

SECOND SUBSTITUTE ORDINANCE NO. BL2022-1121

An ordinance to amend Title 17 of the Metropolitan Code of Laws, the Zoning Ordinance of the Metropolitan Government of Nashville and Davidson County, to amend Chapters 17.12, 17.24, 17.28, 17.36, and 17.40 pertaining to the cluster lot option, all of which is described herein (Proposal No. 2022Z-004TX-001).

WHEREAS, Metro Nashville and Davidson County is characterized by rolling hills, steep bluffs, valleys, floodplains, forests, and numerous rivers and streams; and

WHEREAS, NashvilleNext, Metro's General Plan adopted in 2015, identifies such natural areas as important community assets that provide benefits including enhancing air and water quality, moderating temperature, providing wildlife habitat, and better quality of life for residents; and

WHEREAS, NashvilleNext identifies the importance of sensitive development techniques to minimize hazards associated with development in natural areas and to balance preservation and development to create resiliency; and

WHEREAS, allowing for flexibility in development patterns within existing zoning allowances can help to achieve goals to balance development with protection and conservation of sensitive natural areas; and

WHEREAS, updating the standards of the zoning code pertaining to the cluster lot option will help ensure that flexibility of lot size and development pattern are appropriately balanced and linked with the quantity and quality of natural area conservation achieved by the proposed development.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Chapter 17.12 of the Metropolitan Code is hereby amended by deleting section 17.12.090 Cluster Lot Option in its entirety and replacing it with the following:

17.12.090 - Conservation Development

- A. Purpose and Intent. Conservation development is a set of standards that shall be utilized in the design of subdivisions as provided in this section. The purpose of these standards is to:
 - 1. Preserve unique or sensitive natural resources such as steep slopes; hillsides; streams, wetlands, floodways, and floodplains; problem soils; archaeological resources; and native forests or unique vegetation through the creation of natural open space.
 - 2. Encourage the creation of lots on less environmentally sensitive areas of the site.
 - 3. Provide flexibility in design of subdivisions within existing zoning districts to promote environmental resource protection.
- B. Applicability. Subdivisions proposed in the R/R-A and RS/RS-A zoning districts that meet both of the following standards shall utilize the provisions of this section.
 - 1. Minimum Site Area. The minimum site area of no less than ten (10) times the minimum lot area for the base zoning district as established by Table 17.12.020A. For example, in the R10 district the minimum area for the

subdivision would be one hundred thousand square feet. (Ten thousand square feet minimum lot size times ten).

2. Minimum Natural Area. A minimum of ten percent of the site contains any, or a combination of, the following:
 - a. Areas shown on FEMA maps as part of the 100 year floodplain or identified in local studies as confirmed by Metro Stormwater;
 - b. All perennial and intermittent streams, floodways, and associated buffers, as determined by Metro Stormwater or the State;
 - c. Areas of natural slopes of 20% or greater of at least 10,000 square foot contiguous area;
 - d. Areas containing problem soils as established by Section 17.28.050; Wetlands, as determined by Metro Stormwater;
 - e. Known habitat for federally or state listed or proposed rare, threatened, or endangered species;
 - f. Areas containing a protected Cedar Glade plant species as established by Section 17.28.060;
 - g. Archaeological or historic sites, cemeteries, and burial grounds; or
 - h. Protected, heritage and historic and specimen trees, as defined by Section 17.40.450 of the Metro Zoning Code.
- C. Maximum Lot Yield. The determination of the maximum lot yield shall be based on assigning 20% of the gross acreage of the site to open space and infrastructure. The remaining 80% of the gross acreage shall be divided by the minimum lot size of the base zoning district to determine the maximum yield. Yield shall not be based on the minimum lot size as described in Section D Lot Size Flexibility.
- D. Conservation and Design Flexibility. In order to accomplish the purposes of this section, flexibility in lot sizes may be proposed in exchange for protection of the natural areas present on the site in natural open space according to the following standards:
 1. Conservation Areas
 - a. Subdivisions subject to the Rural Character Subdivision Regulations shall follow the procedures of those regulations for identification and protection of Primary Conservation Lands in ~~common~~ natural open space. In no case shall the standards of this section be construed to lessen the requirements for protection of Primary Conservation Lands as identified in the Rural Character Subdivision Regulations or establish a lower minimum open space threshold for such developments. If less than 20 percent of the site is Primary Conservation Land, then trees, if applicable, as specified in 17.12.090.B.2 shall be included as Natural Area required to be preserved in open space.
 - b. All other subdivisions shall set aside as ~~common~~ natural open space those portions of the site containing natural areas for purposes of conserving those resources according to the following:
 - i. If less than or equal to 20 percent of the site contains these natural areas, then the entire area shall be set aside in ~~common~~ natural open space.
 - ii. If more than 20 percent of the site contains natural areas, then a minimum of 20 percent of the site shall be set aside as natural open space.

