

MAYOR
Barbara Jo Blain-Bellamy

MAYOR PRO TEM
Larry A. White



COUNCIL MEMBERS
Amanda Butler
William M. Goldfinch, IV
Julie Hardwick
Beth Helms
Justin D. Jordan

PLANNING DEPARTMENT

CITY OF CONWAY

TREE BOARD MEETING AGENDA

Wednesday, February 14, 2024 | 4:00 p.m.

City of Conway Planning & Building Dept. – 196 Laurel Street

- I. CALL TO ORDER**
- II. APPROVAL OF MINUTES – May 24, 2023**
- III. ELECTION OF OFFICERS**
- IV. TREE APPEALS**
 - A. **1501 9th Ave (Falk Family Chiropractic & Wellness):** The applicant, Daniel Falk, is requesting approval to remove a landmark tree, from the property located at 1501 9th Ave (PIN 338-14-03-0031).
- V. PUBLIC INPUT**
- VI. BOARD INPUT**
- VII. STAFF INPUT**
- VIII. ADJOURN**

**CITY OF CONWAY
TREE BOARD MEETING
WEDNESDAY, May 24, 2023**

Present: Jacqueline Kurlowski, McKenzie Jordan, Autry Benton, Troy Roehm, Duc Watts, Gerry Wallace

Absent: Jamie McLain

Staff: Jessica Hucks, Planning Director; Marcus Cohen, IT; Marquiez Carter, Planning Intern; Wanda Lilly, Arborist; Anne Bessant, Planning Assistant

Other: Kathy Ropp, Kaitlyn Weimer

I. CALL TO ORDER

Chairman Wallace called the meeting to order at approximately 4:37 p.m.

II. APPROVAL OF MINUTES

Jordan made a motion to accept the minutes as written and seconded by Kurlowski to approve the April 26, 2023 minutes. The vote in favor was unanimous. The motion carried.

III. TREE MITIGATION REQUESTS

- A. **Previously Deferred – 1528 Fourth Ave (Dollar General):** The applicant, G3 Engineering & Surveying, is appealing the amount assessed by the City Arborist for required tree mitigation (fee-in-lieu), for the property located at 1528 Fourth Ave (PIN 368-03-03-0010).

Hucks stated that the subject property is proposed to have a Dollar General constructed onsite. During civil plan review, the applicant submitted a landscape plan showing the existing trees onsite, including ones proposed for removal. The original intent was to plant the required number of trees that were required to satisfy mitigation, as reflected on the original approved landscape plan. A tree survey is also included in your packet, showing the protected trees that existed on this site.

After reviewing the plans and visiting the site, the arborist assessed the required tree mitigation for the property, for the protected trees to be removed that are within the proposed building footprint. Based on the total DBH to be removed (116 inches), a total of 29 trees, a minimum of 4-inch caliper (each) would need to be replanted, OR a mitigation fee of \$21,750.00 could be paid in lieu of planting the mitigated trees. The applicants originally intended to plant the required number of trees to satisfy mitigation requirements, but due to lot constraints, the applicant has opted to pay the fee in lieu. The applicant is seeking a reduction in the amount that has been assessed, based on the lot size limitations. A revised landscape plan was included in the packet as well and the trees for which mitigation is based were outlined in red.

The civil plans have been approved and in conjunction with the approval of the civil plans, protected tree removals were also approved. Mitigation must be satisfied prior to a Certificate of Occupancy being issued, in accordance with the ordinance.

Protected Trees approved for removal:

- 28” Live Oak
- 20” Pin Oak
- 14” Turkey Oak
- 14” Water Oak
- 22” Live Oak
- 18’ Live Oak

Total DBH proposed for removal: 116 inches.

The applicant has revised their landscaping plan to show that 19 trees meeting the minimum requirements for mitigation, will be installed on the site, and a remainder of 10 trees for which the fee in lieu would total \$7,500.00 (10 x \$750/ea.).

Staff recommends that the board thoroughly review the request.

Kaitlyn Weimer, agent for applicants was present and further explained the appeal.

The board, applicant and staff discussed the appeal in length.

Jordan made a motion for the applicant to plant the 19 trees and also pay the \$7,500 fee in lieu. Kurlowski seconded the motion and the motion carried unanimously.

IV. DISCUSSION

- A. Discussion of Ordinance #ZA2023-06-05 (C), to amend *Article 11 – Signage*, of the City of Conway Unified Development Ordinance (UDO), regarding Electronic Message Centers (EMC’s) and Light-Emitting Diodes (LED’s) with digital and/or animated display.

Hucks stated that the following information was contained within staff’s issue paper for City Council for the Budget Retreat in February of this year:

Chapter 4 of the City of Conway Code of Ordinances assigns the duties of the Conway Tree Board to be the responsibility of the appointed members of the Community Appearance Board (CAB).

