

Section 37.02. - Native canopy tree protection.

A. *Purpose and intent.* The purpose of this article is to establish regulations governing the protection of native canopy trees as listed in Table 37-4[A] as a valuable community resource within the unincorporated areas of Amelia Island to:

1. Encourage the retention and planting of native canopy trees;
2. Recognize the importance of native canopy trees and their meaningful contribution to a healthy, beautiful, and safer community attributable to their carbon dioxide absorption, oxygen production, dust filtration, wind and noise reduction, soil erosion prevention, wetland erosion protection, wildlife habitat, surface drainage improvement, beautification and aesthetic enhancement of improved and vacant lands; and
3. Promote the general health, safety, and welfare of the community. Tree protection is beneficial to the county by providing environmental and energy efficiency safeguards, improving community appearance and quality of life, enhancing property values, and creating a functional living environment for existing and future residents.

Therefore, the board of county commissioners finds that it is in the best public interest to enact and enforce the regulations described herein for the purpose of controlling the removal of native canopy trees, clear cutting and strip clearing of land in the unincorporated areas of Amelia Island.

B. *General requirements.*

1. The terms and provisions of this article shall apply as specified herein to all Class II, III and IV developments, pursuant to section 5.7 of this ordinance [article] as amended from time to time, and government agencies located within the unincorporated areas of Amelia Island.
2. It shall be unlawful for any person, firm or corporation, either individually or through an agent, to cut down, destroy, clear cut, remove, or cause to be destroyed through damaging any native canopy tree without first obtaining site plan approval of the development review committee and the planning and zoning board, except as specifically exempted herein. Violation of this section shall be a misdemeanor in the second degree as designated in the F.S. ch. 775.
3. Developers of sites that have been completely or partially cleared of trees due to agricultural/silviculture use, but have not secured site plan approval of the development review committee and the planning and zoning board, shall be required to comply with the minimum tree requirements as described in subsection I.

C. *Exemptions.*

1. Site plan approval of the development review committee and final approval of the planning and zoning board shall not be required under the following conditions and situations, as determined by the planning and zoning department unless otherwise specified:
 - a) A bona fide agricultural/silviculture use such as tree nurseries, forest crops, farming, greenhouses and golf course maintenance.
 - b) Removal of dead or diseased native canopy trees that have fallen from natural causes.
 - c) Removal of native canopy trees that endanger public or private property, and the public health, safety and welfare of the community.
 - d) Removal of native canopy trees planted on the premises of a plant nursery or tree farm that have been grown expressly for the purpose of selling to the general public in the ordinary course of business.
 - e) Removal of native canopy trees within approved utility rights-of-way or easements that are necessary to supply gas, water, sewer, telephone, cable television, electrical service, or other needed utilities, subject to the provisions of Ordinance No. 2003-04.

- f) Public utilities with the power of eminent domain may remove or transplant trees either on-site or off-site.
- g) Emergency conditions may require the department of emergency management services to waive all, or part, of the requirements of this article in the event of manmade or natural disasters such as hurricanes, tornadoes, floods, storms/high winds, hard freezes, fires, etc. The waiver shall apply to a geographically defined area for a period not to exceed ninety (90) days. Longer periods shall require approval of the board of county commissioners.
- h) Class II, III and IV development properties (containing an existing structure) in existence as of the date of adoption of these regulations. Notwithstanding, any expansion or redevelopment of any existing developments requiring Class II, III, or IV review shall not be exempt from provisions of these regulations, unless the owner can clearly show that the provisions of this section will decrease the value of the existing development. Clear evidence means ownership and a concept plan (or previously approved plan) that both precede this ordinance [article].