The applicant is encouraged, but not required, as part of this chapter, to set aside areas of common open space in excess of 20 percent in exchange for additional design flexibility.

2. Common open space may be provided for other purposes besides protection of natural areas, but such open space shall not contribute to the flexibility of lot sizes afforded by this section.
3. ~~Lot sizes for single-family lots may be reduced in size from the minimum required by the base zoning district by equivalent percentage of the site that is in the natural area protected in common open space or in primary conservation land, if applicable. For example, on a site zoned RS15 with ten percent of the site set aside as natural area, the lots may be reduced in size by ten percent, or to a minimum of 13,500 square feet in area. On a site zoned RS15 with 35 percent set aside as open space protecting natural area, the lots may be reduced in size by 35%, or to a minimum of 9,750 square feet.~~
3. Lot Size Flexibility
 - a. Subdivisions subject to the Rural Character Subdivision Regulations may reduce lots in size from the minimum required by the base zoning district by equivalent percentage of the site that is in the natural area protected in natural open space and such lots shall be reduced in lot area no more than the equivalent minimum lot size of two smaller base zoning districts. For example, a rural character subdivision in a RS20 district with 20 percent natural open space may create lots reduced in size by 20 percent. On a similar RS20 site with 60 percent natural open space, lots may be reduced the equivalent in size to a RS10 district, but no smaller.
 - b. All other subdivisions may reduce lots in size from the minimum required by the base zoning district by equivalent percentage of the site that is in the natural area protected in natural open space. For example, on a site zoned RS15 with ten percent of the site set aside as natural open space, the lots may be reduced in size by ten percent, or to a minimum of 13,500 square feet in area. On a site zoned RS15 with 35 percent of the site set aside as natural open space, the lots may be reduced in size by 35 percent, or to a minimum of 9,750 square feet.
4. In no case shall the minimum lot size be reduced below 3,750 square feet.
5. Lots proposed for duplexes must meet the minimum lot size of the base zoning district (no reduction in area permitted) and shall comply with the standards of 17.16.030.D of this title.
6. Development in hillside and floodplain areas shall follow those standards as set out in Chapter 17.28. If the natural area preservation required in those sections is greater than the area required here, then that chapter shall prevail. In no case shall the required natural area preservation be less than that required in this section.
7. ~~Trees removed pursuant to this section~~ preservation or removal proposed in a conservation development shall follow the standards of Chapter 17.28.065 17.24. If the tree or natural area preservation required in that section is greater than the area required here, then the requirements of that section shall prevail. In no case shall the required natural area preservation be less than that required in this section.
8. The standards for the review of critical lots as provided in the adopted Subdivision Regulations shall apply.
9. The bulk standards and landscaping requirements of a comparable zoning district which most closely resembles the alternative lot sizes proposed for any given phase of development shall be employed for that phase of the subdivision.
10. A standard C landscape buffer yard as per 17.24 Article IV Landscape Buffer Yard Requirements shall be required along the perimeter of the development when perimeter lots are reduced in size from the minimum lot size required by

the base zoning district. If all perimeter lots meet the minimum size of the base zoning, no landscape buffer yard is required.

