

Official Zoning Code Interpretation



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Requested Interpretation		Case Number
<p>UDO 9.1.2. states the applicability of Article 9.1 Tree Conservation is for both subdivisions and site plans over 2 acres. Further, 9.1.2.A.2. states that “Any eligible tree conservation priority in conflict with a build-to requirement is not required to be protected.” In most cases the build-to requirement is determined at the site plan level since the build-to is a Base Dimensional Standard of building type. However, in the case of a subdivision, there is only a build-to requirement if the zoning includes a Frontage designation as defined in Article 3.4. Given the applicability of Article 9.1, does 9.1.2.A.2. apply to a subdivision with build-to required by zoning conditions or frontages such as PL, GR, UL, UG, or SH?</p>		<p>UI-12-2017 TCA, Frontages and Subdivision Design</p>
<p>Site Address/PIN: Generic (City-Wide)</p>		
<p>Date Submitted: 8/10/17</p>	<p>Date Issued: 8-15-2017</p>	<p>Code Sections 9.1.2.A.2</p>

STAFF ANALYSIS

The question seems to be centered on how 9.1.2.A.2 applies in designing subdivisions for parcels over 2 acres in size. This section states, “Any eligible Tree Conservation (TC) priority in conflict with a build to requirement is **NOT** *{my emphasis}* required to be protected.” However at time of subdivision, build-to is not taken in consideration since there is no building(s). Without a known building type, it is impossible to know which if any build-to requirement would apply/be enforced. The UDO requires that TC be recorded prior to recordation of the lots. At that point there is no building proposed and as such there is no build-to requirement. As a result the TC would “trump” the build-to requirement.

In a case where the TC is recorded and the lot(s) are then rezoned to a parking limited frontage the TC would still be applicable and override the build-to requirement (since there still are not any buildings on the site). If the site was originally zoned as a parking limited then the TC would be negated and no TC will be recorded and only the buffer rules will apply to the site.

If the site has a primary TC recordation with a parkway frontage at time of subdivision, then entire eligible parkway frontage should be recorded at time of subdivision. However, the final location of driveways won’t be determined until each of the lot(s) comes in for site review and the parkway requirements should be recorded as TC where eligible. Driveways and sidewalks may cross the TC areas as specified by the Parkway Frontage regulations. The TC may be adjusted as appropriate at time of each lot develops based on existing conditions and regulations.

STAFF INTERPRETATION

Therefore, TC overrides the build-to requirement provided that the TC was recorded prior to the recordation of the lots within the subdivision. However, if the property is rezoned to a frontage without a TC recordation then only buffer rules are applicable. Finally if the site has primary TC with a parkway frontage then the entire frontage needs to be recorded at time of subdivision.

SIGNATORY

Gary D. Mitchell Planning & Zoning Administrator