ARTICLE 10
LANDSCAPING AND TREE PROTECTION

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SECTION 10.1
GENERAL PROVISIONS

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Section 10.1.1 Purpose and Intent

These landscaping and tree protection regulations are intended to:

1. Maintain and enhance property values;

2. Preserve and enhance the visual appearance of the Town;

3. Reduce the impacts of development on the Town's stormwater system;

4. Promote the abatement of noise, heat and glare conditions;

5. Provide visual buffering;

6. Preserve river basin habitats and enhance the quality of the Town's estuarine waters;

7. Increase tree canopy; and

8. Prevent the indiscriminate removal of trees and facilitate tree replacement in new and existing developments.

Section 10.1.2 Applicability

1. Except as specifically exempted in Section 10.1.3 of this Article, compliance with the terms and provisions of this Article shall be verified prior to receiving Town approval or authority for one (1) or more of the following activities:

   A. Minor or major subdivision of property;

   B. Alteration of an existing drainage system;

   C. Receipt of a building permit~~;~~

D. Site development;

E. Removing or any pruning of a Specimen or Heritage tree;

F. Obtaining a CZC; and/or

G. Any other activity regulated by the Town's Zoning and/or Subdivision Ordinances which requires approval by one of the Town's public bodies.

2. No such approval shall be issued until it is determined that the proposed project is in conformance with the provisions of this Article.

3. Substantial compliance with this Article and an approved Landscape Plan and Tree Protection Plan, where applicable, is also required prior to issuance of a CO or the recording of a final plat.

Section 10.1.3 Exemptions

1. Bona fide agricultural and forestry activities which do not involve drainage of land provided that such properties shall not be clear-cut during the conduct of forestry or agricultural activities. To maintain the visual character of the site from adjoining properties and right-of-ways, a vegetated perimeter buffer shall be maintained while and after tree harvesting for forestry occurs. All existing vegetation located in a required side or rear yard shall be maintained, exclusive of areas needed to access the property or connect to adjoining sites. Along public right-of-ways, all existing vegetation located in a required street yard shall be maintained, exclusive of areas required for access to the site.

2. Nurseries.

3. The maintenance, alteration, or improvement of an existing structure that does not involve an increase in impervious surface.

4. The following tree removal actions may be taken without an approved Tree Protection Plan:

A. Clearing or maintenance of Town right-of-ways.

B. Clearing or maintenance required by the Town to maintain appropriate sight triangles at intersections.

C. Clearing or removal as caused by emergencies and disasters such as hurricanes, tropical storms, floods, ice or snow storms or other acts of nature causing damage to a tree such that it imperils life, property, or other trees.

D. Removal of minor tree limbs or other minor pruning of non-Heritage and non-Specimen trees except that topping of trees through removal of crown material or the central leader, or any other similarly severe procedures which could irreparably harm the natural form of the tree are hereby prohibited except where such procedures are necessary to maintain public overhead utilities. Any such prohibited activity shall be a violation of these regulations.

E. In the event that any tree shall be determined to be in a hazardous or dangerous condition so as to endanger the public health, welfare or safety and therefore requires immediate removal without delay, verbal authorization may be given by the Town Administrator and said tree removed without obtaining a written permit as herein required. Provided, however, that the owner of a residential lot with an existing structure who is not otherwise subject to the provisions of this Article (hereinafter referred to as an "exempted residential lot owner"), shall not be required to seek such authorization from the Town Administrator before removing a non-Specimen or a non-Heritage tree that is in a hazardous or dangerous condition.

5. Public utilities removing trees or cutting trees in conjunction with construction, maintenance or repair of utility lines shall be subject to the following requirements:

A. A public utility shall submit a tree protection plan and shall acquire a tree protection permit before removing any protected tree within a utility easement or right-of-way. There shall be no charge for such permit.

B. A public utility shall submit a tree protection plan and shall acquire a tree protection permit before undertaking any tree trimming or pruning activities in connection with the construction, maintenance or repair of utility lines within a utility easement or right-of-way. There shall be no charge for such permit.

