



Agenda Item #:	A
Meeting Date:	June 24, 2020
Responsible Staff:	Jim Wasilak

SUBJECT:

Recommendation to Mayor and Council on Zoning Text Amendment TXT2020-00256, to Amend Section 25.21.21 of the Zoning Ordinance to Modify the Tree Planting Requirements for New Residential Lots Containing Townhouses, Duplexes and Other Attached Units; Mayor and Council of Rockville, Applicants

RECOMMENDATION

(Include change in law or Policy if appropriate in this section):

Staff recommends that the Planning Commission consider the staff recommendation and formulate a recommendation to the Mayor and Council.



Overview

Case: Zoning Text Amendment TXT2020-00256

Location: Citywide

Staff: Jim Wasilak
Zoning and Development
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Applicant: Mayor and Council of Rockville

Filing Date: February 19, 2020

Background

The proposed Zoning Text Amendment is a result of an internal review of recent development applications that contain townhouse units, as well as a lack of clarity related to existing requirements for tree planting on residential lots. The current Zoning Ordinance requirement in Section 25.21.21, Tree Planting, requires that the subdivider plant a minimum of one tree in the front yard and two trees in the rear yard of every residential lot. The code section does not distinguish among types of residential lots, so this section has been applied to single unit detached as well as attached (townhouse) lots as part of the subdivision process.

In practice, new lots containing single unit detached dwellings can easily accommodate this requirement, while it is difficult for townhouse lot developers to meet this requirement on individual lots, as most townhouse lots are not large enough to support three trees and the space required for them to thrive. Most townhouse lots do not have enough space for large trees to meet their full canopy size without interfering with the residence itself or possibly

adjacent street trees, potentially leading to severe pruning of limbs as the tree matures. As an alternative, developments containing townhouse lots have been granted waivers of this requirement at the time of subdivision in order to provide these trees in the aggregate and not within the residential lots themselves, but within the boundaries of the project. This has permitted the total amount of required trees per lot to be provided within each development, but not necessarily on individual townhouse lots.

Note that waivers of requirements of the subdivision regulations (Article 21 of the Zoning Ordinance) are granted by the Planning Commission, if the Commission finds that undue hardship will result from strict compliance with the requirement, such that the public health, safety, aesthetics and general welfare will be protected, and the waiver will not be contrary to the intent and purpose of the Plan and the Zoning Ordinance.

Zoning Text Amendment, as Authorized by the Mayor and Council

As authorized for filing by the Mayor and Council on January 13, the proposed text amendment (see Attachment A) would reduce the tree planting requirement to one (1) tree per lot for residential lots containing townhouse, attached and semi-detached units, and retain the existing requirement for single-unit detached lots. This requirement would achieve additional tree cover within residential townhouse lots primarily with ornamental trees, in addition to the shade trees provided as street trees and those required by the FTPO. It included flexibility to allow for the trees to be planted in either the front or rear yard of such lots, but not outside of the residential lots. This would result in fewer requested subdivision waivers for tree planting, but would still allow for the granting of subdivision waivers if a hardship can be determined. This requirement would be more in line with the number of trees per lot supported by the Mayor and Council for the Shady Grove Neighborhood Center project plan, which yielded less than one tree per lot on the individual townhouse lots while providing 1.5 trees in the aggregate within the first phase of the project.

Text Amendment – As Revised and Recommended by Staff

At the February 26 Planning Commission meeting, staff presented the draft as authorized by the Mayor and Council. Based on that discussion, staff developed a revised draft to address the concerns raised, including the reduction of tree canopy generally, providing flexibility in certain circumstances and providing for tree canopy in infill developments within or adjacent to residential neighborhoods, that was presented to the Commission on April 8. The new language as recommended by staff (see Attachment B) allows an applicant the ability to locate the a portion of the required trees in common areas or on city-owned property, subject to certain criteria, including if the design of the typical lot prohibits placing all three trees on the lot; whether there is tree canopy in the vicinity of the lots provided through other tree-planting requirements, and that the trees planted off of the residential lots contribute toward tree canopy within the semidetached, attached or townhouse area.

