

## ARTICLE 11

### LANDSCAPE REQUIREMENTS AND TREE PROTECTION

#### 11.1 Purpose

The regulations set forth in this Article are intended to reduce tree canopy loss and implement urban forest management improvements through requirements for tree protection, tree preservation, the planting of trees and the maintenance of existing and newly planted trees within the Town of Rutherfordton. Additionally, this Article will establish minimum standards for the design of landscapes so as to improve the community aesthetically, economically, and environmentally. The requirements are intended to enhance the quality of life through sustainable urban forest practices and increase the benefits trees provide, including, but not limited to the following.

- (A.) Absorption of carbon dioxide and returning oxygen
- (B.) Reduction of soil erosion and increase in rainwater infiltration
- (C.) Provision of shade for cooling
- (D.) Screening of noise, dust, glare, and visual intrusions
- (E.) Reduction of storm-water runoff
- (F.) Reduction of risk for both wild fires and structure fires
- (G.) Maintenance and improvement of Town appearance and aesthetics
- (H.) Provision of habitat for wildlife
- (I.) Preservation, protection and enhancement of the natural environment

#### 11.2 Administration

The following personnel have responsibility for administering and enforcing the provisions of this section:

- (A.) The *Planning, Zoning & Subdivision Administrator* shall have responsibility for overseeing the administration of this article.
- (B.) The *Public Works Administrator* shall have responsibility and control over all trees and shrubbery planted or growing upon Town property including public street right-of-way.
- (C.) The *Planning, Zoning & Subdivision Administrator* shall have the authority to enforce the standards of this Article in the event of compliance failure. The *Planning, Zoning & Subdivision Administrator* shall also have responsibility and control over all regulated, unsafe, and diseased trees located on public and private property.

### **11.3 Applicability**

The provisions of this article shall apply to the following:

- 11.3-1 All new major subdivisions with four (4) or more new lots, all new non-residential developments, and all new multi-family developments with four (4) or more units except for those projects listed under Exemptions below.
- 11.3-2 Changes in use, expansions, and new buildings for already existing residential, non-residential, or mixed-use developments as per the following:
  - (A.) Changes in use to a higher intensity, such as a change from residential to commercial. The requirements shall be applicable to the entire lot;
  - (B.) All non-residential expansions of buildings, except the first three thousand (3,000) square feet of gross leasable area. The requirements of this article shall be applicable only to the expansion area;
  - (C.) Expansions exceeding 50 percent of the pre-expansion floor area must bring the entire site into compliance, super-ceding 11.3-2(B);
  - (D.) Renovations with a total cost exceeding 50 percent of the appraised value of the building as established by the Rutherford County Tax Office. The value of any expansions or reconstruction of such structures over a three-year period shall be considered in calculating the 50 percent threshold.
- 11.3-3 Vehicular use areas shall be subject to the landscape requirements as outlined under the Parking Lot Landscape Requirements as follows:
  - (A.) Any new parking lot with six (6) or more spaces;
  - (B.) Expanded portions of existing parking lots which are less than 50 per cent of the total vehicular use areas shall landscape the area included in and around the expansion;
  - (C.) Expansions exceeding 50 percent of the paved area must bring the entire vehicular use area into compliance with the Parking Lot Landscape Requirements;
  - (D.) Existing unpaved parking lots which are paved or existing paved lots which are demolished and repaved must bring the entire vehicular use area into compliance with the Parking Lot Landscape Requirements.
- 11.3-4 Any land disturbing activities or tree removal shall require a Tree Disturbance Permit as per section 11.10 of this Article.

#### **11.4 Exemptions:**

The provisions of this Article shall not apply to the uses and activities listed below. Any applicable requirements of Article 19 apply:

- 11.4-1 Properties within and abutting the Main Street (MS) District shall be exempt from the buffer and tree conservation area requirements but are still required to meet the street trees and parking lot landscaping requirements;
- 11.4-2 Property lines abutting utility easements in excess of sixty (60) feet in width and all railroad rights-of-way;
- 11.4-3 Property lines abutting dedicated street rights-of-way, which have remained unopened for a period of at least fifteen (15) years;
- 11.4-4 Tree removal on an area of three thousand (3,000) square feet or less, after the *Planning, Zoning & Subdivision Administrator* has determined that such a removal is not associated with a forthcoming development proposal and will not be inconsistent with any plan previously approved by the Town; however, watershed and/or soil erosion requirements may still apply if triggered;
- 11.4-5 Property covered by an active forestry management plan prepared by a North Carolina Registered Forester, provided that documentation has been furnished to the *Planning, Zoning & Subdivision Administrator*.

#### **11.5 Landscape Plan Procedure**

- 11.5-1 Landscape Plan Approval Required. An applicant must receive approval of a landscape plan from the *Planning, Zoning & Subdivision Administrator* prior to grading or before site work may begin.
- 11.5-2 Installation of Plant Materials Required. Installation of plant material shall occur prior to the issuance of a Certificate of Occupancy.
- 11.5-3 Performance Guarantee In lieu of Installation of Plant Materials.
  - (A.) If at the time of a request for a Certificate of Compliance, the required planting areas are not complete the developer may provide a performance guarantee in accordance with G.S. 160D-804(g), guaranteeing the installation of the plant materials if the following conditions are met:
    - (1.) Plant materials are unavailable,
    - (2.) Completion of the planting areas would jeopardize the health of the plant materials, or
    - (3.) Weather conditions prohibit completion of the planting areas.

The Performance Guarantee shall be in an amount equal to 125 percent of the estimated cost of the installation of the required plant materials, as determined by the Town. The *Planning, Zoning & Subdivision Administrator* may accept a valid contract assignable to the Town containing a ninety-day (90) termination and/or cancellation notice to the Town by any party exercising such action incorporated therein for the remaining materials and turn-key installation, as a form of cost estimation. The performance guarantee shall secure the installation of the plant materials as shown on the approved landscape plan. The performance guarantee shall remain in full force and effect until such time as the installation of plant materials is completed, inspected, and accepted by the Town of Rutherfordton. Failure to maintain the required performance guarantee shall result in the revocation of the approval of the site development plan and any permits issued as a result of the plan approval. The performance guarantee shall be renewed by the applicant unless all parties, including the Town, agree not to renew it at least sixty (60) days prior to its scheduled expiration date.

A temporary construction easement permitting the Town of Rutherfordton or its designee(s) to access the property for the purpose of installing the guaranteed plant materials shall be provided with the performance guarantee. The temporary construction easement shall be valid until all guaranteed plant materials have been installed and approved by the Town. The temporary construction easement shall bind all successive owners until the guaranteed plant materials have been installed and approved by the Town.

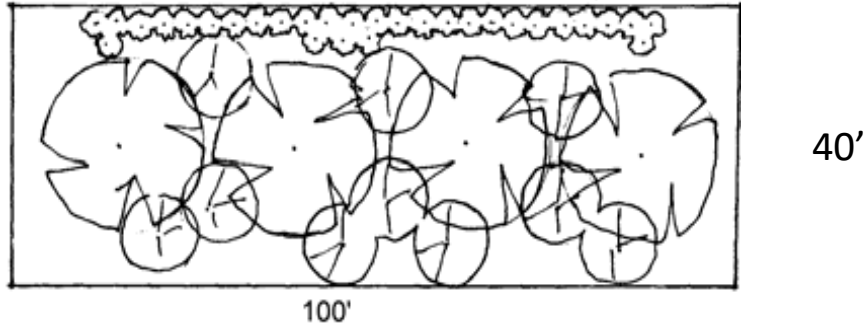
- (B.) Failure to initiate installation of the plant materials within one year of the date the performance guarantee was accepted by the Town of Rutherfordton may result in the Town, at its sole discretion, directing and/or installing the plant materials, with the cost to be paid from the performance guarantee. The performance guarantee shall, if requested by the Town, pay all or any portion of the performance guarantee to the Town up to the amount needed to complete the installation of the plant materials based on an estimate by the Town as described in 11.5-3(A) above. The Town at its discretion may spend such portion of said funds as deemed necessary to complete all or any portion of the required plant installation. The Town shall return to the developer any funds not spent in completing the plant installation, less reasonable administrative, professional and legal services cost resulting from the failure of the developer. Default on a project does not release the developer from responsibility for the completion of the plant installation. The Town may release a portion or all of any performance guarantee as the plant installation is completed and approved by the Town. In the event the amount of the performance guarantee on hand is insufficient to pay for completion of the plant installation, the property owner shall pay to the Town of Rutherfordton the total amount of the insufficiency. If the Town is not re-paid in full, the amount of the

insufficiency shall be the basis for a claim against the property and constitute a lien on the property in favor of the Town upon filing with the Register of Deeds.

