



OR-2004-10-01

VILLAGE OF MARVIN

TREE ORDINANCE

Amended 10/11/05 – Article 3

Amended 2/14/06 – All references to “Preliminary Plats” changed to “Sketch Plans”

Amended 2/9/2010 – Article 4, Section 4.2

ARTICLE 1
AUTHORITY, ENACTMENT, SHORT TITLE, JURISDICTION, PURPOSE, ENFORCEMENT AND
PENALTIES, LIABILITY AND DISCLAIMER

Section 1.1 Authority and Enactment Clause

WHEREAS Section 160A-174 of the North Carolina General Statutes authorizes villages, cities and town to adopt ordinances to protect the public health, safety and welfare; and,

WHEREAS regulation of the plating, maintenance, and removal of trees located in or on roadways, parks, and public areas owned and controlled by the Village and on new developments and alterations to previous developments on private property enhance and promote public health, safety and welfare by facilitating and protecting the aesthetic qualities of the Village community; and,

WHEREAS the protection of trees in the Village promotes clean air quality and reduce harmful effects on the environment.

NOW THEREFORE BE IT ORDAINED by the Village Council of the Village of Marvin, North Carolina that the Village hereby adopts a tree ordinance governing the plating, maintenance, and removal of trees located on roadways, parks, and public areas owned or controlled by the Village and on new developments and alterations to previous developments on private property, said ordinance to read as follows:

Section 1.2 Short Title

This Ordinance shall be known as the “Village of Marvin Tree Ordinance.”

Section 1.3 Purpose, Intent and Scope

These regulations are established to preserve and replenish the tree canopy within the Village of Marvin. These regulations shall apply to both public and private subdivided tracts of land excluding individual owned residentially zoned lots of record that existed at the time of adoption of this Ordinance that are less than five (5) acres in area or any non-subdividable lot that was in existence on or before the effective date of this Ordinance. These regulations shall also apply to tracts of land that are subdivided. The term “non-subdividable” shall mean any lot or tract that cannot be legally subdivided per the Marvin Zoning or Subdivision Ordinances or per any recorded deed restriction or easement. These regulations shall not apply to agricultural uses. These regulations also establish minimum standards for the maintenance, planting and removal of trees. It is the intent of this Ordinance to:

1. Protect, facilitate and enhance the rural roadside character and other natural landscape qualities of the Village to help ensure that tree removal does not reduce property and aesthetic values.
2. Emphasize the importance of trees and vegetation as both a visual and physical buffer in furthering the land use policies of the Village, including encouragement for the preservation of open spaces and wooded sites.
3. Discourage clear-cutting of sites before and during construction.

4. Preserve existing tree canopy and plant new trees on new development sites to maintain and enhance the tree canopy within the Village.
5. Promote clean air quality by helping to reduce air pollution and carbon dioxide levels in the atmosphere.
6. Reduce the harmful effects of wind and air turbulence, heat, noise, and the glare of motor vehicle lights.
7. Minimize temperatures increases on lands with natural and planted tree cover.
8. Help to maintain moisture levels in the air of lands with natural tree cover.
9. Preserve underground water reservoirs and permit the return of precipitation to the ground water strata.
10. Prevent soil erosion.
11. Provide shade.
12. Minimize the cost of construction and maintenance of drainage systems necessitated by the increased flow and diversion of surface waters by facilitating a natural drainage system and amelioration of storm water drainage problems.
13. Conserve natural resources including adequate clean air and water.

Section 1.4 Liability and Disclaimer

Nothing contained in this section shall be deemed to impose any liability upon the Village, its officers or employees, nor to relieve the owner of any private property from the duty to keep any tree, shrub or plant upon any street area on his property or under his control in such condition as to prevent it from constituting a hazard or an impediment to travel or vision upon any street, road, boulevard, alley, park, amenity ground, common area, conservation easement, or public place within the Village.

Section 1.5 Enforcement and Administrative Responsibilities

The Village's Zoning Administrator, and any other person so designated by the Village Council, shall have the authority to administer and enforce this Ordinance. Such person shall hereafter be referred to as the "Administrator." Minor exceptions to this Ordinance may be granted by the Administrator where, in his/her belief, such exception would not significantly impact or impair the intent of this Ordinance as stated in Section 1.3. Any decision of the Administrator may be appealed to the Marvin Board of Adjustment as provided for in Article 10 of the Marvin Zoning Ordinance.

Before submitting a sketch plan, the owner of any lot/tract that is subject to this ordinance or any major subdivision (as herein defined) shall use the most up-to-date Union County aerial maps and tree survey located in the Marvin Village Hall and have a valid site walk evaluation with a member of the planning board, Administrator and the developer/owner to assist in the layout and planning of roads and the development of building sites to preserve existing trees in their natural state.

The Village shall hire an independent certified arborist to evaluate and ensure that the provisions of this ordinance have been met and implemented, as presented and approved in any site plan or subdivision application. The cost of the arborist's evaluation shall be done at the developer's/builder's expense

which shall be considered part of the related expenses of the Village's site and subdivision application approval process.

The Village strongly encourages the use of existing canopy and understory trees to meet any of the planting requirements within this ordinance.

All site plans, zoning permit applications, applications for subdivision plat approval or conditional use permit submitted to the Village of Marvin shall comply with this Ordinance. No grading, demolition, trenching land clearing, or other land disturbing activity that is subject to this ordinance, may proceed before approval of such site plan, zoning permit or subdivision plat by the Planning Board or Village Council or Zoning Administrator.

Section 1.6 Penalties

Any person, firm or corporation that violates any of the provisions of this Ordinance shall be subject to:

- A civil penalty five hundred dollars (\$500.00) plus an additional fifty dollars (\$50.00) per day per offense, for each day that the violation continues to exist; and/or
- A planting requirement, provided for under Article 6, which may be assessed in addition to or in lieu of any monetary penalties; and/or
- Such order as a court of competent jurisdiction may issue directing a violator to replace any removed trees with new trees and planted within a specified time.

