

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS
Round 27 – Item E Champion Trees
Planning and Zoning Board Public Hearing
December 16, 2013

EXECUTIVE SUMMARY

Staff has compiled a series of amendments to the Land Development Ordinance (LDO) in response to concerns raised by property owners, representatives of the development community, and staff.

Town Council conducted a public hearing on all of the Round 27 amendment items on October 24, 2013. Following the public hearing, Town Council directed staff to convene a champion tree stakeholders meeting to address more comprehensive issues related to tree preservation (Round 27, Item E). The stakeholders meeting was held on November 14, 2013. The Planning and Zoning Board subsequently discussed all of the proposed Round 27 LDO amendments at its work session on November 25, 2013.

This agenda item is a public hearing for Round 27 LDO Amendment Item E (Champion Trees). Since the council's public hearing, Item E has been further divided into the following two parts: Item E-1 (Interim Adjustment) and Item E-2 (Comprehensive Revision). The background and rationale for this step is described below.

We note that a separate public hearing will also be conducted during this meeting for the other Round 27 LDO amendments (Item A-D, F and G).

OVERVIEW

SUMMARY OF PROPOSED AMENDMENT:

Item E of the Round 27 LDO amendments pertains to standards and approval procedures related to when Champion trees may be removed. We note that two different issues related to Champion trees were addressed in recent amendments that were included in Round 25. A table providing a summary and chronology of both the Round 25 changes and the proposed Round 27 changes to champion tree provisions, and a [summary of actions](#) to date, is attached for reference.

The proposed changes (Round 27, Item E) to champion tree regulations presented for public hearing on October 24, 2013, included more specific criteria that the Planning Director would use to determine when a healthy champion tree could be removed in order to accommodate development activity. (*Note: Current regulations, in effect since June 13, 2013, allow removal of champion trees only if they are determined to be dead or diseased*). Following the October public hearing, Town Council directed staff to conduct a stakeholders meeting on the champion tree ordinance, with an equal balance of developers and non-developers. Council noted that if changes resulting from the stakeholder meeting could not be incorporated in the time frame of the regular Round 27 schedule in order to address immediate needs, then council wanted to retain the option of proceeding with the amendment as initially proposed, and consider additional, more comprehensive changes in the near future.

Accordingly, in an effort to address immediate needs while also allowing time for an appropriate long term solution to come together, Item E has been split into two parts:

Item E-1 Champion Trees – Interim Adjustment

Item E-1 includes the proposed amendment present at the October 24, 2013 public hearing, with some minor adjustments to incorporate a portion of the feedback received at the public hearing and at the stakeholders meeting. This amendment (Item E-1) will be forwarded to Town Council for consideration at its December 19 meeting in order to provide council the option to address immediate needs on an interim basis until more comprehensive changes regarding preservation of champion trees can be developed and considered.

ITEM E-1 TENTATIVE SCHEDULE <i>(italicized dates are tentative)</i>	
Planning and Development Committee	September 19, 2013
Advertisements in <i>The Cary News</i>	October 9 and 16, 2013
Public Hearing	October 24, 2013
Planning and Zoning Board Work Session	November 25, 2013
Planning and Zoning Board Meeting	December 16, 2013
Final Action by Town Council	<i>December 19, 2013*</i>
Effective	Upon Adoption

Item E-2 Champion Trees – Comprehensive Revision

Item E-2 remains focused on addressing more comprehensive issues related to tree protection, including the following:

1. Additional changes to the definition of a champion tree (comparison with State Champion Trees);
2. Flexibility to reduce buffers and open space requirements in exchange for saving champion trees;
3. Exploring additional reasonable standards for when a champion tree can be removed (e.g., required location of parking, buildings, etc.);
4. Treatment of defined redevelopment areas differently than developing areas; and
5. Establishing criteria when removal of champion trees related to a development plan require approval from the Town Council.

Following the Planning and Zoning Board’s public hearing on December 16, 2013, staff recommends that this amendment be referred to the Planning and Zoning Board’s next Work Session in February 2014, for further discussion.

ITEM E-2 TENTATIVE SCHEDULE <i>(italicized dates are tentative)</i>	
Planning and Development Committee	September 19 , 2013
Advertisements in <i>The Cary News</i>	October 9 and 16, 2013
Public Hearing	October 24, 2013
Planning and Zoning Board Work Session	November 25, 2013
Planning and Zoning Public Hearing	December 16, 2013
Planning and Zoning Board Work Session	<i>February 10, 2014</i>
Planning and Zoning Board Meeting	<i>March 17, 2014</i>
Final Action by Town Council	<i>April 10 or 24, 2014</i>
Effective	Upon Adoption

FISCAL IMPACT:

Implementation of the proposed changes will be absorbed by existing staff during the review and approval process for various development applications and/or construction plan submittals.

STAFF RECOMMENDATION:

After conducting the public hearing, staff recommends that the Planning and Zoning Board take the following actions:

1. Recommend approval of Item E-1 (*Champion Trees – Interim Correction*) as presented at the October 24, 2013 Town Council public hearing and modified to:
 - A. Revise the definition of a Champion Tree to exclude trees that may meet the size criteria but are, dead, damaged, diseased or significantly misshapen. Although there will be situations where an arborist’s report is still needed to confirm such a status, this simplifies what has to subsequently be addressed under the exceptions and replacement sections. In addition, staff has provided a

definition for a “Dominant Tree” which is referred to in the definition of a Champion Tree. Also, the Critical Root Zone definition is being revised to reflect how it is being presently implemented (even though the Critical Root Zone is currently defined as an area 1.5 times the drip line of the tree, the LDO only requires Tree Protection Fencing to be placed 1.25 feet away from the tree for each inch of caliper – this change will make the perimeter of the Critical Root Zone consistent with the currently required location of the Tree Protection Fencing).