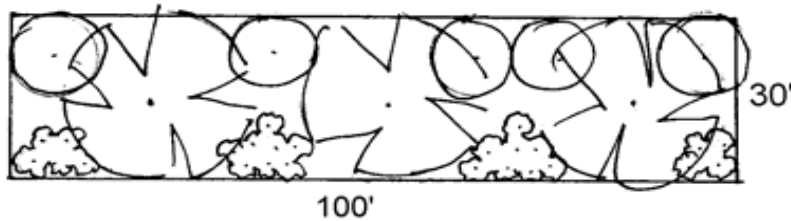
### 11.6 Landscape Requirements

The following buffer yards are hereby established and shall be required where applicable:

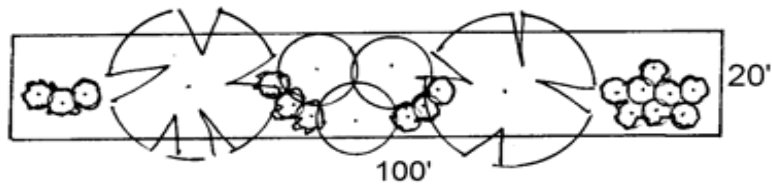
Type A Buffer Yard: A high-density screening buffer to substantially block visual contact between adjacent uses with a minimum of 90% opacity.



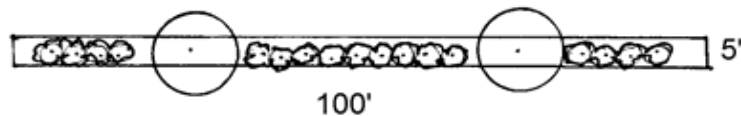
Type B Buffer Yard: A medium-density screening buffer to partially block visual contact between uses with a minimum of 60% opacity.



Type C Buffer Yard: A low-density screen intended to partially block visual contact between uses with a minimum of 60% opacity.



Type D Buffer Yard: A peripheral planting strip intended to separate uses, provide vegetation in densely developed areas, and to enhance the appearance of individual properties.



11.6-1 Buffering and Screening of Different Districts. Buffer yards, in accordance with section 11.3 above, to separate development in certain districts from adjacent districts are specified in Table 11.1 below. The buffer yards are required on the sides and rear of property being developed abutting the identified adjacent district. The following buffer yards shall be provided when property in an identified development district abuts one or more of the identified adjacent districts. To determine the required buffer yard for a development, first identify the development district in which the development is to be located. Then identify the adjacent district abutting the proposed development to determine the type buffer yard applicable to the project.

DEVELOPMENT DISTRICT	ADJACENT DISTRICT	BUFFER YARD REQUIRED
“AG”, “IND”, “HIO”	All other districts	Type A
“MU”, “C-221”, “C-74”, VSR”	“SFR”, “RMST”, “CIV”, “TNDO”	Type B
“MS”, “CIV”	“SFR”, “RMST”	Type C
“VSR”	“MS”, “MU”, “C-221”, “C-74”	Type C
“MS”, “C-221”, “C-74”	“MU”, “IND”	Type C
“SFR”, “RMST”, “TNDO”	All other districts	Type C
“MU”	“MS”, “C-221”, “C-74”, “VSR”	Type D

Plantings shall be provided in buffer yards as indicated in Table 11.2 below:

Buffer Yard Type	Average Width (ft.)	Minimum/ Maximum Width (ft.)	Evergreen Tree Rate per 100 lf	Canopy Tree Rate	Understory Tree Rate	Shrubs Rate
Type A Yard	40	35/65	8	4/100 lf 25 feet on center	10/100 lf 10 feet on center	33/100 lf 3 feet on center
Type B Yard	30	25/50	6	3/100 lf	5/100 lf	25/100 lf
Type C Yard	20	15 /40	4	2/100 lf	3/100 lf	17/100 lf
Type D Yard	5	5/10	0		2/100 lf	18/100 lf

(A.) Buffer Yard Alternative Standards and Conditions.

- (1.) The minimum buffer width for all buffer yards except the Type D yard may be reduced by 30% with the use of an opaque wall or fence constructed of masonry, stone or pressure treated lumber providing such reductions do not disturb the Critical Root Zone (CRZ) of existing trees. The wall or fence should be a minimum of five (5) feet in height. The wall or fence shall be set back from the property line a minimum of five (5) feet and shall be planted with half the required plantings, including all types of shrubs and trees required, on the outside of the wall or fence (facing the adjacent property).
- (2.) Understory trees shall be substituted for canopy trees at the rate of two (2) understory trees for every canopy tree to be planted within fifteen (15) feet of an overhead utility line.
- (3.) Canopy trees may be substituted for shrubs at the rate of one (1) canopy tree for eight (8) shrubs and understory trees may be substituted for shrubs at the rate of one (1) understory tree for five (5) shrubs if approved by the *Planning, Zoning & Subdivision Administrator*.

(B.) Location of Buffer Yard. Required trees and shrubs shall not be installed in street rights-of-way. Required trees and shrubs may be placed in water quality conservation easements, electric utility easements below overhead lines, and in drainage maintenance and utility easements upon approval by the *Planning, Zoning & Subdivision Administrator*.

(C.) Setback Less Than Buffer Yard. If the required building setback is less than the required buffer yard width, the building setback shall reduce the required planting yard width only alongside the building. The planting rate of the required planting yard shall still apply.

(D.) Encroachments Permitted in Required Planting Yards. The following are permitted in required planting yards provided the landscaping requirements are met and there is no interference with any sight area: Cornices, steps, canopies, overhanging eaves and gutters, windowsills, bay windows or similar architectural features, at-grade patios, chimneys and fireplaces, fire escapes, fire balconies, and fire towers may project not more than two and one-half (2 1/2) feet into any required planting yard, but in no case shall be closer than three (3) feet to any property line or handicap ramps except for porches and landings.

(E.) Obstructions. Landscaping shall not be placed in the sight visibility triangle which would obstruct the view of motorists using any street, driveway, or parking aisle.

11.6-2 Screening of Dumpsters, Outdoor Storage, and Utility Structures. All dumpsters, loading docks, outdoor storage areas over 40 square feet, and utility structures must

be screened if they are visible to adjacent public or private streets or any adjacent properties. Screening of a dumpster shall not be required in the Industrial District, unless the dumpster is located within one hundred (100) feet of an existing non-industrial land use. Screening options include:

- (A.) A single opaque material wall or fence with a minimum height of 6 feet.
- (B.) A combination of opaque materials, berming, and/or evergreen landscaping spaced at 8 feet on center that provides the required screening effect. The combination of opaque materials, berming, and/or evergreen landscaping shall have a minimum height of 6 feet within three (3) years of planting.
- (C.) The wall(s) of a principal or accessory structure may also count for screening.
- (D.) Chain-link fencing with woven slats of opaque material is *not* acceptable.