E. Natural Open Space. Open space provided for the purposes of protecting natural areas and in exchange for flexibility of design, as described above, shall be called natural open space and subject to the standards below. These standards are not applicable to common areas or open spaces that may be provided for other purposes.

1. All natural open space provided in accordance with this section shall be platted with the first phase of development that includes any lots utilizing alternative lot sizes as provided for above and shall be identified on the plat as protected natural open space. Consideration shall be given to the timing of platting of natural open space for large developments that contain natural area located in a portion of the site that may be inaccessible to the first phases of development.
2. Clearing, grading or disturbance of natural open space shall be prohibited, except for essential infrastructure. Roadways and other essential utilities necessary to serve the development may be permitted to cross a natural open space provided that this development minimizes impacts to this area. Preliminary grading and construction plans that demonstrate the limits of disturbance, feasibility of construction and overall impacts to the area at a level of detail beyond that normally required at the concept plan (preliminary plat) phase shall be required prior to approval of a plan incorporating such infrastructure. The portion of the natural open space that must be disturbed to accommodate essential infrastructure shall not contribute toward the required minimum natural open space or flexibility of lot size afforded by the previous section.
3. Protected natural open space shall be located and identified in the field by the applicant prior to the issuance of a tree removal or grading permit to ensure there is no disturbance of these areas during the construction process.
4. Configuration and Access. To the maximum extent practicable given the configuration of natural areas, the open space shall be in a contiguous tract. Consideration should be given to the preservation of natural area that adjoins neighboring areas of open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected open space in an adjacent development. The open space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with pedestrian access to the open space via direct access or an access easement designated on the plat.
5. Permitted Uses of Natural Open Space. The following uses may be located or installed within natural open space without affecting the contribution of those areas to flexibility of lot size afforded by the previous section:
 - a. Conservation of natural resources;
 - b. Paved greenway trails or trailhead facilities identified in the Metropolitan Parks and Greenways Master Plan and located within publicly accessible greenway conservation easements to the benefit of the Metropolitan Greenways Commission or Metro Parks;
 - c. Walking or bicycle trails provided they are constructed of pervious paving materials;
 - d. Passive recreation areas such as picnic shelters, gazebos, or shared docks;
 - e. Required stormwater mitigation measures such as reforestation that do not require grading;
 - f. Other conservation-oriented uses compatible with the purposes of this section.

6. Prohibited Uses of Natural Open Space.

- a. Clearing, grading, disturbance, or tree removal except as specifically authorized in the permitted uses;
- b. Roads, parking lots, impervious surfaces, and infrastructure;
- c. Active recreational or play facilities including but not limited to tennis courts, basketball courts, swimming pools, playgrounds, baseball/softball diamonds or volleyball courts or other facilities that incorporate impervious surface; and
- d. Impoundments, such as retention and detention basins, and other conventional stormwater facilities.

