

**ARTICLE 10.**  
**LANDSCAPE AND BUFFERING REQUIREMENTS**

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# ARTICLE 10. LANDSCAPE & BUFFERING REQUIREMENTS

## SECTION 10.01 LANDSCAPE AND BUFFER REQUIREMENTS

The intent of this section is to provide procedures and standards for review and approval of site and **landscaping** design plans of commercial, **multi-family** projects, and new residential **subdivision developments** to ensure they comply with the provisions of this section and meet the **development** policies established by the Town.

(A) *Purpose.*

- (1) To regulate site planning and **landscaping** in order to:
  - (a) Enhance and preserve the economic and aesthetic qualities of the Town as an attractive and progressive community;
  - (b) Protect and maintain the value of existing property;
  - (c) Lessen traffic congestion and minimize traffic safety problems;
  - (d) Preserve and enhance the natural resources of the Town in order to provide aesthetic and other public benefits, such as **pollution** abatement, erosion and run-off control, energy conservation, enhancement of property values, minimization of **flood** hazards, and continued maintenance of the ecology systems;
  - (e) Minimize any adverse impacts of new **development** on existing uses through provision of screening, **buffering, landscaping,** and other techniques; and
  - (f) Protect public investment by mitigating impacts generated by new **development** on existing public facilities and utilities.
- (2) When, for any reason, an existing business, without a previously approved **landscaping** plan ceases to operate in a non-residential business district and a new business seeks to operate on that same site, the property owner shall submit to the **UDO Administrator** a **landscaping** plan as required in Subsection (C) below.

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(B) *Exemptions.*

- (1) Individual **single-family** detached residential **lots**.
- (2) All bona fide agricultural land use is exempt from this section.

(C) **Landscaping Plans.** A **landscaping** plan and general application shall be submitted to the **UDO Administrator**. The **site plan**, **site plan** amendment, and **landscaping** plan shall be reviewed by the **UDO Administrator** for all permitted uses.

- (1) A **landscaping** plan shall be submitted before or at the time of application for the building permit for all commercial, **multi-family** projects, and residential **subdivision development** projects. The plan shall contain the following information:
  - (a) Name, address, and telephone number of the owner of the site; address of **development** site; name, address, and telephone number of the **applicant** if contractor, or agent of the property owner.
  - (b) Date of plan preparation.
  - (c) Project name and description of land use.
  - (d) A plan at a scale as appropriate to size and scope of project showing:
    1. North arrow.
    2. Graphic scale.
    3. Locations and species of all heritage trees, as defined in Appendix A. If groves of heritage trees exist that will not be removed or disturbed, it is permitted to label the grove as such on the plan, stating the approximate number of trees, without specifying data on each individual tree. Reasons for removing heritage trees shall be explicitly stated on the plan.
    4. Any proposed grade changes which might adversely affect or endanger any tree to be retained with a statement of how the tree is to be protected and maintained.

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5. Locations, dimensions, and square footage of required **buffer** strips and **parking lot landscaping**.
  6. Details of required **landscaping** showing species, dimensions, and spacing of planted materials and the use and protection of existing vegetation.
  7. Location and square footage of **structures** and improvements, **parking lots**, existing and/or proposed utility services roadways, bikeways, and walkways.
  8. Adjacent **zoning** districts.
  9. Current **zoning** of the property.
  10. Approximate locations of all trees greater than ten (10) inches diameter within required **buffer**.
- (2) Proposed schedule for **landscaping**.
- (3) If any new or retained tree shown on the approved **site plan** dies or is removed by the developer within one (1) year after the issuance of the **certificate of occupancy** or the granting of **final plat** approval, it shall be replaced by planting a new tree having a minimum caliper of two (2) inches.
- (D) **General Landscaping Requirements.** A minimum of fifteen (15) trees at least two (2) inches in diameter, measured four and one half (4.5) feet above ground, shall be retained or planted on the parcel for each acre of **development**, or shall be prorated accordingly. If any heritage trees are to be cleared from the site, reasons for doing so shall be clearly stated on the landscape plan. Suitable reasons for clearing one (1) or more of these trees could include such factors as it is impossible to position buildings on the parcel and meet **setback** requirements without tree removal. Unsuitable reasons include such factors as more parking than the minimum specified is desired or that non-selective clearing by builder is less expensive than selective clearing. Only **landscaping** plastic which allows rain water to flow through is permitted. Solid plastic cover is prohibited.
- (E) **Planting Areas along Boundaries of Right-of-Ways.**
- (1) Within every fifty (50) feet of **lot frontage** along any **street**, a planting area eight (8) feet in depth immediately interior to the sidewalk shall contain one (1) tree eight (8) feet in height, or three (3) flowering trees five (5) feet in height, and six (6)