The issue that faces the current Tree Board is that there is no clear direction as to the appeals process regarding their decisions. There are 3 appeals options listed in the Tree Preservation Ordinance:

- a) Denial of a protected tree removal permit from City Arborist. The applicant may appeal to the Tree Board. It must be filed within 10 working days of the denial of the permit.
- b) The arborist cannot grant a permit to remove a landmark tree. If the tree is determined to be a landmark tree, the applicant must request permission to remove from the Tree Board. IF the Tree Board denies the applicant a permit to remove a landmark tree, they may appeal their decision to City Council. It

must be filed within 10 working days of the denial of the permit.

- c) Appeal of the penalty assessed by the Tree Board. If the applicant wishes to appeal the penalty (or mitigation amount) that was assessed by the Tree Board, they may appeal to City Council. It must be filed within 10 days of the Board's decision (or assessment).

Staff has explored a couple of different options regarding the Tree Board and the appropriate Board for protected tree removal requests to be considered.

In our research, staff has concluded that because Conway is a "Tree City USA", there must be a designated "Tree Board" OR a "Tree Department", and even with a Tree Dept., it is the opinion of the City Arborist, as well as other Cities / Towns with certified arborists that a Tree Board would still be necessary. Additionally, staff researched several cities / towns that are also a Tree City USA, and of the ones we found – all had a Tree Protection Ordinance and either a Tree Board, or in some cases, a Tree Commission. As such, staff has reached the following conclusions and suggestions for the Tree Preservation Ordinance and the appeals authority to ensure that the City does not lose its Tree City USA status and continues to strengthen its efforts in tree preservation and protection:

1. Codify the Tree Preservation Ordinance into the UDO. Then the Tree Ordinance falls under the purview of the Planning & Development Dept.
2. Designate that the Community Appearance Board (CAB) will continue to act as the Tree Board; however, appeals of the decisions of the Tree Board would be directed to the Board of Zoning Appeals (BZA).
3. Amend the Tree Preservation Ordinance, including the Appeals Section (Sec. 3-4-15 – Appeals), items (b) and (c) that directs appeals of the Tree Board to Conway City Council, and amend to direct appeals of the Tree Board decision to Board of Zoning Appeals (BZA). This would ensure a proper appeal process, as the appellant would then appeal decisions of the BZA to circuit court instead of City Council.
4. Begin collecting an application fee (\$250) for Tree Board Appeals. Staff proposes to begin charging \$250 for Tree Appeal applications. Should applicants seek to overturn the decision of the Tree Board, and these requests go to BZA, the property will need to be posted, the appeal would need to be advertised, letters would need to be sent to adjacent property owners, and decisions from the BZA would need to be mailed certified to interested parties.

Staff recommends to remove the Tree Preservation Ordinance from the general code and codify into the UDO and amend the Tree Preservation Ordinance to direct appeals of the Tree Board to the authority of the BZA.

Additional discussion for Tree Board is as follows:

- The Tree Preservation Ordinance, currently found in the general code (Chapter 4) will be repealed.
- The Unified Development Ordinance will be amended to include a new Article, Article 16 – Tree Preservation; however, the exact article name is still under consideration.
- City Council was favorable to collecting a \$250 fee for Tree Board appeals.
- Some of the protected trees could possibly be removed from the protected tree species list, while others could be added.
- Review the attached Tree Preservation Ordinance, with some of the amendments proposed.

- This is not final. We will have more discussions and a workshop before the amendments are advertised for Planning Commission consideration.

The board and staff discussed in length.

V. BOARD INPUT

None

VI. PUBLIC INPUT

None

VII. STAFF INPUT

None

VIII. ADJOURN

There being no further business to come before the Board, a motion was made and seconded to adjourn the meeting at approx. 5:03 p.m. The vote in favor was unanimous and the motion carried.

Approved and signed this _____ day of _____, 2023.

Gerry Wallace, Chairperson

DATE: January 14, 2024

ITEM: IV. A.

ISSUE:

1501 9th Ave (Falk Family Chiropractic & Wellness): The applicant, Daniel Falk, is requesting approval to remove a landmark tree, from the property located at 1501 9th Ave (PIN 338-14-03-0031).

ZONING DISTRICT:

Professional (P)

SCOPE OF WORK:

The applicant, Daniel Falk, is requesting approval to remove a landmark tree, from the property located at 1501 9th Ave (PIN 338-14-03-0031).

The tree in question is located in middle back of the parcel. The tree is a Quercus Virginiana (Live Oak) and measures 3' 3" in diameter at breast height.

This tree has one limb that extends over the roof of the building. It is staffs understanding that the applicant would like the tree removed due to the state of this limb as well as wanting to build on to his existing business in the future.

The applicant provided a letter from an arborist, written on January 6th of 2023 who stated "On the date of my observation several large sections of the tree canopy were bare. The largest of the dead section was overhanging the clinic." He continued with this recommendation "Because there are multiple dead large diameter leaders, it is likely that the tree is in an acute decline, and it is not likely to benefit from corrective pruning and or fertilizing. For these reasons, I recommend removal of the tree in question."