7. Ownership and Management.

- a. Natural Open space within a conservation development shall be owned and maintained by an incorporated association for the mutual benefit of residents or property owners within the development and shall be adequately described on a recorded plat of subdivision approved by the planning commission. All property owners within a conservation subdivision shall be a member of the association which shall be responsible for the assessment of dues to cover the recurring costs of maintaining all natural open space areas. Articles of incorporation and bylaws shall be submitted and approved according to the subdivision regulations.
- b. In limited circumstances where the natural open space is identified on the Greenways Master Plan or within the Parks Master Plan, the developer may offer the open space for dedication to Metro Parks subject to approval and acceptance by Metro Parks Board and Metro Council as appropriate.
- c. Natural Open Space Management Plan. With the concept plan applicants shall submit a plan for the management of the open space and common facilities which allocates responsibility and guidelines for maintenance and operation of the open space and any facilities located within the open space areas. If the open space is restricted via a conservation easement in the favor of a bona fide land trust or other permanently established organization legally able to accept such easements, a stewardship plan or other management plan associated with the conservation easement may be provided in lieu of the open space management plan.
- d. Failure to maintain. When the failure of an association or other responsible party to properly maintain a natural open space results in a public nuisance, the zoning administrator is empowered to initiate appropriate measures to eliminate the nuisance. If public funds are utilized to remove a nuisance and/or maintain ~~common~~ natural open space, those costs shall be assessed proportionally against all property owners within the development in the form of a tax lien. This provision shall not apply to any natural open space that has been dedicated to and accepted by the metropolitan government.

F. Application Requirements.

1. The subdivision concept plan (preliminary plat) shall clearly indicate that a conservation development is proposed and shall be prepared in accordance with the procedures and requirements of the Metro Subdivision Regulations.
2. Concurrent with the submittal of the concept plan, the applicant shall prepare and submit a site analysis map that identifies the natural areas. Documentation of, or determinations regarding the areas from appropriate Metro, State or

Federal agencies or official maps or resources, if applicable, shall also be provided.

3. Preliminary grading and construction plans that demonstrate the limits of disturbance, feasibility of construction and overall impacts to a natural area at a level of detail beyond that normally required at the concept plan (preliminary plat) phase shall be required prior to approval of a conservation plan.

Section 2. That Chapter 17.24 of the Metropolitan Code is hereby amended by deleting subsection 17.24.100.B.3 and replacing it with the following:

3. Compliance with this subsection B. shall be calculated using gross acreage of the property but shall not include the following:
 - a. The portion of the land area currently or proposed to be covered by buildings;
 - b. The fenced area of any athletic field;
 - c. The area of a lake or pond which is covered by water year round; and
 - d. Open areas of golf facilities.
 - e. Natural areas preserved in open space pursuant to 17.12.090 Conservation Development.

Section 3. That Chapter 17.24 of the Metropolitan Code is hereby amended by deleting subsection 17.24.110.D and replacing it with the following:

- D. Fencing of Tree Protection Zone or Natural Area Open Space. Prior to the commencement of construction, the developer shall enclose the entire tree protection zone or natural area open space within a fence or similar barrier as follows:
 1. Chain link fencing at least four feet in height and secured using appropriate posts spaced not more than ten feet apart.
 2. During construction, each tree protection zone shall be identified with a temporary sign or signs to clearly demarcate the extent of the zone. The developer shall maintain the protective barrier during the entire construction process and shall make certain that it is observed by the contractor.

Section 4. That Chapter 17.24 of the Metropolitan Code are hereby amended to modify subsection 17.24.110 to insert the following as subsection 17.24.110.D and re-letter the subsequent subsections:

- D. Development Prohibited within the Natural Areas. All development activities shall be prohibited within any tree protection zone established for a natural area preserved in open space pursuant to Section 17.12.090 Conservation Development.

Section 5. That Chapter 17.28 of the Metropolitan Code is hereby amended by deleting subsection 17.28.030.A.2 and replacing it with the following:

2. Single and/or two-family subdivisions in areas characterized by twenty percent or greater slopes shall employ the conservation development provisions of Section 17.12.090. In general, lots so created shall be grouped on those portions of the site that have natural slopes of less than twenty percent. The planning commission may authorize lots on natural

slopes ranging up to twenty five percent, subject to the special standards and conditions noted above. Large contiguous areas containing natural slopes in excess of twenty-five percent should be recorded as either common or natural open space and permanently maintained in a natural state.