Staff recommends the revised language, in part because it creates an ordinance standard for which to review and evaluate a trees-per-lot a reduction request, rather than subjecting the request to the subdivision waiver standard, which is primarily hardship and sometimes difficult to prove. The new language also gives the applicant flexibility in locating required trees-per-lot to common areas and public parkland within the development project. There is past precedent for this in the City that came about through the subdivision waiver process, and the new language formally makes this option available, provided that the criteria are met.

Staff also proposed some clarifications to the text amendment that were not included in the original draft authorized by the Mayor and Council. The first clarifies that existing trees to be preserved on single family lots count toward the tree-per-lot requirement. The second clarifies that trees planted to meet the tree-per-lot requirement do not count toward trees that are required by the Forest and Tre Preservation Ordinance (FTPO) or street tree planting requirements.

Planning Commission Discussion

The Planning Commission had concerns about reducing tree canopy during previous discussions on February 26 and April 8, given Rockville's status as a Tree City, the desire for tree canopy to not be eroded throughout the City, and potential negative effects on neighborhood character. The Commission generally agreed on the following components, and asked staff to develop a revised text amendment for consideration.

- *Trees per Lot:* Most commissioners stated that the three trees per lot requirement should be retained for semi-detached (duplex), townhouse and attached units.
- *Duplex Lots:* The Commission supported duplex lots having the same requirements as single-unit detached lots, as the lot area of duplexes is only slightly smaller than a typical single-unit detached lot, and that this requirement should be met on site.
- *Flexibility in meeting the trees per lot requirement:* Commissioners supported the planting of trees required for attached and townhouse residential lots on common areas, allowing for the creation of stands of trees within a townhouse development that would make the tree planting more effective and potentially more compatible with surrounding development.
- *Urban vs. Infill Townhouse standards:* The Commission recognized that some townhouse developments are more urban in character, which could or should have different tree-planting requirements than townhouses in other areas, such as those within or near existing residential neighborhoods.
- *Survivability:* The Commission expressed concern about the survivability of trees on individual lots, which is not guaranteed and dependent on individual property owners retaining the trees.

- *Reference to Chief of Zoning rather than City Forester:* Commissioners noted concerns with the text amendment as modified by staff, including the change from referencing the City Forester to the Chief of Zoning for determining whether planting is acceptable.
- *Quality of trees planted:* Commissioners stated that planting quality trees, including native species, should be incorporated in all development.

Revised Staff Draft to Address Planning Commission Concerns

Staff provided a revised draft for the Planning Commission's consideration that incorporates the discussion points listed above (see Attachment C). The revised draft incorporates the following changes:

- Retains three trees per lot requirement for all semidetached, townhouse and attached units. The draft relocates semidetached to the section with single unit dwellings, so that requirement remains three trees per lot, to be provided on the lot containing the units and would not be eligible for off-lot locations.
- Provides criteria for when required trees per lot may be located off of the residential lots: when there is not enough room on the proposed lots for trees to thrive; and when it can be demonstrated that off-lot trees provide tree canopy in or near the townhouse or attached unit areas;
- Provides additional criteria for developments containing townhouse or attached units, in or adjacent to existing neighborhoods, that tree locations be compatible in character with the existing residential community; and
- Modifies references to the City Forester and Chief of Zoning by referring to planting standards enacted by the Forester, but also refers to Chief of Zoning, whose staff reviews development plans for conformance. This will clarify that the trees required to be planted by this requirement are subject to the standards developed by the City Forester regarding species and planting requirements. Staff notes that trees planted on common area are typically subject to a Forest Conservation Easement, and are enforced via site plan at a minimum. Trees on individual residential lots are not enforced in this manner, unless they are covered by an easement, which is rare. Trees in a Forest Conservation Easement are also subject to a five-year Warranty and Maintenance Agreement which greatly enhances their survivability.

Proposed Requirement Based on Zone

Staff notes that the urban style of townhouse lots/units that are now proposed and developed in Rockville have even less lot area to plant trees than townhouse lots developed in Rockville historically, and the Commission raised a concern about reducing the amount of trees required per lot and its potential negative impact on neighborhood character. In response, staff recommends that the Commission consider different tree planting requirements for those area

where urban, dense townhouse designs are appropriate, such as the MXE, MXCD and MXTD zones, which are the zones which allow for the highest densities in the City. Currently, there are not residential density limitations per se in these zones, which has resulted in dense townhouse developments such as those approved at Shady Grove Neighborhood Center and Tower Oaks.