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shrubs eighteen (18) inches in height. Height measurements shall be at time of planting.

- (2) Adequate sight angles as required by North Carolina Department of Transportation roadway standards shall be maintained.

(F) *Interior Planting Areas.*

- (1) Interior **landscaping** shall be provided equal to eight percent (8%) of the gross paved area to be used for parking, loading, or vehicular use. **Landscaping** shall be in the form of planting islands, either separate or protruding from the perimeter **landscaping**.

- (2) Each island shall be a minimum of eight (8) feet in width and no less than one hundred (100) square feet overall. Each island shall contain at least one (1) tree eight (8) feet in height and six (6) shrubs eighteen (18) inches in height at planting.

- (3) Consecutive **parking spaces** shall incorporate landscaped peninsulas no more than fifteen (15) spaces apart and at the ends of all parking rows. Peninsulas shall contain one hundred forty-four (144) square feet of area and be at least eight (8) feet in width. When a business establishment is required to provide over three hundred (300) **parking spaces** by the Town's Ordinance, the **Planning Board** may waive the requirement for a **landscaping** island every fifteen (15) consecutive spaces if: 1) the parking area and **landscaping** islands are located to the rear or sides of the building, and 2) the parking area is not visible from any public right-of-way from which the business establishment has ingress and egress. If the **Planning Board** waives the fifteen (15) consecutive space requirements for **landscaping** islands, a **landscaping** island must be installed at a maximum of every thirty (30) consecutive spaces. All other applicable **landscaping**, dimensional and parking requirements shall apply.

- (4) All interior plantings, including islands, shall be curbed or blocked for protection.

(G) **Buffer Strips.** **Buffer** strips shall be required when a nonresidential use is developed immediately adjacent to an existing residential use.

- (1) Planted **buffer** strips. The planted **buffer** strips shall be at least six (6) to eight (8) feet tall and give approximately seventy-five percent (75%) visual opacity, year round, within one (1) year of planting. Three (3) rows of planted materials shall be required to a minimum depth of fifteen (15) feet.

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- (2) Approved type screening shall be required to shield outside storage areas, loading/unloading areas, heating and air conditioning units, dumpsters, or trash storage areas.
- (3) The following means to create a **buffer** shall be used:
  - (a) Natural vegetation may be retained to meet this requirement.
  - (b) One (1) or more of the following means shall be used to supplement the natural vegetation as necessary or to provide an adequate **buffer** where no natural vegetation exists:
    1. *Planted **Buffer Strips***. The planted **buffer** strip shall be at least six (6) to eight (8) feet tall and give approximately seventy-five percent (75%) visual opacity within one (1) year of planting. Three (3) rows of planted materials shall be required to a minimum depth of fifteen (15) feet.
    2. *Combination Planted **Buffer Strip** with Artificial Privacy Fencing or Wall. **Fences*** or walls shall be uniform in design, construction, and material. The **fence** or wall shall be brick, vinyl, decorative cement block, stucco, maintenance-free metal, or treated wood (excluding any type of plywood or lattice sheets) or any combination. Height adjustments shall be made by vertical steps not to exceed six (6) feet in height. Both sides of a **fence** or wall must be equal in construction and appearance. The **fence** or wall shall extend along and be set back at least four (4) inches from the property line.
    3. *Earthen Berms in Conjunction with Planted Vegetation*. The berm shall be at least four (4) feet high and stabilized with permanent grass or sod within thirty (30) days of construction during normal planting seasons. The use of temporary rye grass will be allowed during winter months but shall be replaced with permanent grassing within thirty (30) days of the beginning of the next normal growing season. Temporary rye grass is not considered as permanent grassing. The total height of the berm and planted vegetation shall be a minimum of six (6) feet high and provide seventy-five percent (75%) visual opacity within one (1) year of planting. The slope of the berm shall be no steeper than 3:1. It shall have a level or rounded area on top and be constructed of compacted earth. The Planning Board may modify or waive the requirements of a **buffer**