For purposes of this section, a separate offense shall be deemed to have occurred for each protected or planted tree removed or unplanted tree missing from the approved site plan or subdivision plat shall be considered a separate offense.

Replacement trees shall be in accordance with the mitigation schedule described in Article 6 of this Ordinance.

Where the Administrator has determined that a violation of this Ordinance has occurred, no certificate of occupancy or certificate of compliance shall be issued until required replacement plantings have been completed or the violation otherwise remedied.

Pursuant to North Carolina General Statute Sections 160A-175, the violation of this ordinance shall subject the offender to a civil penalty to be recovered by the Village in a civil action in the nature of debt. If the offender does not pay the penalty, the Village may file a civil action to recover said penalty, if the offender does not pay said penalty within five (5) days after the offender has been cited for violation of this Ordinance.

Pursuant to North Carolina General Statutes 160A-175, 160A-365, and 160A-389, the Village may also seek any appropriate equitable relief issuing from a court of competent jurisdiction that it deems necessary to ensure compliance with the provisions of this Ordinance. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Village for equitable relief that there is an adequate remedy at law.

Pursuant to G.S. 160A-389, if a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance or other regulation made under authority conferred thereby, the Village in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises.

In addition, the Village may enforce this ordinance in accordance to the remedies set out in North Carolina General Statute 160A-175. Hence, pursuant to North Carolina General Statute Section 160A-175, the Village may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises. The action shall be governed in all respects by the laws and rules governing civil proceedings,

including the Rules of Civil Procedure in general and Rule 65 in particular.

The above remedies are cumulative, and the Village may pursue any or all of the same as its direction. Each day that the violation exists shall constitute a separate and distinct offense.

ARTICLE 2

DEFINITIONS

For the purpose of interpreting this Ordinance, terms used are defined herein. Except as defined herein, all other words used in this Ordinance shall have their customary dictionary definition.

Administrator: The person(s) persons appointed by the Village Council to administer this Ordinance.

Agricultural Uses: The production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all or such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral and ornamental products; or lands devoted to a soil conservation or forestry management program. Not included as "agricultural uses" are the keeping of any "non-domesticated animals" shall mean any animals not generally associated with the practice of animal husbandry and which are a threat to humans or are commonly perceived to be a threat to humans. Examples of such animals include great cats, wolves, and bears.

Arborist: An individual trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of native ornamental trees.

Arborist, Certified: A person who is licensed as a professional to perform arboricultural work in North Carolina.

Caliper: A trunk diameter measurement for trees taken six inches above the ground for trees with a diameter of less than four inches.

Commercial Zones: Any non-residential zoning district in the Village of Marvin.

Diameter-at-Breast-Height (dbh): Diameter-at-breast-height is the tree trunk diameter measured in inches at a height of 4.5 feet above the ground.

Deciduous: Those plants or trees that annually lose their leaves.

Drip Line: A vertical line extending from the outermost edge of the tree canopy or tree branch to the ground.

Evergreen: Those trees or plants that retain foliage throughout the year.

Existing Tree Canopy: Tree canopy that has existed for at least two (2) years prior to development as evidenced by Village or County aerial photography and/or satellite imagery.

Grading or Land Disturbing: Any type of activity that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Cutting, clearing, and stumping trees are examples of disturbing activities. Land disturbing activity includes harvesting timber when conducted for any purpose other than tree farming where trees will be replaced with trees.

Ground Cover: A plant or shrub growing less than 2 feet in height at maturity that is grown for ornamental purposes and may be used as an alternative to grasses. On slopes, ground covers are used to control erosion while eliminating the maintenance of mowing on hillsides. Many ground covers survive in poor soils, shade and other adverse conditions.

Heritage Tree: Any tree that is listed in the North Carolina Big Trees List, the American Forest Association's list or any tree that would measure eighty (80) percent of the points of a tree on the most recently adopted version of the "North Carolina Big Trees List".

Homeowner: A tenant or owner of a single-family residence.

Impervious Cover: Buildings, structures and other paved, compacted gravel or compacted areas that do not allow the passage of sufficient oxygen and moisture to support and sustain healthy root growth.

Preservation Area, Internal: A preservation area of existing and planted trees exclusive of exterior perimeter strips, existing and dedicated road rights-of-way and utility easements, and existing ponds and lakes. Internal preservation areas shall contain no less than one tree per twenty-five hundred (2500) square feet (or approximately eighteen (18) per acre).

Land Disturbing: See "Grading or Land Disturbing"

Landscaping: The process or product of site development including grading, installation of plant materials, and seeding of turf or ground cover. This shall also include any live plant material such as trees, shrubs, ground cover, and grass used in spaces void of any impervious material or building structure and areas left in their natural state.

Parking Lot Plantings: Planting areas within or adjacent to parking areas designed to shade and improve the attractiveness of paved areas.

Partially Wooded Site: A tract shall be considered "partially wooded" if the tree canopy covers or has covered from twenty (20) percent to less than forty (40) percent of the total land area within the previous two years.

Paved Area: Any ground surface covered with concrete, asphalt, stone, compacted gravel, brick or other paving materials.

Perimeter Preservation Strip, Exterior: A continuous perimeter strip located along the outer edge of a piece of property and abutting major or minor roads (as defined in the Village of Marvin Zoning Ordinance) that consists of existing or planted trees. Such strip shall not be located within any existing or dedicated road rights-of-way. Any such perimeter preservation strip shall contain no less than one tree per twenty-five hundred (2500) square feet (or approximately eighteen (18) per acre).

Person: A public or private individual, corporation, company, firm, association, trust, estate, commission, board, public or private institution, utility cooperative, or other legal entity.

Planting Strip or Area: A ground surface located outside of any public right-of-way that is free of impervious cover and/or paved material and is reserved for landscaping purposes.

Pruning: The act of removing, or cutting back parts of a tree or shrub.