- B. Expand criteria for removal of healthy Champion trees to include situations where construction of public infrastructure improvements outside the control of the property owner has resulted in disturbance of more than 25% of the critical root zone of the tree.
 - C. Allow greater flexibility regarding replacement trees on sites being redeveloped in the Town Center, and require replacement trees only to the extent that they can be accommodated on the site.
2. Recommend continuing discussion of Item E-2 (*Champion Trees – Comprehensive Revision*) at the Planning and Zoning Board’s work session in February 2014.

ITEM E-1 REMOVAL AND REPLACEMENT OF CHAMPION TREES – Interim Adjustment

PROPOSED TEXT

3.19 REVIEW AND APPROVAL PROCEDURES: Minor Modifications

TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED		
Standard That May be Modified	Decision-Making Body	Modification Allowed (%)
<u>Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO section: 7.2.5(C)(4)</u>	<u>Town Council*</u>	<u>(not applicable)</u>
* For properties owned by the Town, the Planning Director shall review all requests for minor modifications that would otherwise be reviewed by the Town Council.		

7.2.5 Tree Surveys, Protection, and Replacement

(C) Protection of Champion Trees Required

- (1) The intent of this subsection is to protect healthy champion trees on sites during the development process. With this in mind, flexibility in site design is provided for in Section 7.2.10 (Allowable Modifications and Reductions) to offset area used to preserve champion trees by deducting area from other required landscape/buffer areas. No champion tree may be removed during development, unless a report from a registered landscape architect, certified arborist, or other such specialist states that the tree is seriously diseased or damaged and treatment would not be practical. The approval authority may approve replacement of such tree pursuant to paragraph (D) below. the approval criteria of Section 7.2.5(C)(3) are met and the tree is replaced pursuant to Section 7.2.5(D), or unless approved by the Town Council pursuant to Section 7.2.5(C)(4). In support of any application which requests removal of a Champion tree, the applicant must submit a report from a a registered landscape architect, certified arborist, or other such specialist.
- (2) For purposes of this section 7.2.5(C) the following definitions apply:

- (a) Adversely impacted means that 25% or more of the critical root zone of the Champion tree will be, or has been within the three years prior to the date of application, impacted by the construction or installation of the listed improvement.
 - (b) No practical alternative location means the applicant has prepared multiple designs or scenarios demonstrating that there is no practical alternative location for the required development feature that preserves the Champion tree and 75% or more of its critical root zone.
- (3) The Planning Director shall approve removal of a Champion tree if the tree is adversely impacted by one of the following and no practical alternative exists:
- (i) Required road connections;
 - (ii) Required sanitary sewer or storm drain lines;
 - (iii) Public infrastructure improvements made by others;
 - (iv) Required stormwater treatment devices located in geographically and topographically appropriate areas; or
 - (v) Town design standards that limit the location of buildings and/or other features such as parking and private streets on the site (e.g. requirements for the buildings to front on streets).
- (4) The Town Council shall review any other request to remove a champion tree as a Minor Modification pursuant to Section 3.19.

(D) Replacement of Champion Trees

- (1) When a champion tree is removed from a site during construction, or dies within one (1) year following construction, on a site located outside of the Town Center District, the applicant or developer shall replace such champion tree with trees of similar type planted at least thirty (30) feet from any other tree such that the total caliper inches of trees planted is no less than the diameter of the tree removed. The size of such replacement trees at the time of installation shall be a minimum of 2 ½ inches in caliper.
- (2) When a champion tree is removed during construction, or dies within one (1) year following construction, on a site located within the Town Center District, the applicant or developer shall comply with the requirements of section 7.2.5(D)(1), except that the total caliper inches of trees planted may be less than the diameter of the tree removed if it is not practical to replant the required number and size of trees spaced at least 30 feet from any other tree on the same site or any adjacent property under common ownership.
- (3) In consultation with the Town staff, acceptable replacement trees shall be determined by a person qualified by training or experience to have expert knowledge of the subject. Alternatively, the valuation of trees removed may be established in accordance with standards established by the International Society of Arboriculture and replaced with landscaping of equal dollar value.
- (4) Replacement trees shall be maintained through an establishment period of at least three years, except that single family detached dwellings on an individual single lot shall have an establishment period of only one year. The applicant shall post a bond or other surety acceptable to the Town guaranteeing the survival and health of all replacement trees during the establishment period and guaranteeing any associated replacement costs. If the replacement trees do not satisfactorily survive the establishment period, the bond or surety will be used to purchase and install new replacement trees. The property owner

and developer shall execute a landscape agreement guaranteeing the survival and health of all replacement trees during the establishment period and guaranteeing to replace any replacement tree(s) that does not survive the establishment period in good health as determined by a certified arborist.

12.4 OTHER KEY TERMS DEFINED

CHAMPION TREE

Any single tree that has been determined to be of ~~exceptionally high~~ value because of its species, size, age, or other professional criteria. An upper-story tree which is thirty (30) inches or greater in diameter at breast height is considered as a champion tree. Size ranges for understory trees are smaller, and vary based upon species. A tree that meets the indicated size but is dead or diseased, or has an abnormal form that is not characteristic of its species (for example the habit is one-sided, or the crown is significantly misshapen or missing), shall not be considered to be a Champion Tree.

CRITICAL ROOT ZONE

An underground circular area extending laterally in all four cardinal directions from the base of a tree's trunk a distance of at least one and one-quarter (1.25) feet from the tree for each inch of caliper. .to a distance typically one and one-half (1½) times larger than the perimeter of the tree's dripline.