6. An exempted residential lot owner shall not be subject to the provisions of this Article unless the owner is or will be:

A. Repairing, altering, or improving an existing drainage system on the lot;

B. Applying for a building permit for new construction on the lot;

C. Applying for approval to subdivide the lot;

D. Repairing, altering, or improving an existing structure or structures in such a way that the lot's impervious surface is or will be increased;

E. Clear cutting the lot which is hereby prohibited and shall constitute a violation of these regulations

F. Removing more than seventy-five percent (75%) of the trees on the lot, provided that no lot shall be clear-cut and all lots shall comply with any applicable provisions under Sections 10.2, *Buffers*, 10.3, *Screening*, and 10.4, *Landscaping*;

G. Removing or pruning a Specimen or Heritage tree; and/or

H. Any other activity regulated by the Town's Zoning and/or Subdivision Ordinances or which requires approval by one of the Town's public bodies.

<u>Section 10.1.4 Plans Required</u>

1. A Landscape Plan must be submitted to the Town Administrator to:

A. Receive approval for a subdivision plat;

B. Alter an existing drainage system;

C. Receive a building permit;

D. Obtain approval to start site development; or

E. Obtain a CZC or CO where applicable.

2. Submittal, review, and approval of a Landscape Plan shall be mandatory for the construction of individual single family and two-family residences. Compliance with a previously approved subdivision Landscape Plan shall be mandatory for lots within that subdivision.

3. Submittal, review, and approval of a Landscape Plan is mandatory for major residential uses (multi-family dwellings, townhouses, and condominiums), institutional uses, commercial uses, and subdivisions.

4. A Landscape Plan shall include the following information (applicants may supplement the Landscape Plan with photographs indicating the location of existing vegetation):

A. Location of wooded areas and all protected trees (with Specimen and Heritage trees being respectively labeled as such);

B. Location of any wooded areas and all protected trees (with Specimen and Heritage trees being respectively labeled as such) which will or could be subject to removal or injured/damaged during development or construction;

C. Location of wooded areas and all protected trees (with Specimen and Heritage trees being respectively labeled as such) which will be retained after development or construction;

D. Location and type of vegetation, including all protected trees (with Specimen and Heritage trees being respectively labeled as such) which will be replaced after development or construction;

E. Location of any required setbacks and buffer strips whether existing or proposed;

F. Location of any screening whether existing or proposed; and

G. Location and composition of any landscape islands whether existing or proposed.

5. When applicable, a Tree Protection Plan shall be included with the Landscape Plan.

Section 10.1.5 Plan Review

Landscape and Tree Protection Plans shall be reviewed by the Town Administrator in accordance with the regulations set forth herein.

SECTION 10.2
BUFFERS

Section 10.2.1 Landscape Buffers Required
Section 10.2.2 Specific Requirements

Section 10.2.1 Landscape Buffers Required

Landscape buffers shall be required and provided along all property lines of a lot zoned MF, MH, BR, CBD, BH, I, or PI when such property lines abut property located in the R-10 or R-15 zoning district. The more intense use and/or district shall be required to provide the buffer as part of its yard requirements. Landscape buffer strips shall be required along property lines adjacent to a residential use and/or zoning district

Section 10.2.2 Specific Requirements

The following requirements shall be met for buffers strips and the yards in which buffers are required:

1. Location of Buffer Strips: Buffer strips shall be required to provide a screen between attached housing developments, mobile home parks, high-density developments, planned developments or commercial and industrial zones, and any detached residential development.

2. Width of Buffer Strips: Buffer strips shall be provided along all property lines of a lot, as identified in Section 10.2.1, at a width of twenty (20) feet.

3. Allowance for Setback Decrease: The setback for structures may be decreased if the base width of the buffer strip is increased by the same amount.

4. Uses in the Buffer: No activities or uses shall occur or be located in a buffer strip, with the exception of maintenance of the buffer or the installation or maintenance of water, sewer, electrical and other utility systems where the installation causes minimal disturbance of existing vegetation.

5. Composition of Buffer Strips: Buffer strips shall provide approximately seventy-five (75) percent opacity. Buffer strips may be occupied only by natural and/or planted vegetation, berms, or fencing, as specified below.