Renovation: Any construction activity to an existing structure that changes its square footage, footprint or modifies the exterior wall material excluding cosmetic maintenance and repairs.

Root Protection Zone: A ground depth of twenty-four (24) inches within the tree's or group of trees' protection area.

Shrub, Large: An upright plant, growing to more than ten (10) feet in height at maturity that is planted for ornamental or screening purposes.

Shrub, Medium: An upright plant, growing five to ten (5-10) feet in height at maturity that is planted for ornamental or screening purposes.

Shrub, Small: An upright plant, growing to less than five (5) feet in height at maturity that is planted for ornamental purposes.

Sight Triangle: The triangular area formed by a diagonal line connecting two points located on intersecting property lines (or a property line and the curb or a driveway), each point being thirty-five (35) feet from the point of intersection.

Specimen Tree: A tree or group of trees considered to be important community assets due to their unique or noteworthy characteristics or values. A tree may be considered a specimen tree based on its size, age, rarity or special historical or ecological significance as determined by the Village Council, Planning Board, Administrator or authorized Arborist. Examples include large hardwoods (e.g. oaks, poplars, maples, etc.) and softwoods (e.g. pine, spruce, etc.) in good or better condition with a dbh of twenty-four (24) inches or greater, and smaller understory trees (e.g. dogwoods, redbuds, sourwoods, persimmons, etc.) in good or better condition with a dbh of ten (10) inches or greater.

Streetscape Plan: A plan that specifies planting strips, tree species, sidewalk locations, building setbacks and other design aspects for streets within Village of Marvin.

Street Tree: A tree planted along the street behind the right-of-way.

Street Yard: A planting area parallel to a public or private right-of-way designed to provide continuity of vegetation along the right-of-way and to soften the impact of development by providing a pleasing view from the road.

Subdivision, Large Tract: A residential subdivision that is located on a tract that is greater than ten (10) acres in area prior to the subdivision taking place. Any large tract subdivision shall be considered a "major subdivision" per the Marvin Subdivision Ordinance. (NOTE: For purposes of this Ordinance, tract areas that existed at the time of adoption of this definition (**October 19, 2004**) shall be used in determining the area of the tract, irrespective of any subsequent changes to the lot area. Thus, if a tract were fifty (50) acres in area and was subsequently subdivided into five (5) ten (10) acre tracts, each of those ten (10) acre tracts would need to be developed to large tract subdivision standards.)

Subdivision, Major: A subdivision that is characterized by any of the following conditions:

- a. Involves more than four (4) lots on an existing approved street; or,
- b. Involves the construction of a new street or prospectively requiring a new street for access to interior property; or
- c. Requires extension of public sewage or water lines or creation of new drainage easements through lots to serve property at the rear; or
- d. Creates new or residual parcels not conforming to the requirements of these regulations and related ordinance; or,

- e. Any large tract subdivision (as herein defined); or,
- f. Any small tract subdivision (as herein defined) that is built to large tract subdivision specifications.

Subdivision, Small Tract: A residential subdivision that is located on a tract that is ten (10) acres or less in area prior to the subdivision taking place. For purposes of this ordinance, tract areas that existed at the time of adoption of this definition (**October 19, 2004**) shall be used in determining the area of the tract, irrespective of any subsequent changes to the lot area. Thus, if a tract were fifty (50) acres in area and was subsequently subdivided into five (5) ten (10) acre tracts, each of those ten (10) acre tracts would need to be developed to large tract subdivision standards. Tracts that were ten (10) acres or less on (**October 19, 2004**) can either developed as a small tract or large tract subdivision.

Tree: A living woody plant with an erect perennial trunk and a definitely formed crown.

Tree Topping: The removal or cutting back of major portions of a tree by any pruning practice resulting in more than one-third (1/3) of the foliage and limbs being removed. This includes any pruning that leads to the disfigurement of the normal shape of the tree. Topping is also referred to as “heading”, “stubbing”, or “dehorning”.

Tree, Understory: Any tree, growing to more than fifteen (15) feet but less than thirty-five (35) feet in height at maturity. An understory tree suitable for planting shall be two (2) inches or more in caliper and a minimum height of eight (8) feet from the ground surface

Tree, Canopy: Any tree growing to thirty-five (35) feet or more in height at maturity and having a drip line diameter of thirty (30) feet or more at maturity. A canopy shade tree suitable for planting shall be three (3) inches or more in caliper with a minimum height of ten (10) feet from the ground surface.

Tree Protection Area: An area containing an existing tree, or trees, to be preserved or saved during development. The area shall be bounded by a line situated five (5) feet beyond the drip line and a ground depth of twenty-four (24) inches for a single tree, and five (5) feet beyond the perimeter drip line and a ground depth of twenty-four (24) inches for a group of trees.

Viewshed Buffer: That portion of a large or small tract subdivision that is required to be undisturbed [except as otherwise called for in the Marvin Zoning and Subdivision Ordinances] and which has a depth of up to two hundred eighty-five (285) feet as measured back from and parallel to an adjoining major or minor road.

Wooded Site: A tract of land shall be considered “wooded” if the tree canopy covers or has covered forty (40) percent or more of the total land area within the previous two (2) years.

Vines: A woody plant that has a spreading pattern of growth. Vines may be used on the ground, on walls and on trellises.

ARTICLE 3

TREE PRESERVATION STANDARDS

Existing trees shall be preserved and protected whenever feasible. New trees shall be planted to enhance the tree canopy within the Village. Tree(s) growing within exterior perimeter preservation strips and interior preservation areas may not be disturbed unless the tree(s) is identified for removal and mitigation on an approved site plan or subdivision plat. The Administrator, in approving a site plan or zoning permit, or the Village Council (in approving a conditional use permit or Subdivision Plat), may grant exceptions to the standards contained in this Article based on unique circumstances found on the lot/tract in question such as steep topography, property shape, grading requirements, or unavoidable site work or utility installations, provided that compensatory mitigation planting of new trees is provided, as specified in this Ordinance.

