

**BOARD OF SUPERVISORS
COUNTY OF NEW KENT
VIRGINIA**

0-18-06

At the regular meeting of the Board of Supervisors of the County of New Kent in the Boardroom of the Administration Building in New Kent, Virginia, on the 5th day of February, 2007:

Present:	Vote:
Mark E. Hill	Aye
David M. Sparks	Aye
James H. Burrell	Aye
W. R. Davis, Jr.	Aye
Stran L. Trout	Aye

Motion was made by Mr. Hill, which carried 5:0, to adopt the following ordinance:

**A ORDINANCE AMENDING CHAPTER 98,
OF THE NEW KENT COUNTY CODE TO
INCLUDE A LANDSCAPING ORDINANCE**

WHEREAS, the New Kent County Board of Supervisors and the Planning Commission have appointed a Zoning Ordinance Re-write Committee to review the draft re-write of chapter 98, Zoning Ordinance that was prepared by staff; and

WHEREAS, the Zoning Ordinance Re-write Committee has completed a thorough review of the proposed landscaping requirements and has forwarded a draft landscaping ordinance to the Planning Commission and Board of Supervisors for consideration; and

WHEREAS, the purpose of the proposed ordinance amendment is to establish standards and requirements for all landscaping plans, buffers, and landscape materials; and

WHEREAS, the Planning Commission scheduled and conducted a

formal and duly advertised public hearing on 20 November 2006, and carefully considered the public comment received and the recommendation of the Zoning Ordinance Review Committee; and

WHEREAS, the Planning Commission voted 9:0:1 to forward the proposed zoning amendment to the New Kent County Board of Supervisors ("the Board of Supervisors") with favorable recommendation for the following reasons; and

WHEREAS, the proposed zoning amendment has been advertised for public hearing before the Board of Supervisors in full accord with applicable provisions of the Code of Virginia; and

WHEREAS, this Ordinance will further the public necessity, convenience, general welfare and good zoning practices in the County of New Kent; and

NOW THEREFORE BE IT ORDAINED this, the 8th day of January 2007, by the New Kent County Board of Supervisors that Chapter 98, Zoning Ordinance of the New Kent County Code be amended to include Article XXXVII as follows:

ARTICLE XXVII. LANDSCAPING

Sec. 98-1060. Application of landscaping requirements.

- (a) The general landscaping requirements of this chapter apply to all development for which a site plan is required.
- (b) All site plans must depict those landscape materials that are to be protected and preserved on site together with those landscape materials that will be installed. Such plans shall contain sufficient information to determine compliance with the general landscape requirements and standards.
- (c) The application of the general performance standards located elsewhere in this chapter may result in additional requirements and standards having an effect on the site. Specific additional requirements and standards adopted as part of a planned unit development or conditional rezoning or conditional use permit may also require supplemental landscaping.
- (d) Additions or redevelopment proposed for already developed sites need only comply with the provisions herein to the extent of the addition or redevelopment. Provided however, that if the terms of a planned unit development or conditional rezoning or conditional use permit apply to the site, then those terms must be met.

- (e) The zoning administrator may approve modifications of the landscaping requirements contained herein for good cause shown. All modification requests shall be in writing, clearly explaining the reasons therefore.

Sec. 98-1061. Landscaping preservation requirements.

- (a) *Purpose and intent.* In order to preserve the rural landscape of New Kent County, no one shall disturb land more than the minimum necessary to allow the economically beneficial use of land.
- (b) *Landscape preservation standards.* The owner or applicant of a development site shall demonstrate the necessity of any land clearing and landscape disrupting activities to the extent reflected in the application.
 - (1) In all cases, the preservation of naturally existing, healthy, landscape plants (especially trees) and the naturally occurring topography in which those plants are living is preferred to planting new or similar landscape materials after development.
 - (2) The County recommends the tree protection practices set out in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, as amended, when trees are to be protected and preserved.
 - (3) In no case shall any viable heritage, memorial, specimen or significant tree (see definitions in section 98-2) be removed from any buffer area or landscape preservation easement except to accommodate necessary entrances or utility service to the site which cannot be relocated in an appropriate manner or where such preservation would create or perpetuate demonstrable public health, safety, or welfare hazards.

Sec. 98-1062. Buffer requirements.

