

Kershaw County Planning and Zoning Department

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Tree Protection

Section 5:3.4, Unified Code of Zoning and Land Development Regulations

5:3.4-1 Findings and Intent

Kershaw County finds that:

- A. Trees appreciably reduce the carbon dioxide content of the air and play a vital role in air purification and the reduction of global warming.
- B. Trees filter dust and other airborne pollutants from the air.
- C. Trees play a significant role in filtering and purifying stormwater passing through the ground to our drinking water aquifers.
- D. Tree root systems stabilize the soil and are an effective component of soil conservation, erosion control, and flood control.
- E. Trees provide valuable amenities to site development by providing shade, cooling the air and land, reducing noise levels and glare, and breaking the monotony of the built environment.
- F. Trees have an important aesthetic impact on the desirability of land, and consequently increase property value.

Based on these findings, it is the intent of Kershaw County to protect certain existing trees and, under the circumstances set forth in this section, to require the planting of trees to replace certain existing trees that have been removed during certain activities related to site development.

5:3.4-2 Tree Protection Definitions

Caliper - The diameter of a trunk of a nursery-grown tree or immature tree that has been grown to be transplanted in a new location, measured at six (6) inches above the top of the root mass.

Diameter at Breast Height (DBH) - The standard measure of tree diameter for trees existing in place on a site. The tree trunk is measured four and a half (4½) feet above the ground. If the tree splits into multiple trunks below four and one half (4½) feet, the trunk is measured at its most narrow point beneath the split.

Forestry Activity - Forestry activity includes, but is not limited to, timber harvest, site preparation, controlled burning, tree planting, applications of fertilizers, herbicides, pesticides, weed control, animal damage control, fire control, insect and disease control, forest road construction, and any other generally accepted forestry practices.

Forest Management Plan - Forest management plan means a document or documents prepared or approved by a forester registered in this State that defines a landowner's forest management objectives and describes specific measures to be taken to achieve those objectives. A management plan shall include silvicultural practices, objectives, and measures to achieve them, that relate to a stand or potential stand of trees that may be utilized for timber products, watershed or wildlife protection, recreational uses, or for other purposes.

5:3.4-3 Existing Significant Trees

Because any healthy pine tree of twenty (20) inches or greater diameter at breast height (DBH) and all other tree species of eight (8) inches or greater DBH is a valuable natural resource by virtue of its age, size, and its contribution to the environment, all such trees meeting this measurement shall be referred to as "significant trees" and shall be protected to the extent practical and feasible.

5:3.4-4 Unlawful to Cut, Generally

Unless authorized by the terms of this section or approved by the Planning Official, no person shall cut down, remove, damage, or destroy any significant tree located within significant tree protection zones.

5:3.4-5 Significant Tree Protection Zones

All existing significant trees located within a significant tree protection area shall be flagged and shown on the required plat, site plan, and/or phased clearing plan for a building permit, grading permit, or land development permit. No more than the allowable percentage of significant trees located in these areas shall be felled and removed under the following regulations:

- A. **Type “A” Significant Tree Protection Zone** - A fifteen (15) foot wide zone measured perpendicular to and continuing parallel to the front property line on any lot or tract where a minimum of seventy-five (75) percent of existing significant trees shall not be felled and removed. Where, owing to existing land use, lot sizes or configurations, topography, or circumstances peculiar to a given piece of property, more than twenty-five (25) percent of the significant trees to be preserved must be felled, two (2) trees measuring not less than two (2) inches caliper shall be planted for every significant tree removed in excess of twenty-five (25) percent of the total number of significant trees located in each protection area. To the extent possible, such trees shall be integrated into the required landscaping.
- B. **Type “B” Significant Tree Protection Zone** - The area within the public right-of-way where no significant tree shall be removed unless prior approval is granted or approval requirements are waived by the Planning Official.
- C. **Type “C” Significant Tree Protection Zone** - The area within the required side yard zoning district setback from the side property line where a minimum of fifty (50) percent of existing significant trees shall not be felled and removed. Where, owing to existing land use, lot sizes or configurations, topography, or circumstances peculiar to a given piece of property, more than fifty (50) percent of the significant trees to be preserved must be felled, two (2) trees measuring not less than two (2) inches caliper shall be planted for every significant tree removed in excess of fifty (50) percent of the total number of significant trees located in each protection area. To the extent possible, such trees shall be integrated into the required landscaping.
- D. **Type “D” Significant Tree Protection Zone** - The area within the required rear yard zoning district setback from the rear property line where a minimum of fifty (50) percent of existing significant trees shall not be felled and removed. Where, owing to existing land use, lot sizes or configurations, topography, or circumstances peculiar to a given piece of property, more than fifty (50) percent of the significant trees to be preserved must be felled, two (2) trees measuring not less than two (2) inches caliper shall be planted for every significant tree removed in excess of fifty (50) percent of the total number of significant trees located in each protection area. To the extent possible, such trees shall be integrated into the required landscaping.
- E. **Type “E” Significant Tree Protection Zone** - Any required buffer, open space, screening, or landscaped area. All significant trees located within these areas shall be utilized to the extent practicable to meet the tree planting requirements per the Buffering, Screening, Open Space, and Landscaping; and the Water Quality Buffer provisions of the Ordinance.

5:3.4-6 Exemption for the Removal of Existing Significant Trees

Removal of existing significant trees shall be prohibited prior to securing a grading, land development, and/or building permit. However, in the event that a tree poses a severe or imminent threat to public safety or property (e.g. in times of catastrophic events or when the tree is irreparably diseased or damaged), the Planning Official may waive the requirements of this section. Written and photographic

documentation must later be submitted to the Planning Official, outlining the threat which initiated the removal. The Planning Official may require replacement of any trees which are removed where it is determined that the threat resulted from negligence.