A continuous exterior perimeter preservation strip shall be required for tracts to be subdivided and along the exterior boundaries and abutting major or minor roads in all developments and all applicable lots within such development or subdivision. This provision shall not apply to individual lots that are to be developed for single-family residential purposes in existing subdivisions or on other recorded lots that existed prior to the effective date of this ordinance. Interior preservation area(s) of existing and/or planted trees, exclusive of all exterior perimeter preservation strips, existing and dedicated road rights-of-way, utility easements and existing ponds and lakes shall also be required on lands for such uses. Where natural wooded buffers exist within perimeter preservation strips and interior preservation area(s), they are to remain undisturbed, except for permitted greenways, horse trails, bikeways, and other pedestrian pathways. Perimeter preservation strips and interior preservation area(s) shall contain no less than one canopy tree per twenty-five hundred (2500) square feet (or approximately eighteen (18) per acre). Perimeter preservation strips and interior preservation area(s) shall be shown on all applicable zoning permit, site plans and/or subdivision plat applications.

Canopy trees with a caliper of three (3) inches or greater and understory trees with a caliper of two (2) inches or greater shall be preserved and protected within exterior perimeter preservation strips or interior preservation areas and may be removed only as specified within an approved site plan or subdivision plat. All canopy trees twelve (12) inches or larger dbh and all understory trees four (4) inches or larger dbh shall be individually identified, as part of the site plan or subdivision plat application, for preservation and protection or removal and mitigation, as specified in Articles 4, 5 and 6.

Existing heritage and specimen trees, as herein defined, including canopy trees twenty-four (24) inches or larger dbh and understory trees ten inches or larger dbh, shall be preserved, unless a permit authorized elsewhere under this Ordinance, has been issued by the Village. If a heritage or specimen tree is removed without a permit, the property owner and/or the person who removed the tree shall be considered as having violated this Ordinance.

All zoning permits, site plans and subdivision plat applications shall, where applicable, include the following information:

- Proposed tree protection measures for trees to be preserved or planted as called for in Article 5;
- A tree planting mitigation schedule for all trees proposed for removal. Mitigation tree planting, as may be required in Article 6, within the perimeter preservation strips and interior preservation area(s) shall be undertaken until a density of one canopy or understory tree per five hundred (500) square feet (ninety (90) per acre) is achieved in both areas. Any remaining mitigation plantings may take place elsewhere on the property.

No grading, demolition, trenching, land clearing, or other land disturbing activity which may adversely affect trees on property being considered for development may proceed prior to site plan or subdivision plat approval. Existing topsoil may not be removed or covered with other soil in approved exterior perimeter preservation strips and interior preservation areas except within existing and

dedicated road rights-of-way and utility easements. The Administrator may grant limited exceptions for site evaluation and survey purposes.

The minimum pervious planting area per canopy tree shall be two hundred seventy-four (274) square feet and two hundred (200) square feet for an understory tree. No impervious surface may be within four (4) feet of the center of a canopy tree or three (3) feet of the center of an understory tree. All berms and perimeter preservation strips, interior preservation areas, and common landscape areas where the top six or more inches of top soil have been removed or covered with other soil shall contain an amended on-site soil or soil mix to a depth of eighteen (18) inches.

New and replacement canopy trees shall be a minimum of three (3) inches caliper and have a minimum height of ten feet from the ground surface at the time of planting. New and replacement understory trees shall be a minimum two (2) inch caliper and have a minimum height of eight feet from the ground surface at the time of planting. Replacement of existing trees must comply with the tree planting mitigation schedule in Article 6. Should any tree(s), designated for preservation or planting on an approved site or subdivision plat, die at any time (or be removed without an approved tree removal permit) after final plat approval or issuance of a Certificate of Occupancy, the owner of the lot upon which such tree is located shall replace that tree(s) in accordance with the tree mitigation schedule within one hundred eighty (180) days.

Section 3.1 Office, Business, Commercial Corridor, and Light Industrial Uses

Exterior Perimeter Preservation Strips and Interior Preservation Areas

A continuous exterior perimeter preservation strip (not located within existing or dedicated road rights-of-way) consisting of existing and/or planted trees shall be required. Perimeter preservation strips abutting major or minor roads shall have a minimum width of one hundred (100) feet or the width of the viewshed buffer, whichever is less. Perimeter preservation strips abutting residentially zoned property shall be a minimum of one hundred (100) feet in depth. All other exterior perimeter preservation strips shall be a minimum of twenty-five (25) feet in depth.

On any wooded site having an area of ten (10) acres or more, where forty (40) percent or more of the site is wooded, or was wooded at any time within the previous two years, a preservation area(s) of existing and/or planted trees representing at least ten (10) percent of the total site area shall be preserved. Such interior preservation area(s) shall be exclusive of exterior perimeter preservation strips, existing and dedicated road rights-of-way and utility easements, and existing ponds and lakes. Furthermore, any such interior preservation area shall be a minimum of one acre in size.

On any partially wooded site, ten (10) acres or more, where less than forty (40) percent of the site is wooded, a preservation area(s) of existing and/or planted trees representing at least five (5) percent of the total site area shall be preserved. Such interior preservation area(s) shall be exclusive of exterior perimeter preservation strips, existing and dedicated road rights-of-way and utility easements, and existing ponds and lakes. Furthermore, any such interior preservation area shall be a minimum of one-half (1/2) acre in size.

The developer/builder shall designate their recommended locations for perimeter preservation strips, interior preservation areas, new tree planting, trees to be removed under Article 4, tree protection measures under Article 5 and mitigation tree planting under Article 6 on zoning permit, site plan, or subdivision plat (and, where applicable, conditional use permit) applications.

Street Tree Requirements:

There shall be one existing or planted canopy tree for every forty (40) feet of street frontage (i.e., public roads and private roads that are accessible and designed to be used by the general public) or fraction thereof.

Parking Tree Requirements:

No parking space may be more than fifty (50) feet from the center of an existing or planted canopy tree.