Following the request to remove the tree City Arborist, Wanda Lilly, inspected the tree and provided the following as her diagnosis and recommendation.

"It appears that the major limb of concern exhibits signs that there may be a root issue. Potentially caused during construction of an addition to the building in 2018. If any portion of the root was severed at that time, it could explain what has caused the limb to be in a state of stress. Time is necessary to establish the extent of the damage and to allow the tree the opportunity to recover. My recommendation is to wait and make a more professional decision after spring when the tree has time to recover in a warmer climate."

To allow for a third-party decision not one provided by the City arborist or one provided by the property owner staff requested Arborist, Lois Edwards of Tree City USA, to provide her input as well. She stated "I do not recommend that the tree between the two buildings be removed at this time. The leafless branches may still have living tissue and not be totally dead branches. It would be best to wait to see if they leaf out this spring." She continued by saying "half the tree is in good shape and it might be good to investigate why just one side of the tree looks to be in poor health. Many times, just one large root is damaged thus effecting the on side of the tree. I do believe it is a root issue and effecting the crown." And finished up her recommendation by stating "I agree with your recommendation not to remove the tree at this time. More time is needed to see what exact issues the tree has."

The recommendations from each arborist and pictures of the tree are included in your packet.

Applicable Standards

City of Conway Tree Board Ordinance:

- Section 3.4.6: Definitions
- Section 3.4.8: Tree Preservation

- 3.4.9: Tree Permits Required
 - Section 3.4.10: Mitigation of trees approved for removal
 - Section 3.4.12: Tree Pruning
 - Section 3.4.13: Exemptions from this Chapter
-

STAFF RECOMMENDATION:

Staff recommends following the recommendation of the City Arborist provided in the issue paper.



TREE PERMIT - SITE INFORMATION

Staff Use Only

Received: _____

BS&A: _____

Staff: _____

City of Conway Planning Department
196 Laurel Street
Conway, SC 29526
www.cityofconway.com

Phone: (843) 488-9888
Planning@cityofconway.com

APPLICANT INFORMATION

Contact Name: Dr. Falk	Address: 1501 Ninth Ave.
Contact Phone/Email: 843-248-0104 843-995-2428 (cell)	PIN#(s): 338-14-03-0031
Tree Species: Live Oak - Landmark	Tree DBH: 34"
Nature of Request (trimming/pruning/removal): removed To have Landmark tree	

SITE INFORMATION

Location on site of Tree: Located behind building on the right side.	Protected or Landmark Tree: Landmark Tree
Additional Info: Have a letter from a Certified Arborist Andrew Bolger w/an analysis of the health of tree & recommendation of removal.	







Andrew Bolger
Certified Arborist
Surfside Beach, SC 29575
843-471-5589

1/6/2023

Dr. Daniel Falk
1501 Ninth Avenue
Conway, SC 29526
843-248-0104

RE: Dr. Falk and the City of Conway

Assignment

I was tasked with assessing the health of a tree located on the right side of the building after some sections of the tree broke away and impacted the roof.

Analysis

The tree in question is a live oak tree, Latin name *Quercus virginiana*. On the date of my observation several large sections of the tree canopy were bare. The largest of the dead sections was overhanging the clinic.

Recommendation

Because there are multiple dead large diameter leaders, it is likely that the tree is in an acute decline, and it is not likely to benefit from corrective pruning and or fertilizing. For these reasons, I recommend removal of the tree in question.

Certification

I, Andrew Bolger certify that:

- 1) The facts and opinions expressed herein are my own, and they are based on accepted arboricultural practices.
- 2) My fee is not contingent upon any predetermined finding or occurrence.
- 3) I have no present or future interest in the tree or property in question and, furthermore, that I have no preference nor bias toward any of the involved parties.
- 4) The consultant shall not be required to give testimony or to attend court by reason of this report unless subsequent contractual arrangements are made, including payment for such services.
- 5) Loss or alteration of any part of this report invalidates the entire report.

6) I reserve the right to make alterations to my report as new and pertinent information becomes available to me.

I also certify that I am Arborist: SO-11053A a member in good standing of the International Society of Arboriculture.

Andrew Byrce



Katie Dennis

From: Wanda Lilly
Sent: Monday, February 5, 2024 3:08 PM
To: Katie Dennis
Subject: FW: [Junk released by Policy action] Tree at 1501 9th Ave

I will send more as I can

-----Original Message-----

From: Lois Edwards <edwardsl@sccoast.net>
Sent: Friday, February 2, 2024 3:57 PM
To: Wanda Lilly <wlilly@cityofconway.com>
Subject: [Junk released by Policy action] Tree at 1501 9th Ave

CAUTION-External Email: This email originated from outside of the City of Conway. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Wanda , it was good to have seen you yesterday (Feb 1st). You seem to be right back working hard after your surgeries.

I appreciate you inviting me to look at the landmark live oaks at 1501 9th Ave. I totally agree with you that I do not recommend that the tree between the two buildings be removed at this time. The leafless branches may still have living tissue and not be totally dead branches. It would be best to wait to see if they leaf out this spring.