A. Natural vegetation shall be retained provided it does not constitute a fire hazard. If necessary, the Town Administrator shall consult with the local fire department in determining whether any retained vegetation constitutes such a hazard. One or more of the following means shall be used to supplement the natural vegetation as necessary or to provide an adequate buffer where no vegetation exists:

i. Planted Buffer Strips – Three rows of planted materials shall be provided. Within two (2) years of planting, planted buffer strips shall be at least six (6) feet in height and provide approximately seventy-five percent (75%) visual opacity.

ii. Planted Buffer Strips with Fencing – Fences shall have a minimum height of six (6) feet and a maximum height of ten (10) feet. Fences shall be located interior to the buffer strip (i.e. fences shall be located on the building side of the buffer

strip). Two rows of planted materials shall be provided, at a minimum height of three (3) feet and providing at least fifty (50) percent opacity of the fence at initial planting. Within two (2) years of planting, planted buffer strips shall provide approximately seventy-five percent (75%) visual opacity of fencing.

iii. Planted Buffer Strip with Berm: Berms shall only be used in conjunction with Planted Buffer Strips or Planted Buffer Strips with Fencing, as specified above. The slope of a berm shall be stabilized with vegetation and no steeper than 3:1. The height of a berm shall be six feet (6') or less, with a level or rounded area on top of the berm. The berm shall be constructed of compacted earth. Within two (2) years of planting, the combined height of a berm with plantings shall be at least six (6) feet in height and provide approximately seventy-five percent (75%) visual opacity.

In situations where Specimen trees exist in the location of a proposed berm, tree wells and/or similar implements shall be used to protect such trees. Prior to the Town's approval of such measures, an applicant shall submit a report by a Certified Arborist that indicates that such measures will not endanger or compromise the survivability of the specimen tree.

SECTION 10.3
SCREENING

The following features located on commercially or industrially zoned or used property shall be screened from the view of property lines abutting a residential use/district or right-of-way, through the use of plantings and/or fencing that provide seventy-five percent (75%) opacity within two (2) years of planting:

1. Dumpsters or other trash holding areas;

2. Outside storage areas;

3. Loading/unloading areas;

4. Heating/air conditioning units, including roof mounted units; and

5. Lights shall be shielded in such a manner that light from the fixture will not directly radiate into the buffer strip or beyond.

SECTION 10.4
LANDSCAPING

Section 10.4.1 Street Yard Landscaping
Section 10.4.2 Parking Lot Landscaping

Section 10.4.1 Street Yard Landscaping

1. A street yard landscape strip of at least ten (10) feet in width shall be provided on all lots which are undergoing development, including the new construction of principal structures or the expansion of such structures. No street yard landscape strip shall be required for those portions of a lot's frontage used for perpendicular driveway crossings.

2. Street yard landscape strips shall be planted in accordance with one (1) of the following standards:

A. Minimum Standards – For every fifty (50) feet of linear street frontage, or fraction thereof, the street yard landscape strip shall contain the following:

i. Either one (1) overstory tree eight (8) feet in height or three (3) understory trees five (5) feet in height; appropriate overstory and understory tree species shall be as listed in Table 10.5.1, Tree Species Selection List.

ii. In addition to the required tree plantings, every fifty (50) feet of the landscape strip shall be planted with at least six (6) shrubs, twelve (12) inches in height.

B. Creative Standards – To promote creative designs, street yard landscape strips shall consist of trees and shrubbery which covers at least fifty percent (50%) of the area of the landscape strip.

3. Existing trees located in the area of the proposed street yard landscape strip may be counted as credits towards meeting Section 10.5, Tree Protection.

4. All street yard landscape strips shall be planted with a combination of live vegetation, groundcover, grass, trees, and/or shrubs. No portion of the street yard landscape strip shall remain or be maintained without vegetation.

5. Plantings and vegetation in the street yard landscape strip shall be maintained in compliance with this Article and the approved Landscape Plan. In addition, owners and developers of non-residential properties subject to this provision shall perform the necessary actions and measures to reasonably ensure that the material in the landscape strip survives and grows.