Townhouse and attached unit developments in other zones, such as the MX-NC, MXC and RMD zones, are often adjacent to existing residential neighborhoods, and it would be appropriate to retain the three trees per lot requirements in these zones. Staff notes that this would include any new or modified zone or zones that might be proposed to implement land use recommendations for “missing middle” or similar types of residential infill development.

Staff notes that those local jurisdictions with zoning standards for tree planting in townhouse developments (many do not have requirements) include a range of requirements from 1 to 2 trees per townhouse lot, with flexibility to locate some of the trees in common area. Staff therefore recommends that the Planning Commission consider a reduced requirement of trees per lot for the MXE, MXCD and MXTD zones, including where they are designated equivalent zones to 1.5 trees per lot, or some other amount less than three trees per lot, with the flexibility to locate trees off the residential lots but within the overall development, subject to the above criteria. This would align the trees per lot planting requirement more closely with the desired development pattern permitted in the City’s various zones.

This potential addition is not included in the draft Planning Commission revised text amendment but is provided for consideration.

Planning Commission Recommendation

Staff recommends that the Planning Commission consider the revised draft and make any changes as is the will of the Commission. As is practice, staff will produce a recommendation memo for circulation to commission members and ultimately for transmission to the Mayor and Council.

Community Outreach

Text amendment applications are sent to all neighborhood associations for review and comment prior to public meetings.

Next Steps

A public hearing by the Mayor and Council will occur subsequent to Planning Commission review and recommendation.

Attachments

- Attachment 1.A.a: Text Amendment as Filed (PDF)
- Attachment 1.A.b: Text Amendment as Recommended by Staff (PDF)

Attachment 1.A.c: Draft Planning Commission Recommended Version Section 25.21.21 -
Tree Planting (PDF)

Jim Wasilak
Jim Wasilak, Zoning and Development Manager 6/18/2020

December 23, 2019

ATTACHMENT TO APPLICATION
TO THE CITY OF ROCKVILLE FOR A
TEXT AMENDMENT TO THE ZONING ORDINANCE

Applicant: Mayor and Council of Rockville

The applicant proposes to amend the zoning ordinance adopted on December 15, 2008, and with an effective date of March 16, 2009, by inserting and replacing the following text (underlining indicates text to be added; ~~strike throughs~~ indicate text to be deleted; * * * indicates text not affected by the proposed amendment). Further amendments may be made following citizen input, Planning Commission review and Mayor and Council review.

Amend Article 21, "Plats and Subdivision Regulations" as follows:

25.21.21 – Tree Planting

- a. The subdivider shall plant at least one (1) street tree per 40 feet of lot frontage within the public right-of-way or if approved by the Approving Authority, adjacent to the public right-of-way. The species, location and method of planting to be approved by the ~~City Forester~~ Chief of Zoning.
- b. Tree Planting on Residential Lots
 1. Single Unit Detached Residential Lots:
 - (a) The subdivider shall plant a minimum of one (1) tree in the front yard and two (2) trees in the rear yard of every residential lot as approved by the ~~City Forester~~ Chief of Zoning.
 2. Semi-detached, Attached, and Townhouse Residential Lots:
 - (a) The subdivider shall plant a minimum of one (1) tree on each lot, supplemented with shrub plantings, as shown on the approved landscape plan.
 - (b) Each lot shall provide a minimum tree planting area of 7 feet in length by 7 feet in width and a minimum 200 cubic foot tree pit for each tree.
 - (c) The tree planting area shall not be encumbered by utilities or easements.
- c. Tree planting must be done in accordance with the provisions of Chapter 10.5 of the City Code, "Forest and Tree Preservation".