Half the tree is in good shape and it might be good to investigate why just one side of the tree looks to be in poor health. Many times just one large root is damaged thus effecting the one side of the tree. I do believe it is a root issue and effecting the crown.

I understand the tree board will hear the case on the February 14,2024. I agree with your recommendation not to remove the tree at this time. More time is needed to see what exact issues the tree has and exactly the plan for the property in the future.

Again it was good to see you again and meet Frankie. Stay in touch and let me know the outcome of the tree board meeting.

Lois Edwards

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-4 Jurisdiction.

The city arborist shall be responsible for the administration of all provisions of this chapter and for public tree management. The city arborist shall be assisted in his/her administration of these regulations by the Conway tree board, established below.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-5 Conway tree board.

The Conway city council hereby establishes a board of appointed citizens as the Conway tree board. The members of this board serve concurrently as appointed members of the community appearance board (CAB), already established. Any duties described in the appointment of the CAB that relate to tree issues hereby convey to the Conway tree board, as do any present appointment of members and scheduling of board meetings. The Conway tree board is one and the same as the CAB, with duties and responsibilities as described in its charter. All current appointments remain in effect until each respective member's normal expiration of term. Future appointments to the community appearance board will include appointment to the Conway tree board. Any reference to the tree board in this chapter also refers to the current community appearance board.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-6 Definitions.

All words in these standards have their customary dictionary definition except as specifically defined herein. The words "shall" and "must" are mandatory, and the words "may" and "should" are permissive. Technical terms used are defined as follows:

- (1) Area: The area of a tree, as defined in this chapter, shall be arrived at by multiplying pi (3.14, a constant) times the square of the radius of the tree (where the radius equals one and one-half (1 ½) times the diameter breast high) or the standard area formula: $A = \pi \times r^2$.
- (2) ANSI (current edition): American National Standards Institute. The ANSI A300 standards represent the industry consensus on performing tree care operations.
- (3) Caliper: A caliper measurement shall be measured six (6) inches above the soil line, or across the stump, in the event the tree has been severed at less than 12 inches above the soil line.
- (4) Critical root zone: That area of tree roots under the canopy measured to be no less than one and one-half (1 ½) feet in radius for every inch of trunk diameter measured four and one-half (4 ½) feet above the ground.
- (5) Diameter breast height (d.b.h.): The diameter measurement of a tree is measured at four and one-half (4 ½) feet above ground level and is referred to as diameter, breast high, commonly abbreviated as d.b.h. Trees consisting of two (2) or more stems in which the fork is below d.b.h. are considered as separate trees and the diameter is measured for each stem separately. If a fork occurs exactly at d.b.h., the diameter measurement is taken immediately below the enlargement caused by the fork. Measurements shall be made by use of an arborist diameter tape or arborist tree calipers.
- (6) Drip line: An imaginary vertical line extending downward from the outermost tips of the tree branches to ground level.

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- (7) Grubbing: The removal of understory vegetation which does not remove any trees with a d.b.h. of four (4) inches or greater.
 - (8) Hazard tree: A tree, or tree part that may be dangerous and is likely to fail and cause damage or injury, and the likelihood of failure exceeds an acceptable level of risk. The city arborist shall make such determination with the mayor's approval.
 - (9) Pruning: The cutting or removing of any part of the branching structure of a tree in the crown, trunk or root areas.
 - (10) Public nuisance (trees that have become): Any tree with an untreatable disease or insect pest problem; dead trees or trees in irreversible decline; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to public safety or property.
 - (11) Silviculture: The art and science of controlling the establishment, growth, competition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.
 - (12) Tree: Any self-supporting woody plant growing upon the earth that provides single or multiple trunks with potential d.b.h. of two (2) inches and grows to an overall height of 15 feet or more.
 - (13) Tree removal: The cutting or removal of 50 percent or more of the crown, trunk, or root system of a tree, or causing the death of a tree through damaging, poisoning, or other direct or indirect action.
 - (14) Tree survey: A survey plan prepared by a surveyor, registered forester or certified arborist indicating an accurate location, size, and species, and/or other desired measurements or information on trees on a property or given location.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-7 Licensing.

It shall be unlawful for any person who is being paid a fee for the business of planting, cutting, trimming, pruning, removing, or otherwise modifying trees within the city limits of the City of Conway to conduct such business without first signing an affidavit stating that he or she has received and read the City of Conway tree protection ordinance and 2001 ANSI A300 Standards or any current revision of these documents. Such affidavit shall be completed and submitted when making application for, or renewing, a City of Conway business license.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-8 Tree preservation.

The removal or destruction of any tree as referenced below within the city limits of Conway without the necessary tree removal permit shall be prohibited. No person shall intentionally damage, cut, carve, transplant, or remove any tree, attach any signs with rope, wire, nails, or other contrivance to any tree, allow any substance which is harmful to such trees to come in contact with them or be placed within their dripline over pervious areas; or intentionally set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree listed below. Any such actions shall be subject to the penalties established in section 3-4-14. All trees required for preservation shall be in addition to any landscaping required by the Conway zoning ordinance as part of the overall development of the site.