Section 10.4.2 Parking Lot Landscaping

Landscaping is required for parking lots for the purposes of reducing aesthetic impacts of paving or removing the natural vegetation from large areas, and to reduce the noise, heat, and dust associated with parking lots. Parking areas with twenty (20) or more parking spaces shall be landscaped in the following manner:

1. Buffer strips shall be required as per Section 10.2, Buffers, of this Article.

2. A landscape island comprising an area equaling that of one (1) parking space shall be located at the end of each row of parking and be planted with one (1) shade tree, a minimum of three (3) inches in caliper and sod.

3. The interior of a row of parking shall be landscaped in one (1) of the following manners:

A. One (1) landscape island shall be located after every tenth (10th) parking space within a row; rows with fifteen (15) parking spaces or less shall locate the landscape island in the middle or approximate middle of the row. Such landscape islands shall be planted with one (1) shade tree, a minimum of three (3) inches in caliper.

B. A landscape island/strip, five (5) feet in width, shall be located along the entire length of a row of parking with eleven (11) or more spaces. Such landscape islands/strips shall be planted with one (1) shade tree, a minimum of three (3) inches in caliper, every sixty (60) feet.

4. All parking areas visible from a public or private right-of-way shall be screened from view. Parking areas located in a side yard shall have the portion of the lot that fronts the street screened up to a height of three (3) feet using shrubs, masonry walls (using material that matches the adjacent building), wrought iron fencing, or any combination thereof. If landscaping is used, the minimum planting area width shall not be less than four (4) feet.

SECTION 10.5
TREE PROTECTION

Section 10.5.1 Permits and Tree Protection Plan Required
Section 10.5.2 Application and Procedure
Section 10.5.3 Standards for Approval or Denial
Section 10.5.4 Mitigation of Tree Loss
Section 10.5.5 Heritage Tree Protection
Section 10.5.6 Appeals and Variances
Section 10.5.7Enforcement and Penalties

Section 10.5.1 Permits and Tree Protection Plan Required

1. Any activity subject to the provisions of this Article shall be prohibited without an approved Tree Protection Plan and a tree removal permit.

2. No protected tree shall be removed, or be subject to removal without first obtaining an approved Tree Protection Plan and tree removal permit. Provided, however, that an exempted residential lot owner shall not be required to obtain an approved Tree Protection Plan and a tree removal permit for the removal of non-Specimen or non-Heritage trees.

Section 10.5.2 Application and Procedure

1. Three copies of a Tree Protection Plan, along with the required application fee, shall be filed by the owner or lessor of the subject property, or an authorized agent thereof, with the Town Administrator. The application shall contain the following information:

A. Name of property owner.

B. Date, including the month, day, and year that the original drawing was completed and the month, day, and year for each revision to the original drawing.

C. Location of all existing or proposed structures, improvements and site uses, property dimensions and referenced property lines, setback and yard requirements as they apply to tree removal.

D. The common names, sizes and location of all protected trees, with Specimen and Heritage trees being respectively labeled as such, on the site, designating the trees which are respectfully to be retained, removed, relocated, or replaced. Trees proposed for removal shall be marked with an "X" through the tree symbol in the document. Trees not marked shall be conserved.

E. The location and type of trees which will be planted after development or construction and the time frame for completion of such planting.

2. The Town Administrator shall review the tree protection plan according to the requirements of Article 10.

3. The Town Administrator shall reject, within ten (10) business days after having received it, any proposed Tree Protection Plan that is incomplete or inaccurate, contains false material statements or omissions, or seeks a permit for an activity that would violate the provisions of this Article. The Town Administrator may reject any such proposed plan at anytime prior to the expiration of the ten (10) day period by returning the proposed plan to the applicant along with a written notice indicating the grounds upon which the rejection is based.

4. The Town shall process all complete Tree Protection Plans within ten (10) business days after the Town's receipt of the same. The Town Administrator shall give notice to the applicant of his/her decision and if the decision is to deny the proposed plan, then that decision shall be set forth in a writing to the applicant stating the grounds upon which the denial is based. A proposed Tree Protection Plan meeting the standards of this Article shall be approved.