11.6-3 Street Trees. Street trees are required along all street frontages for all new developments described in Sections 11.3-1 and 11.3-2, unless excepted in Section 11.4. Trees are required at the following rate:

- (A.) One large maturing tree required for every 80 linear feet of street frontage. If overhead utilities are present, planting of one small maturing tree for every 40 linear feet of property abutting a street is required.
- (B.) Where the street abuts a parking lot over 3000 square feet in area and located within 50 feet of the edge of the pavement, shrubs shall be planted at the rate of one deciduous or evergreen shrub for every 5 linear feet of vehicular use area abutting the street in addition to the required street trees. The shrubs must achieve a minimum height of three feet at maturity.



- (C.) Street trees may be evenly spaced or spaced to accommodate existing site features. Street trees shall be a minimum of fifteen (15) feet apart and a maximum of ninety



(90) feet apart. No street tree shall be located more than twenty five (25) feet from the edge of pavement.

(D.) Street trees shall be planted in the planting strip within the public right-of-way. In the Main Street (MS) and Mixed-Use (MU) Districts, the trees may be placed in tree pits with grates that are a minimum of sixteen (16) square feet.

(E.) Existing Trees: See Section 11.9 for information regarding credits for preservation of existing trees.

(F.) No more than fifteen (15) percent of the street-planting yard may be used for walkways serving individual lots, except in the MS, and MU districts. Parking, merchandise display, and off-street loading are prohibited in the street-planting yard.

#### 11.6-4 Parking Lot Planting Areas.

(A.) Applicability. Parking lot landscaping buffers shall be required to separate parking areas from adjacent uses for new and/or expanding parking lots with six (6) or more spaces. Required canopy trees and shrubs shall be located within the parking lot and adjacent to parking spaces in planting areas between rows of parking spaces, at the end of parking bays, in tree islands, and/or around the periphery of the parking lot. The following buffer requirements shall apply to parking lots with six (6) or more spaces:

(1.) A minimum of a type D buffer shall be provided for all parking lots with six (6) or more spaces.

(2.) A type C buffer shall be provided along any edge of a parking lot with a minimum of six (6) spaces and occupying less than 1/2 acre that abuts an AG, SFR, or RMST zoning district.

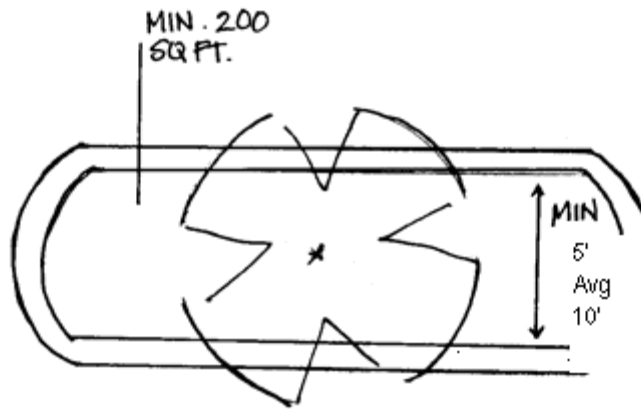
(3.) A type C buffer shall be provided along all edges of any parking lot with a minimum of six (6) spaces and occupying less than 1/2 acre that is located within an AG, SFR, or RMST zoning district.

(4.) A type B buffer shall be provided along any edge of a parking lot with a minimum of six (6) spaces and occupying 1/2 acre or more that abuts an AG, SFR, or RMST zoning district.

(5.) A type B buffer shall be provided along all edges of any parking lot with a minimum of six (6) spaces and occupying 1/2 acre or more that is located within an AG, SFR, or RMST zoning district.

(B.) Planting Rate. For every fifteen hundred (1500) square feet of vehicular use area (VUA), one (1) deciduous tree and four (4) shrubs must be planted. At least seventy five (75) percent of the trees shall be large maturing species. Trees and shrubs must be planted within fifteen (15) feet of the VUA to meet the requirement.

- (C.) Existing Trees. See Section 11.9 for information regarding credits for preservation of existing trees in parking lots.
- (D.) Reduction in Parking Requirements. To allow an existing development to retrofit parking to conform to the landscaping regulations, or for an existing or new development to preserve trees within or adjacent to a parking lot, the number of required off-street parking spaces may be reduced by the *Planning, Zoning & Subdivision Administrator* by up to ten (10) percent.
- (E.) Tree Islands and Medians. When more than four trees are required in a lot with interior rows, fifty (50) percent of the trees and shrubs must be planted in islands or medians located within the parking lot. The planting islands or medians shall be a minimum size of 200 square feet with no dimension smaller than five (5) feet and an average width of ten (10) feet.



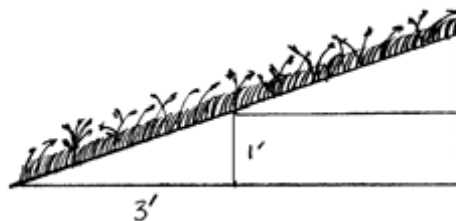
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- (F.) Multiple Parking Bays. When there are more than 4 bays of parking, an interior island with an average width of twenty (20) feet and a length equivalent to the parking bay shall be constructed. It should include a pedestrian walkway five (5) feet or more wide and a planted strip on one or both sides. The median should be located in such a way as to enhance pedestrian circulation within the development, leading to the entrance or to an adjacent sidewalk and/or walkway.
- (G.) Perimeter Parking. All continuous runs of fifteen (15) or more parking spaces shall be interrupted by a tree island.
- (H.) Grouping. Shrubs and trees may be grouped or clustered in the required planting yards, except for the perimeter landscaping adjacent to parking lots, outside storage, access drives, and loading and unloading areas. The remainder of the materials shall be distributed throughout the planting yard. There shall be at least one (1) row of evergreen shrubs or evergreen understory trees in all Type A planting yards used in parking areas.
- (I.) Plant Protection. Whenever planting areas are adjacent to parking lots or drives, such areas shall be protected from damage by vehicles, lubricants, or fuels. Curbing or some other structural barrier is required to be placed around trees within five feet of a car bumper. Allowances may be made if rain gardens are incorporated into the planting area. Trees and shrubs in islands should be set back at least three feet from the curb to allow for the operation of car doors.



**11.7 Reforestation of Slopes Steeper than 3:1**

11.7-1 Tree Cover Required. Areas having slopes steeper than 3:1 must be reforested to provide tree cover over the entire area.



The following standards apply:

- (A.) Reforestation shall include a minimum of one (1) tree per two hundred (200) square feet of surface area and shall be made up of a mixture of deciduous hardwood and evergreen trees that are a minimum of twelve (12) inches high at planting and approved by the *Planning, Zoning & Subdivision Administrator*.
- (B.) The trunk of any required tree shall be no closer than ten (10) feet from any other existing tree.

**11.8 Tree Conservation and Protection**

11.8-1 Purpose of Tree Conservation Area. The purpose of the Tree Conservation Area (TCA) is to encourage the preservation of healthy trees that are four (4) inches or greater in diameter at breast height (DBH).

11.8-2 Tree Conservation Area Determination. The TCA shall be provided in accordance with the chart below. If trees of four (4) inches or greater DBH exist within or partially within these areas, such trees must be saved to the extent possible. The area will be designated a TCA and shall not be disturbed except as allowed herein below in Table 11.3.