5:3.4-7 Significant Trees Removed without Permits

- A. **Significant Trees Removed in Violation of this Section** - Replacement trees shall be planted where significant trees have been removed or where removal is necessitated at any time due to acts of negligence, or where sites were cleared without a replacement schedule approved by the Planning Official. The Planning Official shall require a replacement plan to be submitted for approval. The replacement plan shall identify the number, species, caliper, and location of replacement trees according to a general guideline of the combined caliper of replacement trees is equal to or greater than the combined DBH of the trees removed in excess of the maximum percentage allowable. If the DBH inches of the removed trees cannot be determined, replacement shall be based on the stump diameter.
- B. **Significant Trees Removed Due to Emergencies or Death and Disease of Trees** - Replacement trees will not be required, as determined by the Planning Official, where significant tree removal is necessitated by emergencies or death and disease of trees due to natural causes per the above-referenced exemption. However, replacement trees are encouraged.

5:3.4-8 Tree Fund

- A. **Fee in Lieu of Replacement Trees** - In cases in which the developer determines that a site cannot substantially support any or all of the required number of replacement trees, the developer may submit a request to pay a mitigation fee to a County Tree Fund in lieu of planting the trees.
- B. **Demonstration of Need for Mitigation Fee Payment** - The applicant must request, in writing, the payment of a mitigation fee in lieu of planting replacement trees. This request must be accompanied by demonstration of why on-site planting of replacement trees is not feasible. Approval of the request shall not be made solely to alleviate financial hardship or an inconvenience. The applicant shall demonstrate that there are unique site conditions such as size, shape, or topographic conditions that will prevent the planting of any or all of the required replacement trees on-site.
- C. **Determination of Fee** - The mitigation fee shall be based on the current nursery retail market value of the required replacement trees plus installation costs. The applicant shall submit at least two (2) written quotes from local nurseries for required replacement tree and installation costs.
- D. **Action of Planning Official** - Upon a determination that a strict compliance of the tree replacement regulations would impose a particular hardship, the Planning Official shall determine the mitigation fee based on a reasonable reduction in the cost of the average of the nursery quotes submitted.
- E. **Establishment of County Tree Fund** - Kershaw County shall establish a separate accounting fund in which tree mitigation fees in lieu of on-site replacement planting shall be credited. The County shall maintain and keep financial records of such accounting fund (the Tree Fund) showing the revenues and disbursements from the fund. Any yield on the Tree Fund shall accrue in the fund and be used for purposes specified. Tree Fund records shall be open to public inspection in the same manner as other County financial records.
- F. **Disbursement of Tree Fund** - Tree Fund monies shall be spent only on the planting of trees on County-owned and maintained property. The applicable department head shall submit a request for funds to the County Administrator. The request for funds shall include:
 - 1. Type and number of trees proposed to be planted.
 - 2. Proposed planting location.

3. Total cost estimates from at least two (2) local nurseries. It must be specified if costs include installation and/or delivery or if installation and/or delivery will be done by Kershaw County personnel.

If approved, the County Administrator will issue a not to exceed amount purchase order to be paid out of the Tree Fund.

5:3.4-9 Tree and Root Protection Prior to Development

- A. Before development of the property, the owner shall be responsible for the erection of any and all tree and root protection fencing necessary to protect any existing or installed vegetation from damage both during and after construction. All significant trees, as well as other vegetation such as native species and perimeter landscaping that will be preserved during development shall be protected with a sturdy and visible fence before clearing and grading begins.
- B. The location of tree protection fencing and method of construction shall be noted on the landscape plan. Tree protection fencing shall be installed and remain in place and in good condition until all development activities are completed. The tree protection fence shall be located one (1) foot from the tree trunk for each one (1) inch in tree DBH with a minimum distance of ten (10) feet required from the edge of the trunk. Tree protection fencing shall be constructed from any material substantial enough to prohibit and keep out vehicles, people, and all other activities associated with the development process. Examples include two-inch by four-inch (2"x4") wood posts and one-inch by four-inch (1"x4") wood rails, silt fencing, or orange safety fencing a minimum of four (4) feet in height on metal or wood posts.
- C. No soil disturbance or compaction, stock piling of soil or other construction materials, vehicular traffic, or storage of heavy equipment is allowed in the tree and root protection area(s) of trees to be retained.

5:3.4-10 Forestry Activity

- A. **Permitted Forestry Activity** - Forestry activities are permitted on all forestland parcels within unincorporated Kershaw County that are:
 1. Taxed on the basis of its present value as forestland under SC Code of Laws Section 12-43-220(d);
 2. Managed in accordance with a forest management plan that is prepared or approved by a South Carolina Registered Forester;
 3. Certified under the Sustainable Forestry Initiative, the Forest Stewardship Council, the American Forest Foundations Tree Farm System, or any other nationally recognized forest certification system;
 4. Subject to a legally binding conservation easement under which the owner limits the right to develop or subdivide the land; or
 5. Managed and harvested in accordance with the best management practices established by the State Commission of Forestry pursuant to SC Code of Laws Section 48-36-30.
- B. **Time Restrictions on Issuing Permits** -Kershaw County may deny a grading permit, building permit, or land development permit for a period of either:
 1. One year after the completion of a forestry activity if the activity results in the removal of all or substantially all of the trees that were protected under Kershaw County tree protection regulations governing development from the tract of land for which the permit or approval is sought.
 1. Five years after the completion of a timber harvest if the forestry activity (timber harvest) results in the removal of all or substantially all of the trees that were protected under Kershaw County regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of County regulations.