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where it can be demonstrated by the property owner that the specified screening **buffer** is not needed for the protection of surrounding residential areas because of intervening **streets**, roadways, drainage ways, or other factors such as natural growth of sufficient height and density to serve the same purpose as the required screening **buffer**.

### (H) *Maintenance and Uses within the **Buffer Strip**.*

- (1) All berms and planted living material shall be adequately maintained and irrigated by the owner of the property on which it is located. Any plantings, which become diseased or die, shall be replaced by the owner on a continuing basis for the **development** in order to maintain seventy-five percent (75%) visual opacity. Storm water retention ponds shall be encouraged to be integrated into the landscape plan.
- (2) No activities shall occur in the **buffer** except for maintenance of the **buffer** and the installation and maintenance of water, sewer, electrical, and other utility systems.

### (I) *Administration and Enforcement.*

- 1) Prior to the issuance of a building permit for any new project or renovation or expansion to an existing project required to have **landscaping**, a plan shall be prepared in conformance with the provisions of this Ordinance and shall be submitted to and approved by the **UDO Administrator**.
- (2) No **certificate of occupancy** for any construction or renovation shall be approved by the Building Inspector until the required **landscaping** is completed in accordance with the approved plan.
- (3) Any person, firm, or corporation who violates any provision of this article shall be subject to the penalty provided in Section 1.12.

### (J) ***Critical Root Zone.***

- (1) Sunset Beach recognizes the importance of adequately protecting trees during the construction phase of **developments**. To this end, no excavation or other subsurface disturbances may be undertaken within the **critical root zone** of a tree. Said **critical root zone** shall be marked by means of a barrier **fence**. In cases where, because of utility extension, sidewalk installation, or other site improvements, it is neither prudent nor possible to avoid land disturbance activity in the **critical root zone** area, the developer shall, upon consultation with the **UDO**

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**Administrator**, provide the Town with a root disturbance mitigation plan which shall outline a specific course of action for minimizing damage to a tree's root system.

- (2) If space that would otherwise be devoted to parking cannot be so used because of the requirements of Subsection (1) and, as a result, the parking requirements set forth in Article 9, Part II, cannot be satisfied, the number of required spaces may be reduced by the number of spaces "lost" up to a maximum of fifteen percent (15%) of the required spaces.

### **SECTION 10.02 PRESERVATION OF TREES**

(A) *Purpose.* The purpose of this section is:

- (1) To recognize the importance of mature trees to the quality of life;
- (2) To conserve energy and retard storm water runoff;
- (3) To safeguard and enhance property values and to protect public and private investment through protection of significant **existing trees**, and
- (4) To prevent the indiscriminate removal of trees.
- (5) To protect trees considered valuable to the Town of Sunset Beach as defined in Appendix C, Heritage Trees/Plant List.