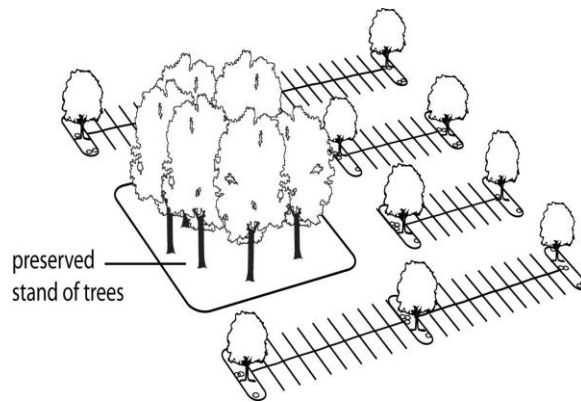
Table 11.3 – Tree Conservation Area (TCA)

Size of Parcel	TCA Required to Include
0 – 55,000 sq. ft.	One percent (1%) of lot area and located within the required planting yard
55,000 sq. ft. – 5 acres	One and one-half percent (1.5%) of lot area. All trees four (4) inches or greater DBH that are located within the required planting yards
5.01 – 10 acres	Three percent (3%) of lot area. All trees four (4) inches or greater DBH that are located within the required planting yard or within fifteen (15) feet of the side and rear property lines, whichever is greater
Greater than 10 acres	Six percent (6%) of lot area. All trees four (4) inches or greater DBH that are located within the required planting yard or within twenty-five (25) feet of the side and rear property lines, whichever is greater

11.8-3 Tree Conservation Area Selection.

(A.) In selecting which existing tree stands are to be designated as Tree Conservation Area (TCA), the landowner shall give due consideration to building, parking lot, driveway, street, and utility location as they relate to the practicality of preservation and shall use the following tree preservation priority list:

- (1.) Existing stands of mature hardwoods as highest priority, then
- (2.) Existing stands of younger hardwoods, then
- (3.) Existing specimen trees (as determined by the *Planning, Zoning & Subdivision Administrator*), then
- (4.) Existing stands of hardwoods and Pine mix, and lastly
- (5.) Existing stands of Pine trees. Preservation of a single Pine tree is not typically encouraged.



(B.) If it is necessary to pick among two or more stands of trees within a category listed above, then Tree Conservation Areas adjacent to the following priority list shall be used in order of significance:

- (1.) Type A buffer yards, as a first priority, then
  - (2.) Type B buffer yards, then
  - (3.) Type C buffer yards, then
  - (4.) Type D buffer yards, then
  - (5.) Street tree yards, and lastly
  - (6.) Vehicular use areas
- (C.) Smaller Trees: Trees less than four (4) inches DBH within the TCA may be preserved at the landowner's option and counted toward buffer yard, street tree, or vehicular use area requirements.

11.8-4 Tree Conservation Flexibility Standards. Flexibility can be granted in the following circumstances:

- (A.) Trees in Sensitive Areas: If there are trees that meet the TCA requirements on other areas of the site (riparian buffers, stream corridors, floodplains, etc.), the landowner may request that the required TCA be designated around such trees instead of the usual locations.
- (B.) Stream Buffer Credits: Properties falling under the Stormwater Management Control Requirements, which are required to maintain an undisturbed stream buffer, may use some of or the entire buffer to satisfy the required TCA, provided that the undisturbed stream buffer contains trees that are a minimum of four (4) inches in DBH.
- (C.) Land Dedication: Land dedicated to the Town that is contiguous to the property being developed may be used towards the tree preservation requirement, if the dedicated land contains trees that are a minimum of four (4) inches in DBH.
- (D.) Reforestation Credits: In situations where TCA requirements cannot be met based on site conditions and when approved by the *Planning, Zoning & Subdivision Administrator*, reforestation efforts on the property can be used to satisfy up to fifty (50) percent of the required TCA.
- (E.) Reduction in the Amount of TCA Required for Specimen Tree Preservation Within the Lot: To allow developers the flexibility to manipulate the location of required Tree Conservation Areas, and to encourage the preservation of certain specimen trees or tree stands within developed lots rather than just at the periphery, the *Planning, Zoning & Subdivision Administrator* may, at their or their discretion, allow the developer the right to reduce the total amount of required TCA using the following table:

Table 11.4

DBH of Existing Specimen Tree(s) in Inches	Allowable Reduction in TCA
8 – 12	5 % reduction
13 – 20	10% reduction
21 – 30	25% reduction
31+	40% reduction

(F.) Waivers: The *Planning, Zoning & Subdivision Administrator* shall have the authority to allow reduced buffer yards or to waive the buffer yard requirements to allow for a greater TCA in another area or make other exceptions, which meet the cause and intent of this section. Additionally, if the *Planning, Zoning & Subdivision Administrator* concludes that due to existing unusual or unique site characteristics, preserving some or all required trees in the TCA(s) would create an undue or unreasonable hardship, the protection of some or all of required trees in the TCA(s) may be waived.

Applicants for such a waiver shall submit their request in writing, along with any necessary site plans to demonstrate the hardship. The findings of the *Planning, Zoning & Subdivision Administrator* shall be final and binding to all parties. Appeals of the *Planning, Zoning & Subdivision Administrator's* decisions may be made to the *Board of Adjustment*, following the procedure outlined in Article 6 of this ordinance.

## **11.9 Tree Credits**

- 11.9-1 Buffer Yards. All trees of appropriate size and type preserved in the Tree Conservation Area (TCA) that are within the buffer yard shall be credited toward meeting all or part of the buffer yard requirements. The protection of tree stands, rather than individual trees, is strongly encouraged.
- 11.9-2 Street Trees. Existing preserved trees may count toward up to 100% of the street tree requirement, providing there is no more than 65' between trees.
- 11.9-3 Parking Lots. For new, expanded, or rebuilt parking lots where trees are being preserved adjacent to the parking lot in order to meet the parking lot planting requirements, trees preserved in a TCA and within fifteen (15) feet of the parking lot may be used to satisfy up to fifty (50) percent of the required number of parking lot trees. Non-TCA trees located within the parking area may count towards up to 100% of the requirement. Trees in the TCA counted toward planting yard requirements may not count for required parking lot trees.
- 11.9-4 Tree Health. No credit will be allowed for any dead tree, any tree in poor health, or any tree subjected to grade alterations. Trees should have a life expectancy of greater than ten (10) years and have a relatively sound and solid trunk with no extensive decay, major insect, or pathological problems. For the purposes of determining the health or condition of any tree, the *Planning, Zoning & Subdivision Administrator* may defer to a qualified expert with the cost of the expert to be reimbursed by the applicant.
- 11.9-5 Tree Replacement. Except for storm damage, the death of any tree used for preservation credit within two (2) years of site development shall require the landowner to plant new trees equal to the number of credited trees. After two (2)

years any trees that were used for preservation credit that die shall be replaced.

11.9-6 Calculation of Credit. Credits are to be given in accordance with the chart below.

Table 11.5 – Tree Credits

DBH of Existing Tree(s) in Inches	Number of Trees Credited
4” – 6”	1
7”-12”	2
13”-18”	3
19”-24”	4
25”+	5

11.9-7 Protection of Existing Trees. To receive credit, trees must be protected from direct and indirect root damage and trunk and crown disturbance. The following standards shall apply:

(A.) Critical Root Zone. To preserve existing trees within the designated TCA, the Critical Root Zone (CRZ) of the trees shall be preserved. The CRZ includes a radius around the tree equal to, or at least, one foot for every one inch of DBH. It is recommended to preserve the entire CRZ of each preserved tree.

- (1.) If the entire CRZ cannot be preserved, tree roots must be cut prior to the grading of the site and no closer than 10 feet from the tree trunk.
- (2.) Disturbance within the CRZ will be allowed only on one side of the tree(s) to be saved and only with prior approval by the *Planning, Zoning & Subdivision Administrator*.
- (3.) Construction site activities such as parking, material storage, dirt stockpiling, concrete washout, and other similar activities shall not be permitted within the TCA.
- (4.) The same land uses can encroach in the TCA as established in the Buffer Yards Section 11.6 provided there is no disturbance to the CRZ of the preserved trees.
- (5.) Changes that significantly raise the grade of soil adjacent to the TCA shall be avoided.
- (6.) Utility line trenches and similar uses shall avoid the TCA. Due to certain site conditions, where disturbance within the TCA is unavoidable, underground tunneling or directional boring of utilities is preferred and allowed on one side only. Trenching shall be used only as the last alternative and root-pruning equipment specifically designed for that purpose shall be used. The *Planning,*



*Zoning & Subdivision Administrator* shall be notified prior to this type of activity and an on-site meeting shall be performed to ensure compliance. See the Town of Rutherfordton Technical Standards & Specifications Manual for trenching detail.