- (a) *Purpose and intent.* New Kent County requires buffers to help preserve the County's rural character and to promote a more harmonious development pattern. Buffers shield potentially incompatible uses and zoning districts from each other, as well as providing an appropriate rural look and feel from the roadway.
- (b) *Buffer design standards.*
 - (1) Buffers shall be continuous except where driveways or other breaks are necessary. Owners and applicants should curve driveways, to the

extent possible, to assist the transitional buffer area in obstructing the view of the site and preserving a natural appearance. Multiple breaks of the transitional buffer area are not permitted unless required to provide efficient and safe access to the site and an internal circulation pattern on the site.

- (2) Accessory structures, storage, or off-street parking or loading shall not be located within the buffer.
 - (3) Utility easements shall not be located within buffers except for those that cross the buffer at a right angle. If the zoning administrator determines that a certain utility location or configuration is essential, and that this essential location or configuration conflicts with this standard, the administrator will permit different standards that achieve an equivalent buffering effect.
 - (4) Buffers are not required along zoning lines that follow public road rights-of-way.
- (c) *Transitional Buffers.* Owners and applicants shall provide buffer screening between dissimilar uses and adjacent to existing uses in compliance with the three (3) different buffer screening requirements described below:
- (1) Buffer Screening Type A shall consist of a minimum 35-foot wide visual buffer that shall average a rate of one (1) Large Evergreen Tree and one (1) Medium Evergreen Tree for every 15 linear feet.
 - (2) Buffer Screening Type B shall consist of a minimum 50-foot wide visual buffer that shall average one (1) Large Evergreen Tree plus one (1) Medium Evergreen Tree plus two (2) Small Evergreen Trees or shrubs for every 15 linear feet.
 - (3) Buffer Screening Type C shall consist of a minimum 75-foot wide visual buffer that shall average one (1) Large Evergreen Tree plus two (2) Medium Evergreen Trees plus three (3) small deciduous, ornamental, or evergreen trees for every 15 linear feet. Owners and applicants must establish a Type C buffer between industrial or commercial development and residential properties.
 - (4) The zoning administrator may reduce the planting ratios proportionately for the use of larger size nursery stock and for the preservation of healthy mature trees that are protected in accordance with the provisions of this chapter. The zoning administrator may approve other modifications of the layout and design standards

contained herein for good cause shown. All modification requests shall be in writing, clearly explaining the reasons therefore.

- (5) Transitional buffers shall be placed on the property bearing the higher intensity use to the extent possible. However if other provisions of this chapter require that either the shared buffer or the required buffer be placed on the less intense use; or if the zoning administrator approves that alternative during site plan review; or if subdivision agent approves that alternative during subdivision approval, then that placement can occur.
- (6) Transitional buffers shall be provided between dissimilar zoning districts, as depicted in the Transitional Buffer Provision Matrix below, provided however, that if the performance standards for a specific use require a greater buffer, that greater buffer shall be provided.

Transitional Buffer Provision Matrix						
District in which proposed use is located	Abutting District					
	Conservation	Agriculture	Residential	B-1, B-2, B-3	M-1	M-2
Conservation	None	None	None	B	B	C
Agriculture	None	None	A	B	B	C
Residential	None	A	None	B	B	C
B-1, B-2, B3	B	B	B	None	A	B
M-1	B	B	B	A	None	A
M-2	C	C	C	B	A	None

- (d) *Relationship between transitional buffer and other elements.* Transitional buffers shall relate to other required design elements as follows:
 - (1) Yard requirements and setbacks. Where a transitional buffer is required along a property line, the minimum yard and setback along said property line shall be the greater of the yard and setback required for the particular zoning district or the width of the transitional buffer.
 - (2) Landscape yards. Landscape yards may be incorporated into the transitional buffer and no additional landscaping above and beyond that required for the transitional buffer shall be necessary.

- (e) *Maintenance of transitional buffers.* The property owner, and the owner's successors, shall be responsible for the maintenance of all landscaping, fencing, and screening materials that comprise the buffer required by this chapter, or as required under the terms of other development approvals, and shown on an approved landscape plan. Failure to maintain such landscaping, fencing and screening shall be deemed a violation of this chapter.
- (1) All plant material and planting areas required by this chapter or other development approval shall be tended and maintained in a healthy growing condition and replaced when necessary.
 - (2) All fences, walls, and screening required by this chapter shall be maintained in good repair and kept free of refuse, litter, and debris.
 - (3) In the event that any required landscaping material within the buffer shown on the plan is subsequently replaced, the new material shall generally conform to the original approved landscape plan, or an approved amended plan, with respect to size and characteristics of the plantings.