5. A denial of a proposed Tree Protection Plan under this Section shall be appealable pursuant to the procedures for Appeals outlined in Section 9.5, *Appeals and Variances*, of the Zoning Ordinance.

6. A proposed Tree Protection Plan that has been denied and later resubmitted in conformity with this Article shall be deemed to have been submitted on the date of resubmission and not on the date of the original submission.

7. A tree removal permit shall become null and void if the removal activities permitted thereunder have not been commenced within twelve (12) months after the date the permit was granted. No refunds shall be made after the permit is issued. If, after twelve (12) months, a party wanting to remove a tree or trees at the same location, then a new Tree Protection Plan and removal permit shall be applied for and another application fee paid.

8. Any person/entity removing all or a significant part of a tree subject to an approved Tree Protection Plan and for which a tree removal permit has been granted, shall notify the Town Administrator when the work under the permit will start and when it is completed. The Town Administrator may inspect the work done under a tree removal permit at any time, require a final inspection and, if deemed necessary, report the results of these inspections to the appropriate officials. Tree removal permit holders, when removing a tree, shall also remove the stump of the removed tree.

9. Should it be determined that a Tree Protection Plan was approved and a tree removal permit was granted on the basis of an application containing false material statements or omissions, then the Town Administrator shall revoke the permit and all tree removal activities thereunder shall immediately cease. In addition:

A. Violating any provision of this Article shall be grounds for revoking a permit; and

B. The revocation of a tree removal permit does not in any way preclude the person/entity alleged to have violated the standards of this Article from being subject to the provisions of Section 10.5.7, *Enforcement and Penalties*, of this Article. Revocation also does not preclude the Town from taking any other action authorized under the Zoning Ordinance or by law.

10. A revocation pursuant to this Section is appealable pursuant to the procedures for Appeals as provided in Section 9.5 of the Town's Zoning Ordinance.

Section 10.5.3 Standards for Approval or Denial

1. Protected trees are to be retained and protected to the maximum extent feasible. No permit shall be issued for the removal of protected trees unless one of the following conditions exists:

A. The tree is located in the buildable area of a yard area where a structure or improvements may be placed and it unreasonably restricts the permitted use of the property and such trees cannot reasonably be relocated elsewhere on the property.

B. Necessity to remove trees in order to construct proposed improvements as a result of the following:

i. Need for access to the building site for construction equipment,

ii. Essential grade changes for surface water drainage and utility installations,

iii. Location of proposed structure and required driveway(s), and

iv. Location of proposed parking spaces and associated circulation required to be installed by the Zoning Ordinance.

C. The tree cannot be relocated on or off the site because of the age, type or size of the tree.

D. The tree is diseased, injured, in imminent danger of falling, is within ten (10) feet of an existing or proposed structure and threatens damage or loss thereto, interferes with existing utility service, creates unsafe vision clearance, or conflicts with other ordinances or regulations.

E. Where tree removal is consistent with an approved subdivision plat or site plan.

F. It is in the welfare of the general public that the tree be removed for a reason other than set forth above.

2. If a plan is approved that allows the removal of protected trees, the approval shall be conditioned upon compliance with a mitigation plan meeting the standards of the mitigation policy in section 10.5.4.

3. The Town Administrator shall only make such a determination regarding the above conditions at the request of a property owner or his/her/their representative. With respect to conditions B., C. and D., the Town Administrator may request that the property owner or his/her/their representative submit a report from a Certified Arborist prior to determining that such a condition(s) exists provided, however, that an exempted residential lot owner shall not be required to submit, at his/her own expense, a report from a Certified Arborist as a condition to the Town Administrator determining whether the above conditions exist and the Town may obtain such a report for such properties at its own expense.

Section 10.5.4 Mitigation of Tree Loss

1. Tree preservation is a pre-planning activity and will be thoroughly considered prior to development of engineering and/or architectural plans and prior to initiation of construction projects. Protected trees shall be guarded during development against the following:

A. Unnecessary cutting, breaking or skinning of roots.

B. Skinning and bruising of bark.

C. Excessive vehicular and foot traffic within drip lines.

D. Parking vehicles within drip lines.

E. Paving within the drip lines.

2. During the land clearing and construction stage of development, the developer shall erect and maintain tree protection fences, as the same is defined under Article 3 herein, around all trees or groups of trees to be protected. The developer shall not allow the movement of equipment or the storage of equipment, materials, debris or fill to be placed within the tree protected areas.