- (7.) Protective fencing shall be installed around the TCA prior to any tree disturbing activities. Such fences shall be at least four (4) feet high and shall consist of orange polyethylene safety fencing. Fencing shall remain in place until construction is complete and other landscaping has been installed, and the *Planning, Zoning & Subdivision Administrator* has approved its removal. See the Town of Rutherfordton Technical Standards & Specifications Manual fencing detail.
- (8.) The TCA should be designated as such with "Tree Conservation Area" signs (in both English and Spanish) posted visibly on the outside of the fenced-in area. Signs may not be posted on the trees.
- (B.) Tree Removal within the TCA. Trees less than four (4) inches DBH not being preserved, undergrowth and plant material in poor condition may be removed from the TCA. No roots shall be removed from the TCA. Stumps may be removed only by grinding. All requests for tree removal within the TCA must have prior approval by the *Planning, Zoning & Subdivision Administrator* pursuant to the provisions of this chapter. Any tree within the TCA, including the CRZ, which the landowner chooses to remove or that must be removed due to poor health or impractical means of preservation shall be removed in a manner that is in accordance with standard arboricultural practice (Per American National Standards Institute (ANSI) Standards) so as to cause as little disturbance or harm to those trees intended to be saved as practical. However, in an emergency situation due to storm damage; to alleviate an immediate hazard to the health, safety, and welfare of the citizens; or to repair property damage, prior approval for tree removal in previously approved designated areas is not required.
- (C.) Tree Conservation Plan Procedures. Approval of a Tree Protection Plan is required for all projects described in Section 11.3, except those listed in Section 11.4 Exemptions and Section 11.10-2 below, and shall be submitted along with all other necessary drawings to the Technical Review Committee. Tree protection items shall be included on all grading plans, erosion control plans, and tree disturbance permit plans. Upon approval of the plan, a Tree Disturbance Permit will be issued prior to any tree-disturbing activities.

## 11.10 Activities Requiring a Tree Disturbance Permit

11.10-1 Purpose. Except as otherwise exempted herein, it shall be unlawful to:

- (A.) Remove, excessively prune, apply chemicals that are harmful to, or disturb any tree or the soil within the CRZ of any tree; or
- (B.) Clear vegetation from a site; or
- (C.) Begin any excavation, remove soil, or place fill on a site within Rutherfordton and its extraterritorial jurisdiction until the *Planning, Zoning & Subdivision Administrator* has issued a permit certifying that such activity complies with the applicable provisions of this Ordinance.

11.10-2 Applicability and Exceptions. The provisions of this section shall apply to all Land Development except:

- (A.) Routine maintenance of existing vegetation outside the public rights-of-way, such as pruning, watering and fertilizing.
- (B.) The removal of dead trees and shrubs or trees and shrubs that have been diagnosed and determined to be diseased beyond treatment, with the burden of proof being placed on the remover.
- (C.) Removal of soil or vegetation from undeveloped land to allow for non-commercial open space no greater than one-quarter (1/4) acre, providing this activity does not take place within the CRZ of any rare or specimen tree.
- (D.) Land disturbing activity normally associated with the occupancy of an existing single family or two-family dwelling.
- (E.) Any new construction or expansion of a single family or two-family dwelling requiring a building permit and involving land disturbance less than ten thousand (10,000) square feet, unless the cumulative land disturbance is over ten thousand (10,000) square feet.

11.10-3 Tree Protection Plan Requirements. A Tree Protection Plan for all development projects to which these standards apply, along with all other necessary drawings, shall be submitted to the *Planning, Zoning & Subdivision Administrator*. Tree protection items shall be included on all grading plans, erosion control plans, and tree disturbance permit plans. Drawings shall identify the following items.

- (A.) Boundaries of the required Tree Conservation Area (TCA)
- (B.) Required planting yard

- (C.) Protected trees within the TCA including tree size and species
- (D.) CRZ of each proposed protected tree or group of trees
- (E.) Limits of clearing
- (F.) Grading
- (G.) Trenching
- (H.) Required tree protection measures including protective fencing and signage
- (I.) Overhead and underground utilities, rights-of-way, and easement
- (J.) Areas of reforestation, if any
- (K.) Stream buffers, if any
- (L.) A complete survey of all trees on the *site* (outside the labeled TCA) that exceed 18 inches DBH, including tree size and species.

11.10-4 Plan Notes. The following required notes shall be indicated on tree protection plans, erosion control plans, grading plans, and Tree Disturbance Permit plans in **LARGER FONT SIZE IN BOLD CAPITAL LETTERS**:

- (A.) Contact the Planning Department to set up a pre-construction meeting.
- (B.) All tree protection devices must be installed prior to inspection by the *Planning, Zoning & Subdivision Administrator* and prior to any tree disturbance activities.
- (C.) Removal or damage of trees in the conservation area will be subject to the penalties established in the Section 11.18, Enforcement, of this Ordinance.

11.10-5 Plan Review. The aforementioned plans shall be reviewed by the *Planning, Zoning & Subdivision Administrator* for conformance with applicable provisions of this section and for tree and vegetation viability. The plans will either be approved or returned for revisions. Reasons for return shall be noted on the proposed plan.

11.10-6 Installation of Protective Measures. All tree protection measures shall be installed prior to inspection by the *Planning, Zoning & Subdivision Administrator or their designee* and prior to tree disturbance.

11.10-7 Site Inspections. The *Planning, Zoning & Subdivision Administrator or their designee* will conduct follow-up site inspections for enforcement of the tree protection requirements.

11.10-8 Permit Display. All permits issued hereunder shall be so displayed as to be clearly visible from a public right-of-way.

11.10-9 Emergency Waiver. The provisions of this section are waived if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms, or other disasters.

## **11.11 Rare and Specimen Trees**

### **11.11-1 Rare and Specimen Trees on Developing Land.**

- (A.) Rare and specimen trees shall be shown on all Tree Protection Plans if such trees are within one hundred (100) feet of areas where soil disturbance or construction activity is proposed. In addition, these trees shall be identified and located by survey on the Tree Protection Plan if such trees are located on the development site or adjacent public property. The *Planning, Zoning & Subdivision Administrator* may visit the site to determine the accuracy of identification.
- (B.) Proposed development shall be designed to preserve rare and specimen trees. Where rare and specimen trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces, and location of utilities shall be pursued in order to save them.
- (C.) No soil disturbance from construction, trenching, grading, paving, or storage of equipment or materials shall take place within the critical root zone of any rare or specimen tree to be preserved unless the *Planning, Zoning & Subdivision Administrator* determines there is no reasonable way the property can be developed without such disturbance or unless the proposed work will be carried out in accordance with the specifications for such work in the Rutherfordton Technical Standards & Specifications Manual.
- (D.) No rare tree shall be removed from land being developed unless the *Planning, Zoning & Subdivision Administrator* determines there is no reasonable way the property can be otherwise developed, improved or properly maintained and the tree saved.

### **11.11-2 Voluntary Protection of Rare and Specimen Trees on Private Land.**

Rare and specimen trees that are located on individual lots with single and two-family homes shall be protected if voluntarily registered by the property owner.