Sec. 98-1063. Landscaping of development sites.

- (a) No site or development plan required under the terms of this chapter shall receive final approval unless a landscaping plan has been submitted and approved.
- (b) No zoning certificate or certificate of occupancy may be issued unless the following criteria are fully satisfied with regard to the approved landscape plan:
 - (1) Such plan has been implemented on the site; or
 - (2) If such plan cannot be implemented immediately because of seasonal conditions, the future fulfillment of the plan will be memorialized in a postponed improvement agreement between the developer and the county. This postponed improvement agreement shall be secured by a letter of credit, cash escrow, or other instrument acceptable to the zoning administrator in an amount equal to the cost of such installation plus a reasonable allowance for estimated administrative costs, inflation and potential damage to existing vegetation or improvements.

- (c) All proposed new developments shall include landscape yards around the perimeter of the site and around the buildings erected on the site to facilitate adequate control and management of stormwater runoff along with non-point source pollution and to enhance the aesthetics of the project.
- (d) Unless a specific application or use elsewhere in this chapter requires a different requirement or standard, all landscaping required by this chapter shall meet the following requirements and standards (all fractional calculations of planting ratios shall be rounded up to the next highest whole number):

Landscape Yard & Planting Requirements			
Location	Yard Width (feet)	Planting Ratios ¹	
		Trees	Shrubs
Front Yard	20	1 per 500 sq ft	1 per 500 sq ft
Side Yard	10	1 per 1,000 sq ft	1 per 1,000 sq ft
Rear Yard	10	0	0
Building Perimeter	10	0	1 per 100 sq ft
Parking Lots	N/A	2 per 10 spaces	4 per 10 spaces

Landscape Planting Size Standards			
Plant Material	Minimum Size ²		
	Height	Caliper	Spread
Trees			
Deciduous	10 feet	2.25 inches	4 feet
Evergreen	8 feet	2.0 inches	4 feet
Flowering & Ornamental	8 feet	1.75 inches	4 feet
Shrubs			
Deciduous	N/A	N/A	24 inches
Evergreen	N/A	N/A	18 inches
Flowering & Ornamental	N/A	N/A	18 inches

- (e) For purposes of calculating planting requirements based on square footage, use only the open space within landscape yards. The area contained in necessary entrances, pedestrian facilities, and similar impervious areas required for site development shall be excluded. Required plantings may be arranged within specified yards in any manner desired and the growth habits of landscape materials installed shall be considered in such decisions.

¹ Both trees and shrubs are required.

² All of the size criteria must be met. However, multi-stem ornamental trees need only meet the height and spread requirements.

- (f) In designing the site landscaping the principles of Crime Prevention Through Environmental Design (CPTED) shall be considered. The goal is to provide as much visibility to and from the site as possible and avoid creating spaces that provide opportunities for concealment through the use of the following standards:
- (1) *Natural Surveillance.* Provide natural surveillance throughout the site, especially to parking areas, buildings, building entrances, walkways, etc. Natural surveillance is the placement of physical features, activities and people in such a way as to maximize visibility.
 - (2) *Natural Access Control.* Provide natural access control throughout the site. Natural access control is the physical guidance of people coming and going from a space by the judicious placement of entrances, exits, fencing, landscaping and lighting. The goal is to guide people where you want them to go and how you want them to get there.
 - (3) *Territorial reinforcement.* Territorial reinforcement is the use of physical attributes that express ownership, such as fences, pavement treatments, art, signage and landscaping. The goal is to promote ownership and pride in where you live and work.
 - (4) *Maintenance.* Allows for the continued use of space for its intended purpose. It also serves as an additional expression of ownership.
- (g) In general, the following CPTED provisions shall be utilized:
- (1) Trees located around buildings, walkways and parking areas should have a natural growth habit that is a tree-form, non-pyramidal shape tree or the canopy of the trees shall be kept at least 4 feet from the ground as they mature.
 - (2) Shrubs located along rights-of-way should have a natural growth habit of no more than 2 feet in height.
 - (3) Fencing shall be decorative in style, strong, while offering visibility to and from the site. Fencing shall be tied into any existing fence lines so that two separate fences do not create an 'alleyway effect'.
- (h) Landscape plant material proposed for installation on the site shall be certified as having been grown in conformance with the American Standard for Nursery Stock (American Nursery and Landscape Association, 1996 or as may be amended from time to time) or the nursery providing the stock has been inspected by the Virginia Department of Agriculture and Consumer

Services, and therefore guaranteed for one year from the date of planting. Healthy landscaping material already growing may be transplanted, provided a performance agreement and surety covering the cost of replanting with nursery stock is provided and maintained through one (1) full growing season.