General Tree Requirements:

No trees except understory trees shall be planted where overhead power distribution lines would interfere with normal tree growth. (This shall normally be construed to be within twenty-five (25) feet of overhead power distribution lines or within the local utility right-of-way for overhead transmission lines.) When understory trees are substituted for canopy trees, there shall be one existing or planted understory tree for every thirty (30) feet of street frontage or fraction thereof and no parking space may be more than forty (40) feet from the center of an existing or planted understory tree unless that parking space is within fifty (50) feet of the center of an existing or planted canopy tree.

Such understory or canopy trees that abut major or minor roads shall be located in the required perimeter preservation strip.

Section 3.2 Large and Small Tract Subdivisions

This section shall apply to new single-family subdivisions only and not to individual lots of record. Notwithstanding the language of this section, small tract subdivisions are exempted from the interior preservation area requirements shown below. Furthermore, small tract subdivisions on tracts of land less than five acres in size (prior to subdivision taking place) are exempted from the continuous exterior perimeter preservation strip requirement shown below.

Exterior Perimeter Preservation Strips

A continuous exterior perimeter preservation strip (not located within an existing or dedicated road right-of-way) consisting of existing and/or planted trees shall be required. Exterior perimeter preservation strips abutting major or minor roads shall have a minimum width of one hundred (100) feet or the depth of the viewshed buffer, whichever is less. Perimeter preservation strips abutting Office, Business, Commercial Corridor, and Light Industrial zoned property shall be a minimum of fifty (50) feet in depth. All other perimeter preservation strips shall be a minimum of twenty-five (25) feet in depth.

Interior Preservation Areas

On any wooded site that is ten (10) acres or greater in area where forty (40) percent or more of the site is wooded, or was wooded at any time within the previous two (2) years, a preservation area(s) of existing and/or planted trees representing at least ten (10) percent of the total site area shall be preserved. Such interior preservation area(s) shall be exclusive of exterior perimeter preservation strips, existing and dedicated road rights-of-way and utility easements, and existing ponds and lakes. Furthermore, any such interior preservation area shall be a minimum of one acre in size.

On any partially wooded site that is ten (10) acres or greater in area, where less than forty (40) percent of the site is wooded, a preservation area(s) of existing and/or planted trees representing at least five (5) percent of the total site area shall be preserved. Such interior preservation area(s) shall be exclusive of exterior perimeter preservation strips, existing and dedicated road rights-of-way and utility easements, and existing ponds and lakes. Furthermore, any such interior preservation area shall be a minimum of one-half (1/2) acre in size.

Perimeter preservation strips and interior preservation areas may be located within common open space or within deeded lot areas with a permanent preservation easement recorded on such lots. The

subdivider shall designate their recommended locations for perimeter preservation strips, interior preservation areas, new tree planting, trees to be removed under Article 4, tree protection measures under Article 5 and mitigation tree planting under Article 6 on all zoning permits, site plans, and subdivision plat applications (and, where applicable, conditional use permits.)

Street Trees

Each lot created after the effective date of this ordinance shall contain one existing or planted canopy tree for every forty (40) feet of street frontage or fraction thereof. Alternatively, such canopy trees can be placed at forty (40) foot intervals along a street front, irrespective of lot line locations. No trees except understory trees shall be planted where overhead power distribution lines would interfere with normal growth. (Normally within twenty-five (25) feet of overhead power distribution lines or within the local utility R.O.W. for overhead transmission lines.) When understory trees are planted, there shall be one understory tree for every thirty (30) feet of street frontage or fraction thereof. Street trees shall be a minimum of four (4) feet and a maximum of twelve (12) feet from the edge of right of way on private property.

Interior Lot Trees

In order to maintain or replenish the Village tree canopy in new residential subdivisions, each lot less than one acre in area shall have a minimum of four (4) canopy trees. Each lot that is one acre or more in area shall have a minimum of six (6) canopy trees. At least two (2) trees shall be located within the front yard and back yard of each lot. Required street trees may be counted towards the fulfillment of this requirement. Existing canopy trees six (6) inches or larger dbh may be counted towards fulfilling this requirement. All canopy shade trees planted within the lot must be spaced at a width sufficient to accommodate mature growth.

New tree planting for each single-family lot shall be done on a lot-by-lot basis, prior to the issuance of a certificate of occupancy for each lot.

ARTICLE 4 PERMITS

Section 4.1 Tree Topping Permit

Tree topping along public rights-of-way is encouraged but shall be prohibited on any public land, right-of-way or easement (or such lands owned by a public utility) except by duly authorized personnel of such public entity or utility. Such personnel shall not be required to receive a permit or authorization from the Village to conduct such authorized tree topping.

A permit issued by the Village shall be required for tree topping activities that otherwise involve any of the following trees located on private property:

- Canopy Trees twelve (12) inches or larger dbh and understory trees four (4) inches or larger dbh.
- Any tree located within an exterior tree preservation strip.
- Any tree located within a tree preservation area.

Section 4.2 Tree Removal Permit

A tree removal permit will be required before removing:

1. Canopy Trees twelve (12) inches or larger dbh and understory trees four (4) inches or larger dbh excluding individual owned residentially zoned lots of record that existed at the time of adoption of this ordinance that are less than five (5) acres in area or any non-subdividable lot.
2. Trees growing on a slope greater than twenty-five (25) percent.
3. Any threatened or endangered species of tree as defined by the North Carolina State Department of Environmental Conservation or Heritage or Specimen trees, as defined by the Village, regardless of size.

Exceptions: Trees may be removed as may be necessary to maintain Village, county, state or utility rights-of-way, or to control forest fires. Trees that are dead, dying or about to fall may be removed without a permit. If the tree is a required or mitigation tree, it will require replacement based on the tree planting mitigation schedule.

Standards for the granting of tree removal permits.