## **11.12 Land Being Developed Outside the Tree Conservation Area (TCA)**

### **11.12-1 Protective Fencing.**

- (A.) Vegetation located outside the TCA that is to be protected on land being developed, as indicated on a Tree Protection Plan, shall be protected by fences or other equally

effective measures during construction activity. Such fencing shall be located and erected according to Town standards and be located as shown on the Tree Protection Plan and site grading plans. All land disturbing activity, storage of equipment, building material, soil, and other debris shall be kept within the area of development activity and outside of the protective fencing.

(B.) Vegetation that is to be retained during rights-of-way clearing of single family or two-family residential subdivisions, as indicated on a Tree Protection Plan, shall be delineated by high visibility flagging during construction activity. Such flagging shall be located and installed according to Town standards and be located as shown on the landscape protection and site grading plans. The use of flagging shall be limited to those specific applications where no rare or specimen trees will be affected by development activity and the *Planning, Zoning & Subdivision Administrator* determines it to be as effective as protective fencing.

(C.) Landscaping activities taking place after the removal of protective fencing shall be accomplished with light machinery or hand labor and in accordance with the Town of Rutherfordton Technical Standards & Specifications Manual.

#### 11.12-2 Treatment of Trees During Construction.

(A.) No nails, ropes, cables, signs or fencing shall be attached to any part of any tree that is to be preserved.

(B.) Trees that are damaged during construction shall be treated so as to promote their continued health.

#### 11.12-3 Removal of Regulated Trees. No regulated tree shall be removed without first acquiring a permit from the *Planning, Zoning & Subdivision Administrator*. Failure to do so shall constitute a violation of this chapter and shall be subject to the penalty provisions in Section 11.18, Enforcement, of this Ordinance.

(A.) Enforcement. Upon a determination that work does not conform to the provisions of this section, the *Planning, Zoning & Subdivision Administrator* shall cause issue of a *Stop Work Order* which shall remain in effect until all corrections are made in conformance with this Ordinance.

(B.) Pre-construction Conference. Prior to the commencement of any activities requiring a permit, a pre-construction conference with the *Planning, Zoning & Subdivision Administrator* shall take place to review procedures for protection and management of all protected landscape elements identified on the landscape protection plan and to designate one or more persons as landscape protection supervisor(s).

### **11.13 Public Trees and Trees Interfering with Public Space – Maintenance and Protection**

The following standards are hereby established for the maintenance and protection of public trees:

- 11.13-1 Approved Personnel. No person except an authorized employee or contractor of a public utility or other approved public personnel shall cut, prune, or remove any living tree on or in a public highway, right-of-way, public park, sidewalk, or other public property; or cut or disturb or interfere in any way with the roots of any tree on public property.
- 11.13-2 Owner Responsibility for Private Trees Interfering with Public Space. Every owner of any tree overhanging any street or right-of-way within the Town shall prune the branches so that such branches shall not significantly obstruct the view of any street intersection and so that there shall be a clear space of thirteen (13) feet above the street surface or eight (8) feet above the sidewalk surface. Said owners shall remove all dead, diseased or unsafe trees, or broken or decayed limbs that constitute a nuisance to the safety of the public. The Town shall have the right to prune any tree or shrub on private or public property when it constitutes a public safety hazard, interferes with pedestrian traffic or the visibility of any traffic control device, sign, or sight triangle.
- 11.13-3 Placement of Materials Around Plants. No person shall pile building or other material around any tree or shrub in a public right-of-way in any manner that will injure such tree or shrub.
- 11.13-4 Paving Adjacent to Trees. No person shall pave or place gravel, soil, or other such material within eight (8) feet of any tree on public property, unless approved by the *Planning, Zoning & Subdivision Administrator*. Plans which fail to identify an impacted tree shall not constitute a transfer of responsibility to the Town or its *Planning, Zoning & Subdivision Administrator*.
- 11.13-5 Dumping of Deleterious Matter. No person shall dump, pour or spill any oil, pesticide, or other deleterious matter upon any tree or tree space in any public rights-of-way, or keep or maintain upon any public rights-of-way, any receptacle from which any oil, pesticide, or other deleterious matter leaks or drips onto any soil, parking area, or concrete gutter so as to injure any tree on any public property.
- 11.13-6 Disposal of Materials on Public Places. No person shall use parks, sidewalks, utility easements, or other public places to dump grass clippings, tree trimmings, rocks or other organic refuse. This shall not apply to properly placed yard waste that is intended for pickup by Town of Rutherfordton Public Services or Solid Waste crews.
- 11.13-7 Decoration, Posting and/or Advertising on Public Trees. No person shall decorate

a tree or shrub in any public right-of-way, neutral ground, park, sight triangle or sidewalk, either with or without lights, or place advertising material, posters, political placards, rope, or wire on trees in public properties.

- 11.13-8 Planting of Street Trees. No part of this section is intended to prohibit the planting of street trees by adjacent property owners within tree planter strips, providing that the selection and location of said trees is in accordance with planting specifications set forth in this section and that any such planting conducted under utility lines shall be limited to planting material taken from the list of recommended small-maturing trees in this Ordinance.

#### **11.14 Hazard Trees**

The following standards are hereby established for trees and shrubs determined to be hazardous.

- 11.14-1 Removal of Trees. The *Planning, Zoning & Subdivision Administrator* may order the removal of any tree, shrub, or part thereof on private or public property, which is unsafe or injurious to sewers or other public improvements, structures, or to the general public.
- 11.14-2 Right to Enter upon Property. The *Public Works Administrator* or their designee may enter upon public or private property in the Town to spray or otherwise treat any tree infected or infested by any parasite, insect, or disease to prevent the breeding or scattering of any parasite or animal pest and to prevent danger to persons or property or to trees planted on Town property.
- 11.14-3 Owner Notification and Opportunity to Correct. Prior to exercising the authority conferred by this section, the *Planning, Zoning & Subdivision Administrator* shall give the owner notice and an opportunity to correct the condition by requesting that corrective action be taken. The request shall be in writing and sent via First Class Mail to the owner of the property in question and shall be acted upon within twelve (12) days (or a lesser period of time if an imminent threat to life or property exists) from the date of the receipt of the request. If, after twelve (12) days, the owner has not corrected the condition or undertaken action that would lead to a timely correction of the condition, the *Planning, Zoning & Subdivision Administrator* may enter upon the property, perform the work necessary to correct the condition, and bill the owner for the actual costs incurred. If the property owner fails to pay the bill for such work within thirty (30) days of such notice, the amount of the bill and any collection costs, including attorney's fees and court costs, incurred shall become a lien against the subject property and shall be collected in the same manner provided for the collection of delinquent taxes. In situations involving an immediate threat to public health, safety, or welfare, the Town may act without prior notification to the property owner.

## 11.15 Species Selection and Planting Techniques

In order to ensure that landscaping required by this article is suitable and is planted in the correct manner, the following selection and planting techniques are hereby established.

11.15-1 Plant Species: Species used in required planting yards and parking lots shall be of a locally adapted nature. Other species may be approved by the *Planning, Zoning & Subdivision Administrator*. See the Town of Rutherfordton Technical Standards & Specifications Manual for: “recommended”, “not recommended” and/or “prohibited species.”