- (i) The landscape material installed on site shall consist of native species as listed by the Virginia Department of Conservation and Recreation (DCR) unless a certified landscape architect or horticulturalist specifies alternative species that have a rated hardiness and growth habit appropriate for the intended location in which case those alternative species may be used. Those species denoted as either "highly invasive" or "moderately invasive" in the DCR publication entitled *Invasive Alien Plant Species of Virginia* (September 2003 or as it may be amended from time to time) shall not be installed or transplanted on any site.
- (j) Impervious surface area should be limited to the minimum amount necessary to accommodate the desired development and ensure appropriate levels of parking, traffic safety, and on-site circulation.
- (k) The zoning administrator may reduce the planting ratios proportionately for the use of larger size nursery stock and for the preservation of healthy mature trees that are protected in accordance with the provisions of this chapter. The zoning administrator may approve other modifications of the layout and design standards contained herein for good cause shown. All modification requests shall be in writing, clearly explaining the reasons therefore.

Sec. 98-1064. Maintenance of landscaping.

The property owner, and the owner's successors, shall be responsible for the maintenance of all landscaping, fencing, and screening materials required by this chapter, or as required under the terms of other development approvals, and shown on an approved landscape plan. Failure to maintain such landscaping, fencing and screening shall be deemed a violation of this chapter.

- (a) All plant material and planting areas required by this chapter or other development approval shall be tended and maintained in a healthy growing condition and replaced when necessary.
- (b) All fences, walls, and screening required by this chapter shall be maintained in good repair and kept free of refuse, litter, and debris.

- (c) In the event that any required landscaping material shown on the plan is subsequently replaced, the new material shall generally conform to the original approved landscape plan, or an approved amended plan, with respect to size and characteristics of the plantings. In applying this provision, the degree and manner in which the existing landscaping on the site has grown and matured shall be considered, specifically the increased space required by larger, mature, existing landscaping.

BE IT FURTHER ORDAINED that the following definitions are adopted for terms used in this Article:

Shrub. A relatively low-growing woody plant typified by having several permanent stems instead of a single trunk. For purposes of this chapter, shrubs shall be further defined as follows:

- (a) Deciduous shrub. Any shrub which sheds its foliage during a particular season.
- (b) Evergreen shrub. Any shrub which retains its foliage throughout the entire year.

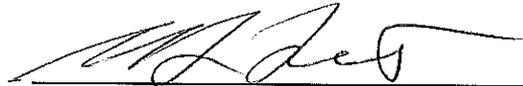
Tree. A woody perennial plant generally with one main stem or trunk, but including multiple stemmed plants, which develops many branches, generally at some height above the ground. For the purposes of this chapter, trees shall be further defined as follows:

- (a) *Deciduous tree.* Shade or flowering/ornamental tree which sheds its foliage during a particular season.
- (b) *Evergreen (or coniferous) tree.* Any tree which retains its green foliage year round.
- (c) *Heritage tree:* Any tree which has been designated by ordinance of the Board as having notable historic or cultural significance to any site or which has been so designated in accordance with an ordinance adopted pursuant to section 10.1-1127.1, Code of Virginia.
- (d) *Large buffer tree:* Any tree having an expected height upon maturity of at least forty feet (40')
- (e) *Medium buffer tree.* Any tree having an expected height upon maturity of between twenty feet (20') and forty feet (40')
- (f) *Memorial tree.* Any tree which has been designated by ordinance of the Board to be a special commemorating memorial.
- (g) *Significant tree.* Any deciduous or coniferous tree with a minimum diameter (caliper) of twenty-four inches (24") when measured four and one-half feet (4½') above ground level.

- (h) *Small buffer tree.* Any tree having an expected height at maturity of between ten feet (10') and twenty feet (20').
- (i) *Specimen tree.* Any tree which has been designated by ordinance of the Board to be notable by virtue of its outstanding size and quality for its particular species.



John A. Budesky
County Administrator



Stran L. Trout
Chairman