The granting of a tree removal permit by the Administrator shall be based on the following criteria:

1. The physical condition of the tree.
2. The proximity of trees to existing or proposed improvements if located:
 - a. Within fifteen (15) feet of a foundation wall.
 - b. Within three (3) feet of a sidewalk or driveway.
 - c. Within ten (10) feet of a cesspool, dry well, septic tank or other subsurface improvement.
 - d. Within five (5) feet of a roadway.
3. The effect of the removal on the ecological systems, including the erosion potential of the property.

4. The effect on the area of removal as determined by accepted tree management practices as recommended by an arborist.
5. The impact of the removal on the value of property and aesthetics of the adjoining properties.
6. The effect of the removal on the solar access of existing or proposed structures on the property.
7. The impact of the tree removal on the public health, welfare and safety.

Approved site plans or subdivision plats showing trees to be removed, tree planting mitigation, trees to be preserved, and tree protection measures shall be deemed a tree removal permit for the removal of trees so designated. No other permit for such tree removal shall be required.

The Administrator, Planning Board, and/or Village Council in connection with zoning permit, site plan or subdivision application, or conditional use permit approval, may require the planting of additional trees to replace trees removed from the affected property associated with the development under consideration, and/or may require moving or relocating existing structures in order to preserve specimen trees.

Section 4.3 Permit applications

The applicant shall file three (3) copies of the tree removal permit application with the Administrator. The Village reserves the right to verify the accuracy of all information included within the application. The costs associated with such verification shall be borne by the applicant. It is strongly recommended that the applicant use the services of an engineer, landscape architect, arborist or certified arborist in preparing the permit application.

Unless otherwise waived by the Administrator, a site walk of the property shall be required prior to permit approval. The Administrator may ask that members of the Planning Board and/or Village Council be part of said site walk. The applicant, or his authorized agent, shall accompany Village officials on the site walk. The application shall include the following information:

- Name and address of the applicant
- Address and Town Tax Map designation of the property on which the tree(s) is/are located
- Total land area involved in cutting operations
- The number of trees to be removed
- The purpose of the tree removal

For a subdivision plat, the applicant shall also provide the following additional information:

- Location, size, and species of all existing canopy trees twelve (12) inches or larger dbh and understory trees four (4) inches or larger dbh.
- Identify the location of proposed exterior perimeter preservation strips and interior preservation areas.
- Existing tree locations shown on tree removal application plans shall be accurate to within two (2) feet of actual location.
- Existing tree information listed above shall be shown on site plans and subdivision plats that are submitted for approval.
- Where neither a site plan or subdivision plat is involved, the existing tree survey information listed above shall be provided as an independent drawing.

Notwithstanding the above, individual landowners who are removing less than five trees (5) that otherwise would require a tree removal permit may substitute a general drawing showing the approximate location and the size (dbh) and species of the trees to be removed in lieu of all of the Tree

Survey Requirements listed above. The Administrator may waive the required site walk prior to such trees being removed.

The Administrator may waive the Tree Survey Requirements for five (5) or more trees for individual landowners, but not the substitution of a general drawing showing the approximate location and the size (dbh) and species of the trees to be removed and the required site walk prior to five or more trees being removed.

Section 4.4 Conditions for Granting Permit

The Administrator and/or the Village Council may, as a condition of granting a permit:

1. Require the reasonable relocation of proposed foundation walls, driveways, surface and subsurface improvements or drainage systems to preserve heritage and specimen trees.
2. Require a performance bond to insure compliance with this chapter (The Village Council shall only have the authority to allow this).
3. Require that each tree to be cut or removed to be marked at two (2) points, one (1) low enough on the stump to be visible after removal of the tree.
4. Require such safeguards as appropriate to minimize the environmental impact of such removal operations.

ARTICLE 5

TREE PROTECTION

Section 5.1 Site Plans and Subdivision Plats

Proposed tree protection measures shall be shown on the zoning permit, site plan conditional use permit, and/or subdivision plats that are submitted for approval. Notwithstanding, individual owned residentially zoned lots of record that existed at the time of adoption of this ordinance that are less than five (5) acres in area or any non- subdividable lot shall not be subject to this Article.

These measures shall include, but not be limited to, the following:

1. Tree Landscape Plan

The tree landscape plan must show that there will be no grading or land disturbing in the Root Protection Zone. Land disturbing is also considered trenching, placing backfill in the Root Protection Zone, driving or parking equipment in the Root Protection Zone, and dumping of materials detrimental to plant health in close proximity of the tree(s).

2. Tree Landscape Protection

Tree protection fencing shall be located around the perimeter of tree protection areas. Fencing in or around an existing tree canopy to be preserved/saved shall contain an area bounded by a line situated five (5) feet beyond the drip line, for a single tree, and five (5) feet beyond the perimeter drip line for a group of trees. The protection fencing shall consist of colored mesh fabric fencing material, three feet minimum height, with posts eight feet or less on center.

Section 5.2 Tree Protection Measures.

No soil disturbance, filling, compacting, or material storage shall occur within tree protection areas.

The applicant shall install tree protection measures, including tree protection fencing, and contact the Administrator for inspection and approval. Clearing or grading shall not commence on the site until tree protection measures have been inspected and approved by the Administrator.

In association with the approval of any permit herein required or any site plan or subdivision plat, the Zoning Administrator and/or Village Council may require additional tree preservation measures above and beyond those listed herein that are deemed to support the tree preservation objectives of this Ordinance.

ARTICLE 6
TREE PLANTING MITIGATION

Where removal of existing trees is approved as part of an approved site plan, subdivision plat or tree removal permit, new trees shall be planted in the general vicinity of the trees removed, in accordance with the following schedule:

TREE REMOVED	REPLACEMENT CANOPY TREE	REPLACEMENT UNDERSTORY TREE
3" caliper to less than 18" dbh tree	One (1) 3" caliper tree	One (1) 2" caliper tree
18-24 inch dbh tree	Two (2) 4" dbh trees or one (1) 6" dbh tree	
24"+ dbh tree	Two (2) 6" dbh trees or one (1) 8" dbh tree	

Where removal of existing trees occurs within proposed or approved exterior perimeter preservation strips or interior preservation areas without a permit, new replacement trees shall be installed at twice the specified replacement size as shown in the schedule above, in addition to other penalties that may be imposed.