11.15-2 Plant Size: Specific plant sizes are listed below:

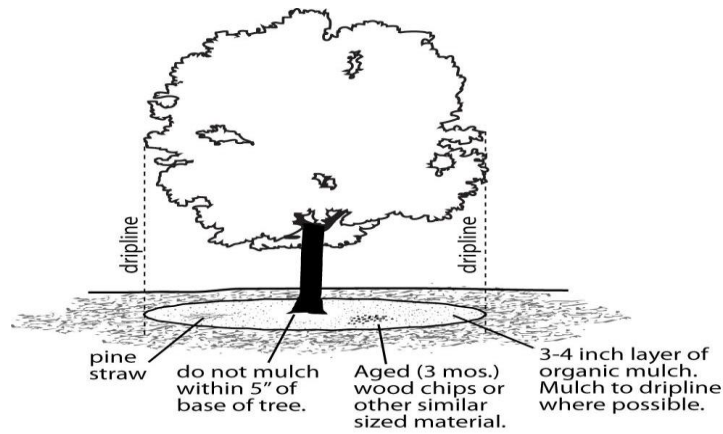
- (A.) Canopy Tree Size: When mature, a canopy tree should have a minimum height of forty (40) feet and have a minimum crown width of thirty (30) feet. Canopy trees must be a minimum of two (2) inches in caliper, measured six (6) inches above grade, when planted.
- (B.) Understory Tree Size: When mature, an understory tree must have a minimum height of twenty-five (25). Understory trees must be a minimum of one and one half (1.5) inches in caliper measured six (6) inches above grade at the time of installation.
- (C.) Shrub Size and Type: All shrubs approved for landscaping of vehicle use areas, loading and unloading areas, and outside storage areas shall be evergreen, with a minimum size of eighteen (18) inches, spread or height, when installed and reach a minimum height of thirty-six (36) inches and a minimum spread of thirty (30) inches. Such shrubs shall be planted using required planting techniques and located parallel to the edge of parking lots, access drives, loading and unloading areas, and outside storage areas. Required shrubs in other locations, outside of the areas listed above, may be evergreen or deciduous and shall be three (3) gallon in size as per American National Standards Institute (ANSI) standards at the time of installation.

11.15-3 Planting Techniques

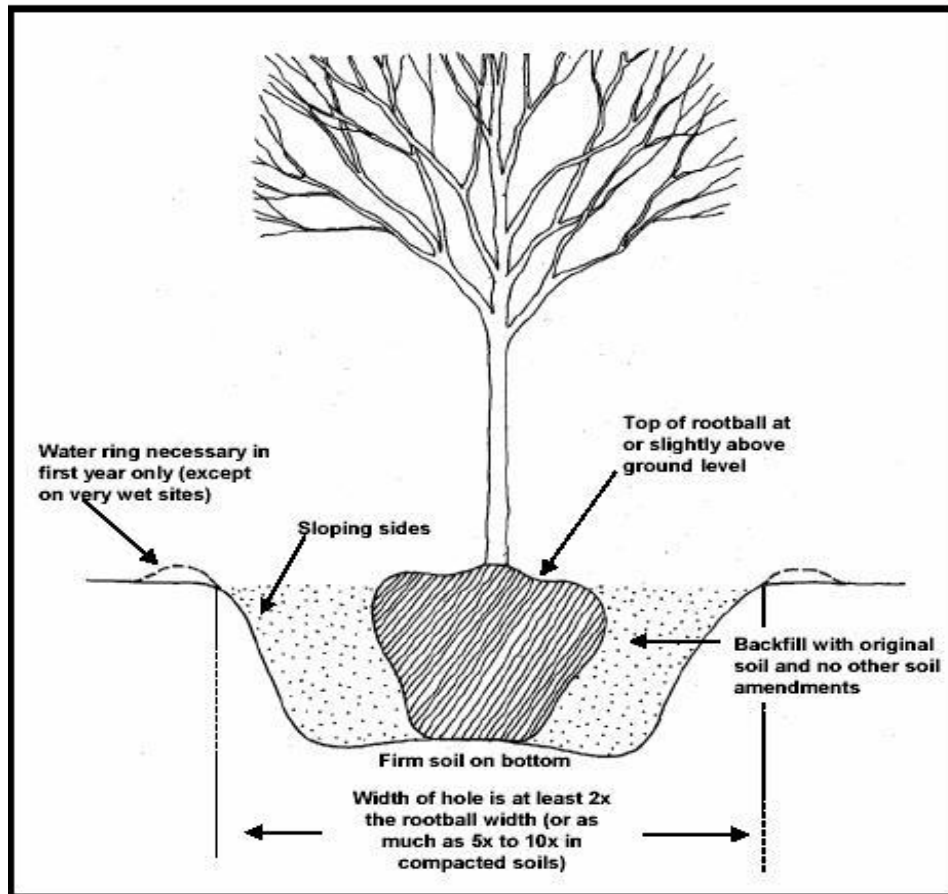
The following soil preparation techniques shall be used for all required landscape areas:

- (A.) Soil preparation for the entire landscape yard includes the addition of organic amendments tilled to a depth of eight (8) to twelve (12) inches.
- (B.) All plantings in landscape yards shall be mulched, including interior parking lot islands less than five hundred (500) square feet, to a depth of three to four (4) inches. The mulch shall be free of trash and maintained weed free thereafter. The sketch below and Figure 2 herein, illustrate these principles.





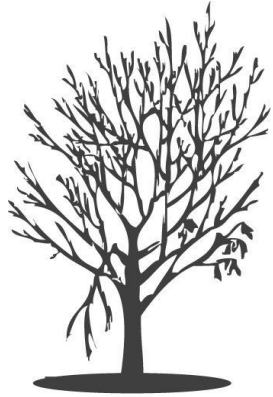
- (C.) Earthen basins are to be constructed around the installed plants.
- (D.) Plants, as required by this section, are to be grouped together where possible.
- (E.) For establishment and survival, plants shall be watered by the landowner or contractor for the first year after planting.



**Figure 2. Recommended Tree Planting Method**

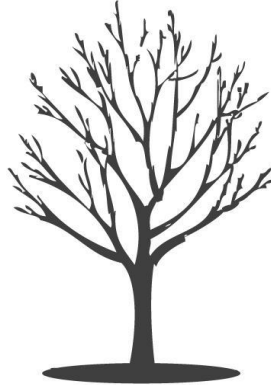
## 11.16 Maintenance of Regulated Planting Spaces

- 11.16-1 Owner Responsibility. The owner or lessee of the property where landscaping is required shall be responsible for the maintenance and protection of all plant and screening material. Landscaped areas shall be maintained in good condition and kept free of debris. Any dead, unhealthy, or missing plants (preserved or planted) shall be replaced with new plant material equal to the number of credited plants planted or preserved, subject to the provisions of this Ordinance. The replacement plant material shall be sized according to the requirements of this section and shall conform to the initial planting rates and standards. The replacement plant material shall be planted within one hundred eighty (180) days of the date that dead, unhealthy, or missing plants are identified. Regulated spaces include those physical areas in which trees and landscape materials are required by this section.
- 11.16-2 Failure to Maintain. Failure to maintain or replace dead, damaged, or diseased material or to repair a broken fence or wall (where such fence or wall is considered a required portion of the landscape as outlined by this section) shall constitute a violation of this Ordinance and shall be subject to the provisions in Section 11.18, Enforcement, if not replaced within 30 days of notification.
- 11.16-3 Destruction by Natural Event. In the occurrence of a natural event which destroys a large quantity of vegetation, the owner or lessee shall have 180 days to replant. Replaced plant material must be in compliance with the minimum size, spacing and quantity standards of this section.
- 11.16-4 Irrigation. It is suggested that drip irrigation, which includes drip misters, be used for required landscaping planting beds during the required establishment period. After establishment, supplemental watering can be reduced and used on an as needed basis. Traditional spray irrigation is prohibited except for turf areas.
- 11.16-5 Pruning. All required trees shall be allowed to reach their mature size and shall be maintained at their mature size. Trimming and pruning shall be done in strict accordance with the (ANSI) standards. Topping is not an acceptable pruning practice. Topping is the reduction of a tree's size using heading cuts that shorten limbs or branches back to a predetermined crown limit. The *Planning, Zoning & Subdivision Administrator* may require the removal and replacement of any tree(s) located in required planting yards or TCA's that have been topped or excessively trimmed.



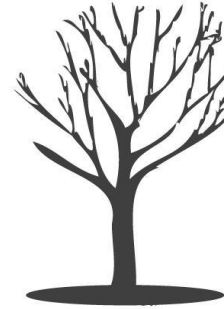
**Before Pruning**

Mature trees often need pruning due to crowded foliage, broken and dead branches, and asymmetrical shape.