3. During the construction stage of development, the developer shall not allow the cleaning of equipment or material within the drip line of any tree or groups of trees to be protected. Neither shall the developer allow the disposal of waste materials such as paint, oil solvents, asphalt, concrete, mortar and so on within the drip line of any tree or groups of trees.

4. No attachments or wires other than those of a protective nature shall be attached to any tree.

5. Soil disturbances within the drip line of a protected tree shall be limited to two inches (2”) in depth removed or two inches (2”) in depth added. Any soil added under the drip line of the tree shall be a loamy soil mix to ensure minimal compaction.

6. During the land clearing and construction stages of development, a designee of the Town Administrator shall periodically inspect the site to insure compliance with the provisions of this article and/or any approved application or plan. Non-compliance may result in revocation of zoning permits and/or other enforcement remedies as set forth in Article 15 herein in addition to any other enforcement provisions provided for within this Ordinance.

7. Tree location and replacement activity permitted or required under this article shall be done in accordance with standard forestry practices and procedures, and all such plantings shall be reasonably maintained and attended to promote successful establishment thereof.

8. To offset negative impacts to natural environment, aesthetics, and property values of Belville and to uphold the intent of this article, the following tree replacement schedule shall be followed, which shall be in addition to any and all fees and/or fines paid or incurred by a party that removes or alters a tree, the effect of which is to eliminate it.

A. All protected trees removed shall be replaced in accordance with the following criteria:

i. All trees protected under this Article and all trees on Town-owned property, excluding Specimen trees, shall be replaced in a one-to-one ratio with trees that at maturity will be of comparable DBH and height of the tree removed. All replacement trees shall have a DBH of at least two (2) inches when planted.

ii. Specimen trees shall be replaced on a two-to-one ratio with trees of the same species. All replacement trees shall have a DBH of at least two (2) inches when planted.

iii. All mitigation shall occur on the property where the tree was removed. Mitigation in connection with construction shall be completed prior to issuance of a certificate of occupancy.

9. Tree loss mitigation shall not be required when the removal of a tree is due to natural causes, such as age, disease, or storm, or other causes beyond the control of the landowner and property developer, such as a car crash or fire for which no party is found responsible. Tree loss mitigation shall be required for all other trees allowed to be removed by permit from the Town Administrator or by variance from the Board of Adjustment as well as for those trees altered or removed in violation of this chapter.

10. Any person/entity subject to the provisions of this Article may be excused from the requirement to install new required trees which would cause the lot in question to contain more than five (5) total protected trees if the Town Administrator determines that the size of a given property and presence of existing vegetation is such that the introduction of a significant number of new trees may be detrimental to both existing vegetation and proposed trees. The decision of the Town Administrator in such matter shall be final.

11. If any new or retained protected tree, shown on the approved Tree Protection Plan dies within twelve (12) months after the issuance of a CO, then it shall be replaced by the holder of said plan planting a new tree having a minimum of two (2) inches DBH. For the unauthorized removal of a new or retained Specimen tree during construction or after the issuance of a CO, the replacement thereof shall be by the holder of the plan planting a new tree with a minimum DBH of two (2) inches for each tree removed without authority. This replacement obligation is in addition to any other enforcement provisions provided within this Ordinance.

12. For the purposes of this section, and other sections as referenced in this Ordinance, all new trees shall be of a species as listed in Table 10.5.1, *Tree Species Selection List*.