D. *Review procedures.*

1. A tree inventory and retention/landscape plan shall be submitted to the development review committee, pursuant to section 5.2(10) and 5.3 of the Nassau County Development Review Regulations, as amended from time to time, prior to the commencement of any development activity, except as specifically exempted herein.
2. The removal of healthy native canopy trees may be allowed for construction purposes where all reasonable alternatives have been documented and exhausted for relocating the specific construction.
3. The removal/replacement of native canopy trees that are twenty-four (24) inches dbh or greater is strongly discouraged. Therefore, all reasonable alternatives or methods that are available, such as design modifications, shall be closely examined before removal will be authorized.
4. During site plan review, the planning and zoning board shall consider the effect that the proposed development activity will have on the future viability of the native canopy trees to be retained/relocated within the area to be developed.
5. The removal of protected native canopy trees shall be allowed, as determined by the development review committee, if one (1) or more of the following conditions exists:
 - a) *Street opening.* Tree location restricts the opening of a street or road right-of-way.
 - b) *Utilities and drainage.* Tree location restricts the construction of public utility lines or drainage facilities.
 - c) *Property access.* Tree location restricts vehicular access to the property, where there are no other reasonable access points.
 - d) *Property use.* Tree location restricts reasonable use of the property consistent with all other applicable city, county and state codes, statutes and/or ordinances; and design modifications are not practical or reasonable.
 - e) *Hazard.* A tree that constitutes a potential hazard to life or property and can be resolved by removal.
 - f) *Poor tree health.* Tree is dead, lacking functioning vascular tissue, or deteriorating to such a state that restoration methods to bring the tree to a sound condition are not practical; or the tree have a disease that may be transmitted to other trees, thereby endangering their health; and, as documented by a ISA certified arborist.
 - g) *Thinning of trees.* Trees are so densely situated on a parcel as to significantly impair light and air circulation, which causes poor health conditions or tree disease, so that removal of up to twenty-five (25) percent of such trees is necessary to alleviate the condition.

- h) *[Site plan.]* An approved site plan which includes protected trees and corresponding protection plan as recommended by an ISA certified arborist shall identify which trees are to be removed, methods of protection from impacts of construction, and the tree replacement requirements necessary to compensate for the loss of protected native canopy trees.

E. *Submission requirements.*

1. All applicants for site plan approval for Class II, III and IV developments are hereby required to submit a tree inventory and tree retention/landscape plan as part of the standard site plan review submission procedures, including, but not limited to the following:
 - a) Developers of all new Class II, III and IV residential developments shall be required to submit a streetscape plan, including proposed tree retention and landscaping.
 - b) Each tree inventory shall have a drawing or accurate representation with an appropriate scale to show tree locations, delineating the following information:
 - (1) Property boundaries, existing and proposed structures and surrounding road system;
 - (2) Location, size, and species (utilizing botanical or common names) of all native canopy trees within areas of construction.

F. *Protected tree preservation/tree replacement.*

1. The minimum number of protected native canopy trees to be preserved upon any development site is equal to forty-five (45) percent of caliper inches within the development site as set forth herein. A protected native canopy tree is defined as a healthy tree as determined by an ISA certified arborist listed in Table 37-4[A] and is at least six (6) inches dbh in size. Healthy trees (and other vegetation) lying within designated conservation areas, jurisdictional wetlands and adjacent upland buffers must be retained but are not counted in the minimum preservation requirement. As an incentive for property owners to retain large trees, the preservation of any tree that is eightieth percentile or larger in inches dbh (of all qualifying/protected native canopy trees on the proposed development site) will generate a bonus credit value of one hundred twenty-five (125) percent of the diameter of the preserved tree. In all cases, qualifying preserved and replacement trees are credited toward the minimum landscaping requirement of each property upon which they are located. By way of illustration, a development site contains an aggregate of one hundred (100) caliper inches of qualifying protected trees and the minimum preservation equals forty-five (45) percent of total caliper inches within the development site. This forty-five (45) inches of required tree protection can be preserved as a single thirty-six-inch dbh qualifying tree (based on bonus credits); or any combination of qualifying protected trees and totaling a minimum of forty-five (45) caliper inches with or without bonus credits. Included in the forty-five (45) percent of caliper inches for preservation shall include a perimeter preservation requirement for any six-inch or larger, healthy Table 37-1 tree located within a required roadway buffer and/or within ten (10) feet of a ROW. Perimeter preservation trees can only be removed as per section 37.02(C) or 37.02(D)5.
2. Unique development scenarios that prevent the forty-five (45) percent preservation or perimeter preservation requirement from being met will require replacement on an inch for inch (dbh) basis with native canopy trees but only if approved by the planning and zoning board.
3. All replacement native canopy trees shall be a minimum of three (3) inches dbh, at the time of planting.
4. Replacement trees shall be planted on-site, if practical, otherwise the developer shall donate to the county and plant the required trees on public property, or alternatively, on private property where a conservation easement exists, subject to approval by the planning and zoning board.
5. All replacement trees shall be in good health, conform to the standards for Florida No. 1 or better as given in Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services, Tallahassee (97T-05, second edition, February 1998), which is hereby adopted and included by reference herein.