(B) *Tree Removal Permit Required.*

- (1) No person, land owner, or corporation directly or indirectly, shall remove any heritage tree from private property without first obtaining a tree removal permit as provided in this chapter. The requirement for tree removal permits shall apply within the entire area covered by the Town's **zoning** authority including the areas known as the mainland, beach, and extra territorial jurisdiction except a parcel of land occupied by a **single-family** home, **duplex**, or **triplex** building.
- (2) All persons seeking a permit for removal of a heritage tree shall make applications to the Building Inspector.

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- (3) The Building Inspector shall issue a tree removal permit if the **applicant** demonstrates one (1) or more of the following situations:
    - (a) For **new construction**, the **applicant** is able to show that essential site improvements cannot be installed without removal of the heritage tree(s). Examples of essential site improvements are the principal/**accessory building(s)**, off-**street** parking, driveway, storm water management facilities;
    - (b) The heritage tree is dead, severely diseased, injured, or in danger of falling close to existing or proposed **structures**;
    - (c) The heritage tree poses an identifiable threat to individuals or **public safety**, and/or
    - (d) Removal of the heritage tree is necessary to enhance or protect the health or condition of adjacent trees.
  - (4) Moving heritage trees is encouraged if adequate care is taken to ensure survival of the tree.
  - (5) Heritage trees permitted to be removed shall be replaced on a one (1) for one (1) basis with an approved tree. Size and species are to be determined from a standard approved tree list established and published by Town Hall.
  - (6) **Golf courses** may remove trees based on the following standards:
    - (a) Any **golf course** operation may remove up to twenty-five (25) trees per year without justification. A permit will be required for tracking purposes; however, no basis for removal is required for up to twenty-five (25) trees annually.
    - (b) For all trees in excess of twenty-five (25), **golf courses** must comply with the Town=s standard tree removal policy.
- (C) *Requirements for Tree Removal Permit Application.*
- (1) Brief written description of the reason for removal of the tree(s).

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- (2) A *site plan*, prepared by a professional surveyor, showing the approximate location of all heritage trees or groups of trees, location and *footprint* of any and all existing or proposed buildings and *structures*, and the removal plan must identify the size, species, height, dripline, and health of all heritage trees and groups of trees.
- (3) A description of the methods proposed to move a heritage tree, if applicable.
- (4) Photographs of trees, or groups of trees, to be removed.
- (5) Any other information that may be required by the Building Inspector to issue the permit.
- (6) The Building Inspector may require a report from an arborist, horticulturalist, or other Town-approved professional regarding the health of a tree to be removed.

### **SECTION 10.03 MAINTENANCE**

In order for any screening to fulfill the purpose for which it was established, it must be properly maintained. The owner of the property where screening is required will be jointly and severally responsible for the maintenance of all required screening materials. Maintenance includes actions necessary to keep screening materials healthy, neat and orderly in appearance, and free of litter and debris. Any live screening materials such as shrubs and trees which may die must be replaced in compliance with the minimum standards of this Ordinance. All screening and landscaping areas must be protected from damage by motor vehicles or pedestrians which could reduce the effectiveness of the screening. Landscaped areas shall be kept in a proper, neat, and orderly appearance and free from refuse and debris. All unhealthy or dead plant material shall be replaced by the property owner or tenant. Failure to maintain the required landscape materials shall constitute a zoning violation and shall be remedied in accordance with the provisions of Section 1.12.

### **SECTION 10.04 TREE CLEARING PROVISIONS**

- (A) *Purpose.* The Tree Clearing Certificate requirement has been developed to implement the enabling legislation granted to the Town by the North Carolina General Assembly. The purposes of these regulations are to:
- (1) Protect existing trees and shrubs located upon undeveloped sites for use as future buffers and streetscapes to meet development plan requirements;
  - (2) Preserve existing tree and vegetative cover to protect the health, safety, and welfare of the public by preserving the visual and aesthetic qualities of the Town;

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maintaining property values; controlling erosion; and reducing sediment and other pollutant run-off into streams and waterways in an effort to protect water quality; and