- (a) Protected trees. The following trees shall be considered protected trees and shall not be removed from any lot in the city limits of Conway without a protected tree removal permit:

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- (7) Grubbing: The removal of understory vegetation which does not remove any trees with a d.b.h. of four (4) inches or greater.
 - (8) Hazard tree: A tree, or tree part that may be dangerous and is likely to fail and cause damage or injury, and the likelihood of failure exceeds an acceptable level of risk. The city arborist shall make such determination with the mayor's approval.
 - (9) Pruning: The cutting or removing of any part of the branching structure of a tree in the crown, trunk or root areas.
 - (10) Public nuisance (trees that have become): Any tree with an untreatable disease or insect pest problem; dead trees or trees in irreversible decline; a tree or limb(s) that obstruct street lights, traffic signs, the free passage of pedestrians or vehicles; a tree that poses a threat to public safety or property.
 - (11) Silviculture: The art and science of controlling the establishment, growth, competition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.
 - (12) Tree: Any self-supporting woody plant growing upon the earth that provides single or multiple trunks with potential d.b.h. of two (2) inches and grows to an overall height of 15 feet or more.
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 - (14) Tree survey: A survey plan prepared by a surveyor, registered forester or certified arborist indicating an accurate location, size, and species, and/or other desired measurements or information on trees on a property or given location.

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- (a) Protected trees. The following trees shall be considered protected trees and shall not be removed from any lot in the city limits of Conway without a protected tree removal permit:

1	Flowering Dogwood	Cornus florida	4" d.b.h. or greater
2	Crape Myrtle	Lagerstroemia indica	4" d.b.h. or greater
3	Redbud	Cercis Canadensis	4" d.b.h. or greater
4	American Holly	Ilex opaca	8" d.b.h. or greater
5	Live Oak	Quercus virginiana	8" d.b.h. or greater
6	Southern Magnolia	Magnolia grandiflora	8" d.b.h. or greater
7	Red maple	Acer rubrum	8" d.b.h. or greater
8	Bald cypress	Taxodium distichum	8" d.b.h. or greater
9	River Birch	Betula nigra	8" d.b.h. or greater
10	Sycamore	Plantanus occidentalis	8" d.b.h. or greater
11	All Oak Species	Quercus	14" d.b.h. or greater

The proposed removal of any tree listed above may be subject to mitigation of trees approved for removal, section 3-4-10.

- (b) **Landmark trees.** The following trees shall be considered landmark trees and shall not be removed from any lot in the city limits of Conway without a landmark tree removal permit:

- (1) All live oak trees designated on the map entitled "The Oaks of Conway, South Carolina," researched and prepared by Evelyn Snider, Joseph N. Pinson, Jr., and Eugene Holbert;
- (2) Any live oak tree equal to or in excess of 30 inches d.b.h.;
- (3) Any tree that city council designates as a landmark tree.

The proposed removal of any tree listed above shall be subject to mitigation of trees approved for removal, section 3-4-10.

- (c) **Required landscaping.** Any tree planted or retained to meet the City of Conway landscape regulations of the zoning ordinance may not be removed without a tree cutting permit. The proposed removal of any tree listed above shall be subject to mitigation of trees approved for removal, section 3-4-10.
- (d) **Setback area.** For all nonresidentially zoned lots, all proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) and for all residentially zoned lots two (2) acres or greater, all trees equal to or greater than eight (8) inches d.b.h. may not be removed from the exterior setback area without a tree cutting permit. Exceptions shall be made for ingress/egress to the parcel.
- (e) **Interior of a lot.** In addition to the trees preserved in the setback area, all nonresidential zoned lots, all proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) and for all residentially zoned sites two (2) acres or greater, a minimum of 10 trees (minimum six (6) inch d.b.h.) or 60 inches of d.b.h. must be retained per actual acre. If the site is less than an acre in size, the fractional requirement (rounded up to the nearest whole number) shall prevail. If there are protected and landmark trees on site that are required for preservation under subsections (a) and (b) above, those trees may be counted to meet the minimum interior lot tree preservation. Where possible, efforts should be made to retain groupings of trees rather than isolated individual trees. No tree removal of any kind may occur without a tree cutting permit. Properties unable to, due site constraints, topography, or absence of trees on the site, preserve the minimum amount of trees listed above shall be subject to mitigation of trees approved for removal, section 3-4-10.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-9 Tree permits required.

