or greater) diameter. In this section, reference to trunk diameter shall always mean as measured 3.5 feet above grade that are anticipated to survive the development process, but do not, must be replaced by new 25 gallon trees of special concern or an equivalent on the oceanfront as specifically approved by the Community Appearance Commission. The Community Appearance Commission shall review and determine the additional trees, if any, needed. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees

shall be replaced and replacement shall occur at the earliest suitable planting season as determined by the Town.

(3) On each property for which a tree plan is required by this section, the tree plan must allow for a minimum tree density standard as follows: For each 1,000 square feet of pervious surface, excluding septic field, one tree, ~~three~~ six inches in diameter or greater measured at diameter breast height or 3.5 feet above natural grade, as applicable. New and/or existing trees that do not survive the development process must be replaced by new ~~trees of 1½ inches in diameter or greater so that the minimum standard tree density is maintained~~ 25 gallon trees or an equivalent on the oceanfront as specifically approved by the Community Appearance Commission so that the minimum standard tree density is maintained. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees shall be replaced and replacement shall occur at the earliest suitable planting season as determined by the Town. ~~The Community Appearance Commission may require an annual review for up to two years to determine the survival rate of replacement trees.~~ Palm trees may not be used to meet the minimum density requirement. In the event that an oceanfront property cannot meet the required tree density based on six inch trees, the Community Appearance Commission may recommend that the tree density be considered based on 3 inch trees.

(4) Landscape plans for properties subject to the ordinance from which this section derives shall show the existing trees to be removed for development of the property. No ~~existing tree three inches in diameter or greater measured 3.5 feet above grade~~ regulated tree shall be destroyed outside the clearing limits indicated on the major landscape permit request unless written approval has been granted by the Building Inspector, Community Appearance Commission, and Planning Board during the landscape plan and final plat approval process.

Section 74-64, Tree preservation, protection and replacement, Subsections (f)(3-4) are hereby amended in relevant part:

(3) Injury or destruction of trees protected by this section that result in total loss of a tree shall require replacement within 60 days of the notice of violation. Injuries shall be assessed by a professional arborist who will determine whether the tree can be treated. If untreatable, replacement of the injured tree(s) shall occur within six months at a ratio of one-to-one. The size of the replacement tree must be at least ~~1½ inches in diameter~~ 25 gallons or an equivalent on the oceanfront as specifically approved by the Community Appearance Commission. Replacement trees must be approved by the Community Appearance Commission. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees shall be replaced and replacement shall occur at the earliest suitable planting season as determined by the Town.

(4) If any trees in the property owner's landscape plan are designated as not being disturbed but are severely damaged during construction or should die within 24 months after project completion, the developer or property owner shall replace the trees at the owner's expense. Replacement shall occur ~~within six months~~ at a ratio of one-to-one. The size of the replacement trees must be at least ~~1½ inches in diameter~~ 25 gallons or an equivalent on the oceanfront as specifically approved by the Community Appearance Commission. Replacement trees must be approved by the Community Appearance Commission. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees shall be replaced and replacement shall occur at the earliest suitable planting season as determined by the Town.

Section 74-84, When required; procedure, is hereby amended in relevant part:

(a) The Building Inspector shall issue a tree removal ~~and oceanfront pruning~~ permit to remove any *regulated trees* or shrubs ~~, or to prune maritime vegetation on oceanfront property~~ of three inches or more in diameter at DBH or trees that are otherwise subject to a fine under Section 74-28, whether naturally occurring or planted by the property owner, only upon a determination by the Community Appearance Commission after a site inspection during which photographs of the site have been taken that the activity will achieve one of the following purposes:

- (1) Protect a structure or improvement on the property from imminent damage from tree roots or limbs.
- (2) Promote the growth and health of other more desirable vegetation.
- (3) Remove dead or diseased trees.
- ~~(4) Improve the appearance and/or livability of the property without significantly destabilizing the soil thereon or of adjacent properties.~~

Approval or disapproval of the permit request must be completed within 30 days of receipt of the application by the Building Inspector. Any person aggrieved by the decision of the Community Appearance Commission may appeal to the Town Manager.

(b) The Building Inspector shall issue an oceanfront pruning permit to prune trees between an oceanfront structure and the beach, whether naturally occurring or planted by the property owner, only upon a determination by the Community Appearance Commission after a site inspection during which photographs of the site have been taken that the activity will achieve one of the following purposes:

- (1) Promote the growth and health of other more desirable vegetation.
- (2) Remove dead or diseased trees.
- (3) Improve the appearance and/or livability of the property without significantly destabilizing the soil thereon or of adjacent properties
- (4) Protect the dunes
- (5) Improve the vista from the property without causing damage to the maritime vegetation.

~~As to Beachfront tree pruning, such pruning shall only be permitted following application to the town.~~

(1) Applications will only be considered for work to be performed during the period from November 1 through March 31. No pruning may occur during the period from April 1 through October 31.

(2) The application shall describe the extent of the pruning desired and shall be accompanied by a pruning plan from a certified professional arborist which states that the pruning desired will not result in damage or death to the vegetation pruned.

(3) Each application will be considered by the Community Appearance Commission on its individual merit. Once a pruning permit is approved by the Community Appearance Commission and Building Inspector, the pruning will be supervised by the certified professional. The Community Appearance Commission and the Building Inspector will monitor this process.

(c) Upon completion of the work requested by the tree removal and oceanfront pruning permit, the Building Inspector and the Community Appearance Commission will re-inspect the site, take photographs, and ascertain compliance with the permit.

(d) Shrubs may be pruned throughout the year without a permit to facilitate the owner's desire for clearance around structures, driveways, walkways, etc. and to promote or achieve a fuller shrub. It is recommended that shrubs that flower should be pruned after they bloom and at no more than 1/3 pruning at any one time.

Section 74-86, Landscape plan, Subsections (a) and (c) are hereby amended in relevant part:

(a) All applications for major landscape permits shall contain a site plan for the property drawn to a scale of one inch = 20 feet for all parcels and shall include the following:

(1) An inventory of existing trees, or groups of trees, having trunks with diameters of six inches in diameter or greater, measured at diameter breast height 3.5 feet above grade on the oceanfront;

(2) Existing trees, shrubs and other native plants proposed to be removed;

(3) Trees and other native plants proposed to be retained and methods to be utilized for the purpose of protecting existing vegetation; and, the tree density per 1,000 square feet of pervious area prior to development and the resulting tree density per 1,000 square feet of pervious area, excluding septic field area, after development;

(4) The location of proposed or existing structures on the property including driveways;

(5) The location and the design of proposed landscape areas and varieties and sizes of plant materials to be planted, including the size and quantity of trees and shrubs;

(6) Existing and proposed topography, clearly representing the extent of any proposed grading, excavation and fill;

(7) The impervious surface area calculation.

(c) All applications for a minor landscape permit shall include at least an 8½ inch × 11 inch sketch of the property, its current structures, the proposed improvement, current regulated trees ~~three inches or greater in diameter~~ near the proposed improvement, any of these trees to be disturbed, plantings to be added, any other pertinent information important to the approval process.

This Ordinance shall be effective upon adoption.

This the ____ day of _____, 2017.

TOWN OF PINE KNOLL SHORES

DRAFT

By: _____
Mayor

ATTEST:

Town Clerk