Table 10.5.1 Tree Species Selection List

Overstory Trees

Bald Cypress *Taxodium Distictum*
Black Gum *Nyssa Sylvatica*
Chinese Elm *Ulmus Parvifolia*
Easter Red Cedar *Juniperus Virginiana*
Japanese Cedar *Cryptomeria Japonica*
Loblolly Pine *Pinus Taeda*
London Planetree *Plantanus Acerifolia*
Longleaf Pine *Pinus Palustris*
Maiden Hair Tree *Gingko Biloba*
Southern Live Oak *Quercus Virginiana*
Southern Magnolia *Magnolia Grandiflora*
Sweetgum *Liquidambar Styraciflua*
Sycamore *Platanus Acerifolia*
Tulip Poplar *Liriodendron Tulipifera*

Understory Trees
American Holly *Ilex Opaca*
Cabbage Palm *Sabal Palmetto*
Chinese Pistache *Pistacia Chinensis*
Crape Myrtle *Lagerstroemia Species*
Dogwood *Cornus/Cornus Kousa*
Eastern Redbud *Cercis Canadensis*
Flowering Apricot *Prunus Mume*
Flowering Crabapple *Malus Species*
Glossy Privet *Ligustrum Lucidum (Tree form)*
Japanese Flower Cherry *Prunus Serrulata*
Japanese Maple *Acer Palmatum*
Lilac Chaste Tree *Vitex Agnus-Castus*
Wax Myrtle *Myrica Cerifera*
White Fringe Tree *Chionanthus Virginicus*
Yaupon Holly *Ilex Vomitoria*
Yoshino Cherry *Prunus Yedoensis*

Section 10.5.5 Heritage Tree Protection

1. In addition to defined Heritage trees, the Board is hereby authorized to designate any tree or group of trees as Heritage trees upon finding that any such trees are historically significant, have a special character or benefit the community. Public notice of any such designation shall be provided by mailing a notice of the same to the subject property owner, publishing the notice one time in a newspaper having local circulation within the Town's jurisdictional limits, posting the notice on the Town's website and circulating the notice to the addressees on the Town's Sunshine List.

2. Any property owner wanting to remove or prune a Heritage tree must apply for a permit from the Town.

3. The following considerations shall be used in by the Town Administrator in determining whether there is good cause shown to issue a permit for the removal or pruning of a Heritage tree:

A. The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures and interference with utility services;

B. The necessity to remove the tree in order to construct proposed improvements to the property;

C. The topography of the land and the effect of the removal of the tree on erosion, soil conservation and the diversion or increased flow of surface waters;

D. The long-term value of the species under consideration, taking into particular consideration the life-span and growth rate of the tree;

E. The ecological value of the tree such as for providing for food, nesting, habitat, protection and shade for wildlife and other plant species;

F. The number, size, species, age distribution and location of existing trees in the area and the effect which the removal or pruning would have upon shade, privacy and scenic beauty;

G. The number of trees the particular property can adequately support according to good arboricultural practices; and

H. The availability of reasonable and feasible alternative which would allow for the preservation of the Heritage tree.

In the event that the services of a Certified Arborist is required by the Town in determining whether there is good cause to permit the removal or pruning of a Heritage tree, then the Town Administrator may arrange for the provision of such services and the property owner/applicant shall be charged and be responsible for the arborist's fee and expenses provided, however, that the Town Administrator shall notify the property owner in advance of the need for the services of Certified Arborist and provide the owner with a reasonable opportunity to arrange for the provision of such services in lieu of the Town arranging for the same.

4. The Town Administrator shall notify the property owner/applicant, in writing and within five (5) business days after deciding the issue, of his/her decision to issue or deny the permit. Said writing shall set forth the specific reasons supporting the decision. If the decision is to issue the permit, then a copy of the permit shall be included with the Town Administrator's written notification. A permit to prune a Heritage tree shall set forth, as conditions upon which such a permit is issued, the specific manner and nature of the approved pruning. Any failure to conform to the pruning authorized under the permit shall be grounds for immediately issuing a stop work order, revoking the permit, and enforcing the violations which have occurred.

5. In the event that the Town Administrator approves the permit to remove or prune a Heritage tree, then the Town shall post a notice on or near the tree notifying the public of the decision to remove or prune the tree. In addition, the Town shall mail notices to the owners of any properties, whether abutting, adjacent or nearby, which are located within 100 feet of any property line of the subject property upon which the Heritage tree is located. The Town shall post and mail the required notices within five (5) business days after the Town Administrator's written decision on the permit.