- (a) Protected tree removal permit . This permit is necessary to remove any protected tree on any lot within the City of Conway. Requests to remove protected trees shall be reviewed on a case-by-case basis by the city arborist. Prior to the issuance of a tree removal permit for a protected tree, the city arborist shall determine that one (1) or more of the following conditions exist:
- (1) The tree is considered hazardous per the definition in section 3-4-6(8);
 - (2) The tree is dead or in irreversible decline as determined by the city arborist;
 - (3) The tree has an untreatable disease or insect pest problem as certified by a registered forester, certified arborist, or by the city arborist;
 - (4) The tree or its root system is causing visible damage to structures, and/or areas used for pedestrian and vehicular traffic;
 - (5) The tree or its root system is causing damage to structures or underground utilities, as certified by a structural engineer;
 - (6) Trees within power line easements that cannot be properly pruned by the local utility company;
 - (7) Trees, after proper pruning, which remain classed as hazard trees;
 - (8) The tree is located in the footprint of a proposed addition or expansion, and there are no practical alternative locations on the lot for the addition or expansion or practical means to build around the tree.

Protected trees may only be removed with the written approval of the city arborist. All protected tree removal permits are valid for six (6) months from the date of issue.

A condition of the protected tree removal permit may be mitigation as defined in section 3-4-10.

- (b) Landmark tree removal permit . This permit is necessary to remove any landmark tree on any lot within the City of Conway. Requests to remove landmark trees shall be reviewed on a case-by-case basis by the city arborist, then by the Conway tree board. The Conway tree board may authorize the city arborist to issue a landmark tree removal permit for the removal of a landmark tree provided the board determines one (1) or more of the following:
- (1) The tree is classed as a hazard tree, is in irreversible decline, and cannot be properly pruned to alleviate such condition;
 - (2) The tree is diseased or infectious as certified by a registered forester or certified arborist or the city arborist and cannot be properly treated or pruned to alleviate such condition;
 - (3) The tree is located on an undeveloped lot in such position that the lot cannot be developed in a reasonable and prudent manner. In this instance, the Conway tree board shall consider a request for a variance from a particular zoning requirement if it would alleviate the need to remove such landmark tree; and if so determined, initiate such request with the board of zoning appeals. In this instance, if no alternative to the removal of the landmark tree can be obtained, the Conway tree board may attach any conditions to the permit the tree board deems necessary to ensure compliance with the intent of this chapter;
 - (4) The tree is causing visible structural damage to a building and no feasible alternative other than removal of such tree exists, as certified by a structural engineer.

All landmark tree removal permits are valid for six (6) months from the date of issue.

A condition of the landmark tree removal permit shall be mitigation as defined in section 3-4-10.

(c) Tree cutting permit. This permit is necessary to remove any tree from any nonresidentially zoned lot in the city limits of Conway, any proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) or any residentially zoned lot two (2) acres or greater. All developments should strive to minimize the removal of existing trees. The following items shall be submitted to the city arborist when requesting a tree cutting permit and may be submitted on the same map:

- (1) A tree survey depicting all protected and landmark trees, all waterways, wetlands and setback areas.
- (2) A tree preservation plan prepared in accordance with section 3-4-8. This plan shall show the location, size and species of all trees proposed for protection.
- (3) A tree mitigation plan prepared in accordance with section 3-4-10. This plan shall show the location, size and species of all trees proposed for planting.

All trees proposed for protection or preservation must be clearly identified in the field prior to the issuance of a tree cutting permit by the city. All tree cutting permits are valid for two (2) years from the date of issue.

(Ord. No. 2007-11-12(A), 11/12/07; Ord. No. 2009-05-11(A), 5/11/09)

Sec. 3-4-10 Mitigation of trees approved for removal.

In cases where any type of tree removal permit is issued, mitigation planting may be required to compensate for the loss of the removed tree(s). The species of replacement trees shall be selected from one (1) of the following sources:

- (1) Shade trees or ornamental trees listed in the recommended plant list of the Conway zoning ordinance (section 11.1115);
- (2) Trees listed as protected trees in section 3-4-8(a) of this chapter;
- (3) Other trees as approved by the city arborist.

All mitigation tree selections shall be reviewed and approved by the city arborist or the Conway tree board. An effort should be made to include a diversity of species when planting mitigation trees.

Where the city arborist determines that a site cannot sustainably support the required replacement, due to the size and shape and/or structures and/or viable site constraints, a fee based on the current nursery market value plus installation costs shall be paid to the City of Conway Tree City USA account. All trees planted to satisfy the mitigation requirements shall be healthy living trees. The owner, occupant, tenant or agent shall be jointly and severally responsible for the maintenance of all trees. Any dead or damaged tree shall be promptly replaced with a tree of a similar size and type. All trees required for mitigation shall be in addition to any landscaping required by the Conway zoning ordinance as part of the overall development of the site.

- (a) Mitigation for trees removed with any approved protected or landmark tree removal permit. The following table shall be used to calculate mitigation tree requirements for protected and landmark trees removed with a permit.

Table 1.