- (3) To create a process whereby some properties are required to obtain a tree clearing certificate, recognize some properties are exempted from the requirement to obtain a tree clearing certificate prior to the removal of vegetation, and establish penalties for removal of all or substantially all of the required vegetation within required vegetation protection areas.
- (B) *Applicability.* The requirements for obtaining a Tree Clearing Certificate and penalties for non-compliance are applicable to all undeveloped properties which are zoned for residential or nonresidential use located within the Town Limits and/or Extraterritorial Jurisdiction (ETJ). For the purposes of this section, undeveloped properties shall include any property within the Town's jurisdiction which is not subject to an approved development plan.
- (C) *Exemptions from Tree Clearing Certificates.* The requirement to obtain a Tree Clearing Certificate shall not apply to the activities listed below.
- (1) Normal forestry activities taking place on property which is taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the North Carolina General Statutes, and provided such activities are accomplished in compliance with Section 10.04(G).
  - (2) Properties with a Town-approved development plan, provided such plan has not expired and that any clearing or vegetation removal is done in strict accordance with the approved development plan.
  - (3) The removal of vegetation by public or private agencies within the lines of any public street right-of-ways, utility easements, or other Town property, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to preserve or enhance the symmetry and beauty of such Town property.
  - (4) The Town-initiated or approved removal of any vegetation which is in an unsafe condition, constitutes a nuisance or noxious weed, or which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, stream or conveyance channels, or other public improvements, or vegetation which is infected with any injurious fungus, insect, or other pest.

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- (5) The removal of vegetation on property located within an approved residential subdivision which is zoned for single family use, and provided such vegetation is not a portion of a required streetscape or other landscaping buffer.
- (D) *Required Buffers and Vegetation Protection Areas.* Other than that necessary to gain reasonable access to the property, clearing, and/or removal of trees and other vegetation shall be prohibited in the areas listed below. In situations where one or more buffer zones or vegetation protection areas overlap on the same site, then the more restrictive requirement shall apply.
- (1) A perimeter streetscape zone having a width of fifty (50) feet as measured from all ultimate property boundaries which adjoin existing roadways as depicted in the Sunset Beach Transportation Plan or as required in Section 10.01. For the purposes of this section, the term "ultimate property boundary" of a parcel or tract shall mean the final demarcation line around the perimeter of a parcel excluding all areas which must be dedicated to the Town for use as right-of-ways.
- (2) A perimeter buffer zone having a width of sixty-five (65) feet as measured from all property boundaries which adjoin developed property or vacant property with an approved development plan.
- (3) A perimeter buffer zone having a width of thirty-two (32) feet as measured from all property boundaries which adjoin undeveloped property or vacant property without an approved development plan.
- (4) Any other areas necessary for the protection of existing vegetation as indicated within this Ordinance (e.g., riparian buffers).
- (E) *Application Requirements.*
- (1) An application for a Tree Clearing Certificate is not required for those activities which can demonstrate an exemption in accordance with the provisions of Section 10.04(C) above.
- (2) An application for a Tree Clearing Certificate may be filed only by all the owners of the property or by such owners' authorized agent.
- (3) An application for a Tree Clearing Certificate shall be filed with the Planning and Inspections Department on a form prescribed by the Department, along with the fee prescribed by the Town Council.