- G. *Tree protection during construction.* Property owners/developers shall protect, during construction, all protected native canopy trees within areas of construction, as identified on the approved site plan.
1. Prior to and during land clearing, the owner, developer or agent shall clearly mark (with red flagging) all native canopy trees proposed to be removed and shall erect barricades around the tree protection zone of all native canopy trees to be protected. The barricades must remain in place and be in good condition throughout construction. Barricades may be removed for the final grading. Building or other development permits may be temporarily revoked if protective measures are not used at any time during construction.
 2. The following shall be prohibited within the tree protection zone (defined in article 32) of designated trees, unless authorized in writing by the planning and zoning director:
 - a) Parking of heavy equipment, cars and trucks or vehicular traffic;
 - b) Stockpiling of any materials;
 - c) Deposition of soil, sediment, or mulch;
 - d) Grading or grubbing;
 - e) Excavation or trenching;
 - f) Burning or burial of debris, within the entire construction site;
 - g) Dumping oil, gasoline, paint, chemicals, wastewater, or other construction wastes. Storage of potentially hazardous materials shall be in appropriate, non-leaking containers as far away from tree protection zone as possible.
- H. *Minimum tree requirements.* All Class II, III and IV non-residential developments requesting site plan approval shall meet the minimum tree requirements of section 37.05.
1. Credit on a one (1) tree for one (1) tree basis toward the minimum tree requirements shall be given for each native canopy tree retained on site.
 2. Any native canopy trees planted to meet the minimum tree requirements shall be a minimum of three (3) inches dbh, ten (10) feet tall, and five (5) feet wide at the time of planting.
 3. Fulfillment of the minimum tree requirements in this section shall not be interpreted to waive any other landscaping requirements on the part of the applicant.
 - (a) In the event that the amount of retained native canopy trees exceeds the requirements of this section, credit on a one (1) tree for one (1) tree basis towards any other landscaping requirements shall be given for each native canopy tree retained on site in excess of the minimum tree requirements.
 - (b) Proper care and maintenance of recently planted trees; i.e., necessary water, fertilizer, and support structures, shall be the property owner's/developer's responsibility, subject to the enforcement provisions of article 4 of the Nassau County Zoning Code and chapter 1, article 3 of the County Code of Ordinances.
 - (c) All required trees shall be in good health, conform to the standards for Florida No. 1 or better, as given in the Grades and Standards for Nursery Plants, State of Florida, Department of Agriculture and Consumer Services as referenced herein.
- I. *Harmful acts.*
1. No person shall abuse, mutilate or otherwise damage any protected tree, as described herein, or any tree located on public property, including those trees located in the public right-of-way along street frontages within subdivisions.
 2. The reasonable and proper trimming of protected trees on public or private property by authorized persons, in accordance with accepted horticultural methods established by the International Society of Arborists (ISA), shall be allowed.

3. No person shall attach any signs in an injurious manner to protected tree, nor shall any person cause any substance harmful to protected trees to come in contact with them, or prevent water or oxygen from reaching their roots by excessive cut and fill activities.
- 4 Violation of this section shall be a misdemeanor in the second degree as designated in the F.S. ch. 775.

J. *Appeals.*

1. It is the intent of this article that all questions of interpretation and enforcement shall be first presented to the county in accordance with section 3.03 and article 4 of the Nassau County Zoning Code.
2. An application for appeal of said decisions shall be presented in accordance with section 3.04(B)(7) of the Nassau County Zoning Code on matters of interpretation and to the code enforcement board on matters of enforcement.

K. *Administration and enforcement.* The planning and zoning department shall administer the provisions of these regulations. The code enforcement department shall enforce the provisions of these regulations. Any violation of the provisions set forth herein shall be brought to the property owner's attention by a certified letter from the code enforcement department. A violation of this article shall, in addition to other appropriate sanctions up to and including revocation of building permits, be enforced in accordance with the code enforcement board procedures as set out under chapter 1, article 3 of the County Code of Ordinances and the provisions of F.S. ch. 162. Building permits may be reinstated after tree protection measures are brought into conformance with approved site plans and any fines and code enforcement penalties (if applicable) are addressed.

L. *Penalties.* Penalties shall be in accordance with the requirements set forth in chapter 1, article 3 of the County Code of Ordinances.

M. *Conflict.* In the event that any section of these regulations is found to be in conflict with any other county code, ordinances or regulation, the more restrictive shall apply.

(Ord. No. 2008-01, § 3, 1-31-08; Ord. No. 2010-08, § 10, 7-26-10; Ord. No. 2013-06, § 2, 4-22-13)