**After Proper Pruning**

After pruning, trees should retain a symmetrical appearance and tree-like form. A minimum canopy spread of 20 feet must be maintained.



**After Excessive Pruning**

Pruning in excess of one fourth (25%) of the required canopy spread is prohibited. Tree-topping (hatracking) is prohibited.

### 11.17 Regulation of Tree Care Professionals

The following standards are established for tree care professionals working within the Town of Rutherfordton and its jurisdiction.

#### 11.17-1 Town-Owned Lands.

- (A.) It shall be unlawful for any person or firm to engage in the business or occupation of pruning, treating, or removing street or park trees or trees within Town owned public rights-of-way without first applying for and procuring a Tree Disturbance Permit. Such a permit will only be granted to individuals, businesses, or companies who employ a Certified Arborist to perform or supervise all tree work.
- (B.) In order to receive a Tree Disturbance Permit, applicants must first sign an affidavit agreeing to abide by ANSI 300 Standards for tree care. Specifically, the “topping” of trees shall be prohibited except in cases where the top of the tree has been injured beyond repair by a storm or related incident.
- (C.) Before any permit shall be issued, each applicant must first file evidence of possession of liability insurance and workman’s compensation insurance, in the minimum amounts as required by the Town of Rutherfordton, indemnifying the Town or any person injured or damage resulting from the pursuit of such endeavors as herein described.
- (D.) The *Planning, Zoning & Subdivision Administrator* is authorized to suspend or revoke the right of any person or business to perform work for the Town of Rutherfordton that engages in work practices that do not comply with tree care

standards as specified in this section and the related ANSI Standards.

11.17-2 Private Lands.

- (A.) The Town of Rutherfordton shall not directly regulate private companies providing tree care services on private property. However, the *Planning, Zoning & Subdivision Administrator* may direct property owners to the International Society of Arboriculture (ISA) website or other resources to assist in the location of Certified Arborists, who have specific training in tree care.

**11.18 Enforcement**

Enforcement of the standards and requirements set forth in this article shall be as provided below.

11.18-1 Notice and Appeal.

- (A.) Notice of Violation. The *Planning, Zoning & Subdivision Administrator* shall provide notice of the violation and any required remedies. The notice of violation shall be served by any means authorized under G.S. 1A-1, Rule 4, and the notice shall set forth the nature of the violation, the measures required to comply with this section, if compliance is at all practicable, and a reasonable time period (not less than 30 days and not to exceed 180 days) within which compliance must be met.
- (B.) Appeal. If any aggrieved party disagrees with a decision of the *Planning, Zoning & Subdivision Administrator*, such party may request a hearing within twelve (12) working days of receipt of the violation. The request must be in writing and directed to the *Board of Adjustment*. The hearing will be conducted at the next regularly scheduled meeting of the *Board of Adjustment*.
- (C.) Decision of *Board of Adjustment*. The *Board of Adjustment* may modify, amend or revise the decision appealed. The decision of the *Board of Adjustment* shall be served upon the appealing party by registered or certified mail, return receipt requested, or by hand delivery.
- (D.) Appeal to Superior Court. If any aggrieved party is dissatisfied with the decision of the *Board of Adjustment*, an appeal may be filed with the Rutherford County Superior Court. Notice of the appeal must be filed within thirty (30) days of receipt of the *Board of Adjustment* decision. Any appeals to the Superior Court shall be in the nature of certiorari.
- (E.) Injunction. Any aggrieved party may request an injunction to preserve the status quo during the pending of any appeal in accordance with applicable North Carolina law.

11.18-2 Penalties.

- (A.) Tree Disturbance Prior to Permit Approval. The penalty for the removal of or damage to trees, prior to the issuance of a tree disturbance permit shall be a civil penalty of ten thousand dollars (\$10,000.00) per acre or prorated fraction thereof. (i.e., the civil penalty for a site of 0.35 acres that is cleared prior to approval or prior to the issuance of a tree disturbance permit is three thousand five hundred dollars (\$3,500.00)). Additionally, the Town of Rutherfordton, under G.S. 160D-921, may deny a building permit to any landowner who clears land in anticipation of development in violation of this section for up to three (3) years after completion of the timber harvest. If it is determined that the timber harvest was a “willful violation” of this Ordinance, then the Town of Rutherfordton reserves the right to deny development approvals for a period of two (2) years following the timber harvest.
- (B.) Removal or Damage to Individual Trees after Permit Approval: The penalty for removal of or damage to the CRZ of protected trees after the issuance of a tree disturbance permit within an approved TCA without approval by the *Planning, Zoning & Subdivision Administrator* shall result in a civil penalty as determined by the *Planning, Zoning & Subdivision Administrator*, up to the amount shown in Table 11.6 below, in addition to the replacement of those trees with quality specimens native to the Central Piedmont & Northeastern Piedmont regions of North Carolina.

Table 11.6 – Penalties for Unauthorized Tree Removal

DBH of Tree(s) Removed or Damaged	Maximum Civil Penalty	Reforestation (4 inch DBH minimum)
4 – 11.9 inches	\$800	1 tree
12 – 20.9 inches	\$1,600	2 trees
21 – 28.9 inches	\$2,400	3 trees
29 – 35.9 inches	\$3,200	4 trees
36+ inches	\$4,000	5 trees

- (C.) Removal of an Area of Trees after Permit Approval. The penalty for removal of or damage to an area of protected trees that have not been surveyed after the issuance of a tree disturbance permit within an approved TCA without approval of the *Planning, Zoning & Subdivision Administrator*, shall result in a civil penalty of ten thousand dollars (\$10,000.00) per acre or prorated fraction thereof but not less than one thousand dollars (\$1,000.00). Such areas shall be reforested at a rate one (1), two-inch caliper canopy tree per two hundred (200) square feet.

(D.) Failure to Install or Maintain Tree Protection Devices. There shall be a civil penalty of five hundred dollars (\$500.00) per day for failure to install or maintain approved tree protection measures sufficient to protect the TCA beginning with the date the citation is issued and ending when the site is in compliance. The property owner may be subject to any penalties for damage under Section 11.18-2 above.

(E.) Failure to Comply with the provisions of Section 11.6 Landscape Requirements. There shall be a penalty of five hundred dollars (\$500.00) per day for failure to install required landscape material or to replace dead landscape material beginning with the date the citation is issued and ending when the site is in compliance.

(F.) Civil Penalties Considered Restorative. Civil penalties assessed under this section are considered restorative; intended to provide compensation to the Town for costs associated with the Town's program to monitor, control, prosecute, cure and/or correct the violation. As such, the amount declared herein is presumed to provide sufficient restoration to the Town for its costs. The decision of the *Planning, Zoning & Subdivision Administrator* to assess a civil penalty may be delivered by personal service, by registered mail, or certified mail return receipt requested or by any means authorized under G.S. 1A-1, Rule 4. Each day of a continuing violation shall constitute a separate violation.

11.18-3 Appeal to Superior Court. Every decision of the *Planning, Zoning & Subdivision Administrator* or the *Board of Adjustment* to assess a civil penalty shall be subject to review by the Rutherford County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the *Planning, Zoning & Subdivision Administrator* or *Board of Adjustment* to assess a civil penalty.

11.18-4 Failure to Appeal and/or Pay: Any civil penalty that is assessed against a person who violates the provisions of this Ordinance shall be recovered by the Town in a civil action in the nature of a debt (placement of liens against properties, etc.), to be brought in the Rutherford County Superior Court if the violator fails to give notice of timely appeal and fails to pay the penalty within the prescribed period of time after he or she has been cited for the violation.

11.18-5 Violations Not Criminal: A violation of this Ordinance shall not be considered a misdemeanor under N.C. General Statute 14-4.