Proposed mitigation tree planting shall be shown on a site plan, indicating the proposed location, size, and species of mitigation trees. Mitigation tree planting, as may be required herein, within the perimeter preservation strips and interior preservation area(s) shall be undertaken until a density of one (1) canopy or understory tree per five hundred (500) square feet (ninety (90) per acre) is achieved in both areas. Any remaining mitigation plantings may take place elsewhere on the property.

Mitigation trees shall be installed prior to approval of any final plat or certificate of occupancy.

New tree planting for each single-family lot shall be done on a lot-by-lot basis, prior to the issuance of a certificate of occupancy for each lot. The minimum caliper for canopy shade trees is three (3) inches and a minimum height of ten (10) feet from the ground surface at the time of planting. The minimum caliper for an understory tree shall be two (2) inches and a minimum eight (8) feet from the ground surface at the time of planting. Existing canopy shade trees six to eight (6-8) inches dbh and understory trees two to three (2-3) inches dbh (outside exterior perimeter preservation strips and interior preservation areas) may be used to meet these planting requirements.

ARTICLE 7
TREE MAINTENANCE, PLANTING AND REPLACEMENT REQUIREMENTS

All new trees planted shall be selected from the Suggested Species List, which is provided as Appendix 1 and 2, provided that additional species may be used subject to specific approval of the Administrator. All trees must comply with the “American Standard for Nursery Stock” published by the American Association of Nurserymen.

All plant material shall be free from disease when planted and shall be maintained in a healthy condition. All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth. All trees shall be properly guyed and staked at the time of planting. All plant materials shall be planted in a manner, which is not intrusive to utilities or pavement.

The plantings that constitute a landscaped area must be properly maintained in order for the landscaped area to fulfill the purposes for which it is established. The owner of the property and/or any tenant on the property where a landscaped area is required shall be jointly and severally responsible for the maintenance of all plant material located within the landscaped area. Such maintenance shall include all actions necessary to keep the landscaped areas free of liter and debris and to keep plantings healthy and orderly in appearance.

When existing and planted trees used to comply with this Ordinance die or are removed for any reason during the development of the property or within twelve months of planting, they must be replaced during the next suitable planting season in a manner, quantity, size and installation period approved by the Administrator. If the developer, builder or property owner fails to replace the trees within three (3) months (or a greater time period approved by the Administrator), the developer, builder or property owner shall be considered in violation of this Ordinance.

Existing and proposed trees used to comply with this Ordinance shall not be sheared, topped, or disfigured by improper pruning. Trees shall be allowed to grow to their natural height and form.

ARTICLE 8
FEEES

A fee, in accordance with the most recent Fee Schedule adopted by the Village Council, the Fee Schedule (except when the applicant is the Village) shall accompany a tree removal permit application. Said fee shall be waived for any application initiated by the Village of Marvin.

ARTICLE 9
INSPECTIONS AND INVESTIGATIONS OF SITES

Agents, officials or other qualified persons authorized by the Village are authorized to inspect the sites subject to the provisions of this Ordinance to determine compliance with this Ordinance or rules or orders adopted or issued pursuant to this Ordinance.

No person shall refuse entry or access to any authorized representative or agent of the Village who requests entry for the purpose of inspection, nor shall any person resist, delay, obstruct or interfere with such authorized representative while in the process of carrying out official duties.

If, through inspection, it is determined that a property owner or person in control of the land has failed to comply or is no longer in compliance with the provisions of this Ordinance or orders issued pursuant to this Ordinance, the Village will serve a written notice of violation. The notice may be served by any means authorized under N.C.G.S. 1A-1, Rule 4, or any other means reasonably calculated to give actual notice, such as facsimile or hand delivery. A notice of violation shall identify the nature of the violation, and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall inform the person that a civil penalty will be assessed immediately or specify a date by which the person must comply with this Ordinance. The notice shall advise that failure to correct the violation within the time specified would subject that person to the civil penalties to be recovered by the Village in a civil action in the nature of a debt.

The Village shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and may enter, at reasonable times, upon any property, public or private, for the purpose of investigating and inspecting the sites subject to the provisions of this Ordinance.

ARTICLE 10
APPEALS

Any applicant aggrieved or affected by the determination of the Administrator shall have the right, within ten (10) days from the date of action by the Administrator, to appeal to the Board of Adjustment and shall state the reason for the appeal. Such appeal process shall be similar in nature and scope to the process stated in Section 11.2 of the Marvin Zoning Ordinance, as amended.

ARTICLE 11
SEVERABILITY

Should any paragraph, section or portion thereof of this chapter be declared by a court of competent jurisdiction to be invalid or unlawful, the same shall not affect the remainder of this Article as a whole or any part thereof other than the part so declared to be invalid.

This Ordinance shall take effect and be enforced as of the date of adoption.

**THIS ORDINANCE IS HEREBY ADOPTED BY THE VILLAGE COUNCIL
OF THE VILLAGE OF MARVIN ON THIS 19TH DAY OF OCTOBER, 2004.**

Gordon J. Suhré, Mayor

Attest:

Melody A. Graham, Village Clerk

Amended – 10/11/05 Article 3

Amended – 2/14/06 All references to “Preliminary Plats” changed to “Sketch Plans”