* * *

Section 25.21.21 – Tree Planting

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- b. Tree Planting on Residential Lots
 1. Single Unit Detached Residential Lots:
 - (a) The subdivider shall plant a minimum of one (1) tree in the front yard and two (2) trees in the rear yard of every residential lot as approved by the ~~City Forester~~ Chief of Zoning. Existing trees on the lot that will be preserved may count toward this requirement.
 2. Semidetached, Attached, and Townhouse Residential Lots:
 - (a) The subdivider shall plant a minimum of one (1) tree on each lot, supplemented with shrub plantings, as shown on the approved landscape plan.
 - (b) Each lot shall provide a minimum tree planting area of 7 feet in length by 7 feet in width and a minimum 200 cubic foot tree pit for each tree.
 - (c) The tree planting area shall not be encumbered by utilities or easements.
 - (d) Modification:
 - i. In approving lots for semidetached, attached, or townhouse dwelling units, the Approving Authority may allow the subdivider to plant some or all of the required trees per lot in a common area or parcel to be dedicated to the City within the proposed development, if the Approving Authority finds:
 - A. The design of the lots makes planting some or all of the required trees on each lot impractical;
 - B. The subdivider has submitted a typical landscape plan for each lot demonstrating the provision of sufficient trees and other plant material on or adjacent to each lot that contribute to the tree canopy and landscaped area within the area of the semidetached, attached or townhouse lots; and
 - C. The trees to be located in a common area or on a parcel to be dedicated to the City contribute to the tree canopy of the semidetached, attached or townhouse area.
- c. Tree planting must be done in accordance with the provisions of Chapter 10.5 of the City Code, “Forest and Tree Preservation”. Trees planted pursuant to this subsection are in addition to trees planted in fulfillment of the requirements of Chapter 10.5.

TXT2020-00256, Trees Per Lot on Semi-detached, Townhouse and Attached Lots
Planning Commission Recommended Draft

Section 25.21.21 – Tree Planting

- a. The subdivider shall plant at least one (1) street tree per 40 feet of lot frontage within the public right-of-way or if approved by the Approving Authority, adjacent to the public right-of-way. The species, location and method of planting **shall be in accordance with standards established to be approved by the City Forester and this section.**
- b. Tree Planting on Residential Lots
 1. Single Unit Detached and Semidetached Residential Lots:
 - (a) The subdivider shall plant a minimum of one (1) tree in the front yard and two (2) trees in the rear yard of every **single unit detached and semidetached** residential lot as approved by the **Chief of Zoning in accordance with standards established by the City Forester.**
 2. Semidetached, Townhouse and Attached Residential Lots:
 - (a) The subdivider shall plant a minimum of **three (3) one (1)** trees per on each **townhouse or attached residential** lot, supplemented with shrub plantings, as shown on the approved landscape plan.
 - (b) Each lot shall provide a **The minimum tree planting area for each tree planted on a townhouse or attached residential lot is 7 feet in length by 7 feet in width and a minimum 200 cubic foot tree pit for each tree.**
 - (c) The tree planting area shall not be encumbered by utilities or easements.
 - (d) Modification:
 - (1.) In approving lots for ~~semidetached~~, attached or townhouse dwelling units, the Approving Authority may allow the subdivider to plant some or all of the required trees per lot in a common area, or parcel to be dedicated to the City within the proposed development, if the Approving Authority finds **that the following criteria have been met:**
 - (a) The design of the lots **or the dwelling units** makes planting some or all of the required trees on each lot impractical;
 - (b) The subdivider has submitted **an overall landscape plan**, as well as a typical landscape plan for each lot, demonstrating the provision of sufficient trees and

**TXT2020-00256, Trees Per Lot on Semi-detached, Townhouse and Attached Lots
Planning Commission Recommended Draft**

other plant material to ensure adequate tree canopy and landscaped area within the area of the townhouse lots; and

- (c) **For townhouse or attached residential lots proposed within an existing residential neighborhood, or lots that are adjacent to or confronting properties with existing single-unit detached dwellings, trees are to be planted in locations and configurations compatible with the character of the existing neighborhood.**
- c. Tree planting must be done in accordance with the provisions of Chapter 10.5 of the City Code, "Forest and Tree Preservation". Trees planted pursuant to this subsection are in addition to trees planted in fulfillment of the requirements of Chapter 10.5.