6. Appeals of decisions made concerning the removal or pruning of a Heritage tree shall be filed with the Town Clerk on a form approved by the Town, and with the payment of the fee established under the Town's Fee Schedule, within ten (10) consecutive calendar days following the date of the Town Administrator's written decision or the Town's notification, as provided for above, of the decision permitting the removal or pruning of the Heritage tree, whichever is later.

7. The timely filing of an appeal shall stay all proceedings related to the applied-for removal or pruning, including any authorized removal or pruning, until the Board of Adjustment decides the appeal. Provided, however, that the Town Administrator may certify to the Board of Adjustment that, in his/her opinion, and because of the facts stated in the certification, a stay would cause immediate peril to life or property. In that event, the proceedings shall not be stayed except by a restraining order issued by a court of record with reasonable notice of the application for any such temporary injunctive relief being provided to the Town Administrator in advance.

8. Any removal or pruning of a Heritage tree as authorized by the Town in accordance with an issued permit shall not commence until and after the time for appealing the decision to issue the permit has elapsed. The permit shall specify, on its face, the date on which the removal or pruning activities may commence in accordance with the applicable period of time in which an appeal may be submitted.

Section 10.5.6 Appeals and Variances

Except as expressly provided for herein, appeals of zoning decisions made under this Article and variances from its provisions shall be as provided for in Section 9.5, *Appeals and Variances,* of this Ordinance.

Section 10.5.7 Enforcement and Penalties

1. The owner, tenant or occupant of the subject property, or part thereof, and/or their authorized representative(s), who create, maintain, cause or consent to the existence of any situation that is contrary to the requirements of this Article may be held responsible for the violation and be subject to the remedies and penalties herein provided.

2. The procedures upon the Town's discovery of any violation of the provisions of this Article, and the penalties and remedies in enforcing the prohibitions against any such violations, shall be as set forth in Sections 15.6, *Procedures Upon Discovery of Violations*, and 15.7, *Penalties and Remedies for Violations*, under Article 15, *Administration, Enforcement and Review* in the Zoning Ordinance. In addition, any violations of Section 10.5 herein shall also be subject to the following with the proviso that the violations set forth in sub-sub-sections A-C herein shall not constitute misdemeanors or infractions and shall constitute, exclusively, local offenses:

A. The removal of each protected tree without first obtaining an approved tree removal permit, shall subject the offender to a civil penalty in the amount of five hundred dollars ($500.00) for each tree removed. Provided, however, that a *non*-exempt residential lot owner shall first be issued a notice of violation for the unauthorized removal of such a protected tree before any citations can be issued impose civil penalties for additional unauthorized removals of protected trees. For the purposes of this particular provision only, protected trees shall not be deemed to include Specimen or Heritage trees which are addressed in the following two sections.

B. The removal of each Specimen tree without first obtaining an approved tree removal permit shall subject the offender to a civil penalty in the amount of one thousand dollars ($1000.00) for each tree removed.

C. The removal or pruning of a Heritage tree without first obtaining a permit to do so shall subject the offender to a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) for each such tree removed or pruned.

D. No zoning compliance permit or certificate of occupancy shall be issued for any improvements upon a property where the owner and/or developer has failed to comply with the applicable provisions of this article. A stop work order shall be issued until violations of the provisions of this article are corrected and until all fines and penalties are paid.

3. Actual and threatened violations of Section 10.5 herein shall also be deemed to constitute a public nuisance such that the provisions of Section 22.3, *Public Nuisances*, under Article 22, *Miscellaneous,* of the Zoning Ordinance which provide for the Town's abatement of public nuisances by legal action, recovery from the liable person(s) of the Town's enforcement costs, including inspection and cleanup expenses and a reasonable attorney's fee, and the establishment of liens upon subject properties to secure the recovery of the Town's enforcement costs, shall be fully applicable to and against any public nuisance created by an actual or threatened violation of Section 10.5.

4. Enforcement decisions and the imposition of any penalties hereunder are appealable to the Board of Adjustment pursuant to the provisions of Article 9, Section 9.5, *Appeals and Variances* of this Ordinance.