Amended 2/9/2010 – Article 4, Section 4.2

APPENDIX 1 CANOPY TREES	Growth Rate*	Maximum Height	COMMENTS:
COMMON NAME, LATIN NAME			
DECIDUOUS			
Ash, Green <i>Fraxinus pennsylvanica</i>	F	50-80'	Do not plant in heavy clay soil; use named varieties
Ash, White, <i>Fraxinus americana</i>	M	50-80'	Do not plant in heavy clay soil.
Bald-cypress, <i>Taxodium disticum</i>	M	50-80'	Produces small leaves that do not need raking.
Birch, River, <i>Betula nigra</i>	F	40-70'	Subject to draught problems; may be multistem; good var. 'Heritage'
Elm, Lacebark, <i>Ulmus pervifolia</i>	M	40-50'	Resistant to Dutch Elm Disease.
Ginkgo, <i>Ginkgo biloba</i>	S	50-80'	Plant grafted male only; pest free; tolerates pollution.
Hackberry, <i>Celtis occidentalis</i>	F	40-60'	Witches broom can develop.
Maple, Red, <i>Acer rubrum</i>	F	40-60'	Can clog sewer lines; some shallow roots; use named varieties.
Maple, Sugar, <i>Acer saccharum</i>	M	50-75'	Best fall colors; good soils preferred; some shallow roots.
Oak, Laurel, <i>Quercus laurifolia</i>	M-F	50-80'	Semi evergreen leaves; use var. 'Darlington'.
Oak, Northern Red, <i>Quercus rubra</i>	M-F	60-80'	
Oak, Sawtooth, <i>Quercus acutissima</i>	M-F	35-70'	Holds leaves in winter, drops lots of nuts; toughest of the oaks.
Oak, Shumard, <i>Quercus shumardii</i>	M-F	40-80'	Good dark red fall color.
Oak, Southern Red, <i>Quercus falcate</i>	M-F	70-80'	
Oak, White, <i>Quercus alba</i>	S	70-80'	May hold leaves; very long lives:
Oak, Willow, <i>Quercys phellos</i>	F	70-80'	Majestic tree; most common tree in Charlotte.
Pagoda Tree, Japanese, <i>Sophora japonica</i> 'Regent'	F	40-75'	May develop cankers, which can girdle limbs.
Planetree, London, <i>Platanus aceifolia</i>	F	60-100'	Withstands harsh city conditions.
Sweetgum <i>Liquidambar styraciflua</i>	S-M	60-75'	Fruit is not a litter problem in var. 'roundiloba'.
Tulip-Poplar, <i>Liriodendron tulpifera</i>	F	60-90'	Flowers best observed close up; needs lots of space: good soils preferred.
Zelkova, Japanese. <i>Zelkova serrata</i>	F	50-80'	Resistant to Dutch Elm Disease.

EVERGREEN			
Cedar, Deodar, Cedrus deodara	M-F	40-70'	Subject to winter injury up to age 15 years.
Cypress, Leyland, Cupressocyparis leylandii	F	60-70'	Maintains good shape; excellent screening.
Hemlock, Canadian, Tsuga canadensis	M	40-70'	Plant in partial shade and good soils:
Magnolia, Southern, Magnolia grandiflora	M-F	50-80'	Drops large leaves in spring and summer.
Oak, Live, Quercus virginiana	S	40-80'	
Pine, Austrian, Pinus-Nigra	M	50-60'	Tolerates city conditions.
Pine, Loblolly Pinus taeda	F	40-60'	Susceptible to pine beetles: If not kept healthy
Pine, Virginia, Pinus virginiana	M	15-40'	Susceptible to pine beetles: If not kept healthy
Spruce, Norway, Picea abies	M-F	40-60'	

NOTES AND LEGEND:

1. Where cultivars or varieties are listed, only that type should be used for tree ordinance compliance
2. F: Fast Rate of Growth; M: Medium Rate of Growth; S: Slow Rate of Growth

APPENDIX 2 UNDERSTORY TREES	Growth Rate	Maximum Height	COMMENTS:
COMMON NAME, LATIN NAME			
FLOWERING			
Cherry, Kwanzan Prunus Serrulata 'kwanzen'	S	20-25'	Good soils preferred.
Cherry, Yoshino Prunus yedoensis	M	20-25'	Good soils preferred.
Crabapple Malus spp.	M-F	15-25'	Best varieties; 'Centunon', 'Snowdrift', 'Zumi'
Crape myrtle Lagerstroemia indica	M	15-45'	Must be maintained in tree form; Best Variety 'Natchez'.
Dogwood, Flowering Cornus florida	M-F	20-25'	Needs partial shade, good soils preferred.
Dogwood, Kousa Comus kousa	S-M	15-30'	More hardy than Flowering Dogwood.
Hawthorne Crataegus viridis 'Winter King'	S-M	20-35'	Attractive fruit.
Hawthorne, Washington Crataegus phaenopyrum	S-M	25-30'	Attractive fruit.
Magnolia, Saucer Magnolia sculangeana	M	20-30'	
Pear, Aristocrat Pyrus calleryana 'Aristocrat'	F	30-40'	Very tolerant; best limb structure.
Pear, Capital Pyrus calleryana 'Capital'	F	30-40'	Very tolerant; most columnar.
Pear, Redspire Pyrus calleryana 'Redspire'	F	30-40'	Very tolerant; more narrow than 'Bradford'.
Plum Purpleleaf Prunus cerasifera 'Pissardii'	M-F	15-30'	Remains purple; produces fruit.
Redbud, Eastern Cercis canadensis	M	20-30'	Does well in full sun.
NON-FLOWERING			
Cherry-Laurel, Carolina Prunus caroliniana	M	20-30'	Good soils preferred.
Holly, Foster #2 Llex x attenuats 'Foster'	M-F	15-25'	Multiple uses.
Holly, Savannah Llex x attenuate 'Savannah'	F	20-30'	Multiple uses.
Hombean, American Carpinus caroliniana	S	20-30'	Pest free, tolerates city conditions.
Hornbeam, European Carpinus betulus	S	40-60'	Pest free; tolerates city conditions.
Maple, Hedge Acer campestre	S	15-35'	
Maple, Japanese Acer palmatum	S	15-25'	
Myrtle, Wax Myrica cerifera	S-M	10-15'	

NOTES AND LEGEND:

1. Where cultivars or varieties are listed, only that type should be used for tree ordinance compliance.
2. F: Fast Rate of Growth; M: Medium Rate of Growth; S: Slow Rate of Growth