Diameter of Tree Removed (d.b.h.) Rounded Up	Number of Replacement	Minimum Caliper of Replacement	Alternate Fee
4" through 6"	Equal to number of d.b.h. inches removed	2"	Current nursery market value for required

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(c) Tree cutting permit. This permit is necessary to remove any tree from any nonresidentially zoned lot in the city limits of Conway, any proposed or approved major residential development sites (more than five (5) lots or units or the creation of a new street proposed for dedication) or any residentially zoned lot two (2) acres or greater. All developments should strive to minimize the removal of existing trees. The following items shall be submitted to the city arborist when requesting a tree cutting permit and may be submitted on the same map:

- (1) A tree survey depicting all protected and landmark trees, all waterways, wetlands and setback areas.
- (2) A tree preservation plan prepared in accordance with section 3-4-8. This plan shall show the location, size and species of all trees proposed for protection.
- (3) A tree mitigation plan prepared in accordance with section 3-4-10. This plan shall show the location, size and species of all trees proposed for planting.

All trees proposed for protection or preservation must be clearly identified in the field prior to the issuance of a tree cutting permit by the city. All tree cutting permits are valid for two (2) years from the date of issue.

(Ord. No. 2007-11-12(A), 11/12/07; Ord. No. 2009-05-11(A), 5/11/09)

Sec. 3-4-10 Mitigation of trees approved for removal.

In cases where any type of tree removal permit is issued, mitigation planting may be required to compensate for the loss of the removed tree(s). The species of replacement trees shall be selected from one (1) of the following sources:

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- (2) Trees listed as protected trees in section 3-4-8(a) of this chapter;
- (3) Other trees as approved by the city arborist.

All mitigation tree selections shall be reviewed and approved by the city arborist or the Conway tree board. An effort should be made to include a diversity of species when planting mitigation trees.

Where the city arborist determines that a site cannot sustainably support the required replacement, due to the size and shape and/or structures and/or viable site constraints, a fee based on the current nursery market value plus installation costs shall be paid to the City of Conway Tree City USA account. All trees planted to satisfy the mitigation requirements shall be healthy living trees. The owner, occupant, tenant or agent shall be jointly and severally responsible for the maintenance of all trees. Any dead or damaged tree shall be promptly replaced with a tree of a similar size and type. All trees required for mitigation shall be in addition to any landscaping required by the Conway zoning ordinance as part of the overall development of the site.

- (a) Mitigation for trees removed with any approved protected or landmark tree removal permit. The following table shall be used to calculate mitigation tree requirements for protected and landmark trees removed with a permit.

Table 1.

Diameter of Tree Removed (d.b.h.) Rounded Up	Number of Replacement	Minimum Caliper of Replacement	Alternate Fee
4" through 6"	Equal to number of d.b.h. inches removed	2"	Current nursery market value for required

			replacement plus associated installation costs
7" or greater	Equal to number of d.b.h. inches removed	4"	Same as above

All required mitigation trees must be planted within 12 months of the issuance of the removal permit. All violations of the required tree planting shall be subject to the penalties outlined in section 3-4-14, Table 2.

(b) Mitigation for property unable to retain the required number of trees with any approved tree cutting permit.

- (1) If a property owner obtains a tree cutting permit to remove any tree planted or retained to meet the City of Conway landscape requirements from the zoning ordinance, he/she shall be required to replant the minimum landscape requirements for the use as stated in the Conway zoning ordinance.
- (2) If a property owner/applicant cannot preserve or if there is less than a minimum of 10 trees (minimum six (6) inch d.b.h.) or 60 inches of d.b.h. per actual acre, the property owner/applicant shall re-establish the number of three (3) inch d.b.h. replacement trees necessary to meet the 60 d.b.h. per acre requirement. If the site is less than an acre in size, the fractional requirement (rounded up to the nearest whole number) shall prevail.
- (3) A property owner may apply to the tree board for relief from the tree mitigation requirements. The tree board may waive the tree mitigation requirements if the applicant illustrates that there are unique topographic conditions that prevent the planting of the replacement trees. In this case, the tree board may require that payment of a fine in the amount equal to the current nursery market value for the required replacement trees plus associated costs of installation for as many three (3) inch d.b.h. trees necessary to meet the total required d.b.h. inches of the site.
- (4) All mitigations trees required as a condition of a tree cutting permit must be installed prior to the issuance of a certificate of occupancy of any commercial building or residential home or the recording of a final plat on any proposed major development. The property owner or developer may post a financial guarantee for mitigation trees in accordance to the standards of section 11.1105 of the landscape requirements of the Conway zoning ordinance.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-11 Tree protection during construction.

During any type of development or construction, the following measures shall be utilized to protect any on-site tree that is not designated for removal:

- (a) It shall be the responsibility of the person in charge of the erection, repair, alteration or removal of any building or structure to place a guard or protector around any tree or shrub on subject lot or in the public rights-of-way so as to prevent injury to such tree or shrub arising out of such erection, repair, alteration or removal.
- (b) Protective barriers, such as silt fences, bollards, roping or other such devices as approved by the city arborist shall be placed by the person requesting construction permits around each tree at the drip line of the canopy of each tree to prevent any type of encroachment under the drip line, or six (6) times the diameter at breast height (d.b.h.) whichever is greater.