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- (4) The application form shall be accompanied by a Vegetation Protection Plan which shall include, at a minimum, the following information:
  - (a) Vicinity map showing the location of the tract at a readable scale.
  - (b) A map of the entire tract, including the property boundary of the entire tract by courses and distances with references to true meridian and the location and dimension of all on-site and adjacent off-site easements (e.g., drainage, utility, public access, aerial utility, conservation, permanent and temporary construction easements).
  - (c) General information about the tract, including but not limited to the owner of the tract, the current zoning of the tract, the area of the tract, and the conditional-use zoning conditions, planned unit development master plan requirements, if applicable.
  - (d) The owner, current zoning, and present use of all contiguous properties (including property on opposite side of adjoining streets).
  - (e) The location and width of all future/existing buffers and associated vegetation protection areas, including riparian buffers, perimeter buffers and perimeter streetscapes.
  - (f) The proposed limits of timbering activities, including the location and extent of all tree protection fencing as required under of this Ordinance.
- (5) The UDO Administrator may reduce or waive the requirements for a Vegetation Protection Plan in situations where it can be demonstrated that all vegetation removal will take place outside of required vegetation protection areas.
- (F) *Procedure.* Prior to the commencement of any vegetation clearing or removal on any undeveloped property, the owner or the owner=s agent must demonstrate exemption from the requirements of this section, or submit the required application materials and applicable fees for a Tree Clearing Certificate.
  - (1) Upon receipt of documentation that a property is exempted from obtaining a Tree Clearing Certificate, the UDO Administrator shall review all materials and make a determination if a property is exempted from the requirements, or if the requirements apply. In situations where exemption status is claimed based on forestry use, this documentation shall include proof that the property is taxed under

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the present-use value standard or a copy of the valid forestry management plan prepared or approved by a North Carolina registered forester. The decision of the UDO Administrator may be appealed to the Board of Adjustment.

- (2) If a property is not exempted from the provisions pertaining to a Tree Clearing Certificate, then such application materials shall include a Vegetation Protection Plan consistent with the requirements listed in Section 10.04(E)(4) above.
- (3) The Vegetation Protection Plan shall be reviewed by the UDO Administrator based upon the provisions of this Ordinance. The UDO Administrator may defer the decision on the Vegetation Protection Plan to the Town Council if he or she has concerns about the plan's ability to meet the standards of this Ordinance. In the event the UDO Administrator disapproves the plan, an appeal may be filed with the Town Council within ten (10) days of disapproval. If an appeal is filed, the Town Council shall decide whether to consider the appeal by majority vote and may affirm, reverse, or modify the UDO Administrator's approval.
- (4) An applicant for a Tree Clearing Certificate shall be notified upon approval of the Vegetation Protection Plan, and shall be free to erect or install any and all barriers necessary to protect existing vegetation within required buffer areas and vegetation protection areas from damage during tree clearing and/or removal activities.
- (5) Once all barriers for the protection of existing vegetation have been installed, a property owner or agent shall request inspection of such barriers for compliance with the requirements of this Ordinance.
- (6) Upon a passing inspection of vegetation protection barriers, the UDO Administrator shall issue a Tree Clearing Certificate, and authorized vegetation clearing and/or removal may commence.
- (7) An approved Tree Clearing Certificate shall be valid for a period of not more than twelve (12) months from the date of issuance.

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(G) *Non-Compliance.* Failure to comply with the provisions of this section shall constitute a violation of this Ordinance, and shall subject an offending party to a series of actions, including the payment of fines, delay in development plan approval or building permit issuance. Table 10-1 describes the penalties for non-compliance with this Section. An **AX** in a particular cell indicates the associated penalty which applies:

Table 10-1. Penalties for Non-Compliance

Type of Violation	Payment of Fines (based on Section 1.12)	Review of all subsequent Site Plans by Town Council	Five year delay in approval of a Building Permit or Site Plan	Requirement to double the landscaping provisions during Site Plan review
Property is exempt from Tree Clearing Certificate requirements, but all or substantially all* vegetation within required buffers and/or vegetation protection areas is removed		X	X	X
Property owner obtains a Tree Clearing Certificate, but removes some of the vegetation within a required buffer and/or tree protection area	X			X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes some of the vegetation within a required buffer and/or tree protection area	X	X		X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no certificate, and removes all or substantially all* of the vegetation within a required buffer and/or tree protection area		X	X	X

\* All or substantially all shall mean seventy-five (75) percent or more the existing trees with a caliper of four (4) inches or greater.