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- (c) Trenching shall be no closer than six (6) times the diameter at breast height to the affected tree, nor disrupt more than 30 percent of the drip line root area.
 - (d) No other types of disturbance, equipment or material storage, or construction shall be allowed under the drip line of any tree without prior approval of the city arborist.
 - (e) The city arborist may make an on-site inspection at any time in order to verify compliance with the above and may place a stop work order on the work site for infractions or violations of this section of this chapter.
 - (f) It shall be unlawful for any person to willfully fell, cut down, prune, undermine, burn or otherwise damage or destroy any tree or shrub in or upon any public area or right-of-way.
 - (g) No soil disturbance, trenching, grading, paving or storage of equipment/materials shall take place within the critical root zone of any protected or landmark tree.
 - (h) When save trees are damaged or the critical root zone is disturbed, the property owner shall be subject to the requirements in section 3-4-14.
 - (i) Unnecessary cutting, breaking or skinning of roots, skinning and bruising of bark, smothering trees by stockpiling construction or excavation materials within the drip line is prohibited. Also prohibited is excessive foot or vehicular traffic and parking of vehicles within the pervious area within the drip line.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-12 Tree pruning.

Tree pruning shall be accomplished in accordance with the procedures set forth in the 2001 American National Standards Institute (ANSI) A300 Tree Care Operations standards or its revision/replacement.

The use of unnatural pruning techniques shall be considered an unauthorized removal of a tree unless the tree is designated on an approved landscape plan to be shaped or formed in an unnatural pattern or to be maintained at a certain height. Examples of unnatural pruning are topping, stubbing, dehorning, lion-tailing, or lopping. These practices are detrimental to tree health and are specifically prohibited.

Any tree on any public street or highway right-of-way or easement, owned or maintained by the City of Conway or any tree on private property defined as a hazard tree or public nuisance tree in section 3-4-6 may be pruned based upon the recommendation of the city arborist.

City arborist may have hazard trees or public nuisance trees on public or private property pruned in the interest of public safety. A notification in the form of a door hanger will be used, which serves to alert the owners that crews will be in the area within a three (3) day period. Contact information will be provided on the door hanger including name and telephone number for the city's beautification department.

Any property owner requesting the pruning of a landmark tree must obtain a tree pruning permit. Property owners shall apply directly to the city arborist for this permit.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-13 Exemptions from this chapter.

- (a) If any tree is determined by the city arborist to be diseased, injured or located in a manner that endangers the public health, safety or welfare of city residents, the city arborist may authorize its immediate removal.
- (b) In case of emergencies such as windstorms, ice storms, hurricanes, tornadoes, drought or other disasters, the city arborist may waive the requirements of this chapter during the emergency period so that the

requirements of this chapter would in no way hamper private or public work to restore order to the City of Conway.

- (c) The removal of live trees in conjunction with tree farms, agricultural practices, or commercial nurseries.
- (d) Silviculture so long as the following conditions are met:
 - (1) Property must contain at least five (5) acres.
 - (2) Activities occurring on the tract must be devoted of the production of marketable forest products.
 - (3) No trees may be removed within 50 feet of the entire perimeter of the lot.
 - (4) No protected or landmark trees may be removed.
 - (5) The silviculture activity shall be in compliance with the latest South Carolina Best Management Practices Manual for Forestry.
 - (6) A silviculture permit is obtained from the city arborist. The application for such permits must include a boundary survey of the area to be harvested, depiction of the buffer area, location, size and species of any protected or landmark tree on the site and tree protection and silt fencing devices for preservation of trees in the buffer area, protected trees and landmark trees. Also, the permit application must include a narrative detailing proposed reforestation method.
 - (7) No development may take place on a parcel that has been issued a silviculture permit with three (3) years of the cutting unless the property owner meets the replacement standards detailed in section 3-4-14, Violations.
 - (8) All silviculture permits are valid for two (2) years from the date of issue.

(Ord. No. 2007-11-12(A), 11/12/07)

Sec. 3-4-14 Violations and enforcement.

The city arborist shall have the authority to inspect property for compliance with this chapter and issue stop work orders on any actions found in violation of this chapter.

- (a) Protected and landmark tree violations. Protected and landmark trees cut, removed, or pruned in violation of this chapter are subject to the following penalties: plant replacement trees on site; and/or; pay a fine to the City of Conway Tree City account. The Conway tree board shall make the final determination of any penalty for the removal of a protected or landmark tree without a permit. The following table may be used by the Conway tree board as a guide for penalties of violations.

Table 2. Penalties—Removal of Protected or Landmark Trees Without a Permit.

Diameter of Tree Removed (d.b.h.) Rounded Up	Number of Replacement	Minimum Caliper of Replacement	Alternate Fee
4" through 6"	Double the total d.b.h. of the removed tree	2"	Current nursery market value for required replacement plus associated costs of installation
7" through 12"	Double the total d.b.h. of the removed tree	4"	Same as above
13" or greater	Triple the total d.b.h. of the removed tree	4"	Same as above

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