Section 6. That Chapter 17.28 of the Metropolitan Code is hereby amended by deleting subsection 17.28.040.C.2 and replacing it with the following:

2. Grouped lots. A single and/or two-family subdivision proposed on property containing natural floodplain and floodway areas shall employ the conservation development Section 17.12.090 or the Planned Unit Development (PUD) cluster lot option of Section 17.36.070. Residential lots under the conservation development or PUD cluster lot option may be grouped within the manipulated areas of the natural floodplain. Any residential lot, or any portion of a residential lot, containing natural floodplain shall be designated as a "critical lot" and minimum finished floor elevations shall be established on the final plat of subdivision approved by the metropolitan planning commission and the department of water and sewerage services. Protected floodway and floodplain areas shall not be excluded from the calculation of gross land area for purposes of determining lot yield pursuant to Section 17.12.090.

Section 7. That Chapter 17.28 of the Metropolitan Code is hereby amended by deleting Section 17.28.060 and replacing it with the following:

17.28.060 – Protection of Cedar Glade plant communities.

A residential subdivision or multifamily development proposed on land containing a designated Cedar Glade environment shall make all reasonable effort to preserve that environment through the use of conservation development afforded by this title.

Section 8. That Chapter 17.36 of the Metropolitan Code is hereby amended by deleting subsection 17.36.070.A.1 and replacing it with the following:

1. Residential lots within a PUD district may be grouped to a greater extent than allowed by the conservation development provisions of Section 17.12.090 in return for extraordinary protection of environmentally sensitive areas in a natural state. With proper environmental protection, a PUD master development plan may recapture up to one hundred percent of the average density achievable by similarly zoned land with no environmental constraints. The actual achievable density for any given master development plan may be less depending upon the extent of environmentally sensitive areas to be protected and the minimum lot requirements established below.

Section 9. That Chapter 17.36 of the Metropolitan Code is hereby amended by deleting subsection 17.36.070.C.3 and replacing it with the following:

3. Perimeter lots otherwise abutting a conventional R/R-A or RS/RS-A subdivision may be reduced in size the equivalent of one zoning district with the installation of a standard B landscape buffer yard located within common or natural open space, as applicable. Perimeter lots may be reduced in size the equivalent of two zoning districts with the installation of a standard C landscape buffer yard.

Section 10. That Chapter 17.36 of the Metropolitan Code is hereby amended by deleting subsection 17.36.150 and replacing it with the following:

17.36.150 – General provisions

- A. Properties encompassed by a mapped greenway overlay district are encouraged to utilize the conservation development option (Section 17.12.090) or planned unit development (Article II of this chapter) provisions of this title, thereby protecting the functional integrity of the adopted greenway master plan.
- B. In consideration of a subdivision plat utilizing the conservation development ~~authority~~ provisions of Section 17.12.090 or a PUD master development plan containing property within a greenway overlay district, the planning commission shall solicit a recommendation from the metropolitan greenways commission staff regarding the objectives of the adopted greenway plan as they relate to the subject property. The planning commission shall base its approval or disapproval on the extent to which a property owner has taken all reasonable measures to orient development in a manner which protects the value of those areas within the district for incorporation into a greenway system.

Section 11. That Chapter 17.36 of the Metropolitan Code is hereby amended by deleting section 17.36.160 and replacing it with the following:

17.36.160 - Dedication incentives

Development incentives are established by this section to encourage participation in the implementation of a comprehensive greenway network. In return for a development bonus, the landowner shall locate all development outside the overlay district, design and orient all development in a manner which protects the functional and operational integrity of the greenway network and dedicate all areas within the overlay district for public use by conveyance of easements, property title or equivalent means. The following incentives may be applied to properties lying within a mapped greenway overlay district, and are to be considered bonuses granted above and beyond all other incentives established elsewhere in this title.

- A. Residential development in the R/R-A and RS/RS-A districts utilizing the conservation development provisions of Section 17.12.090 or the PUD cluster provisions of Article II of this chapter may utilize the development bonus provisions of Section 17.36.090 for a corresponding amount of land area dedicated for public greenway use. Area dedicated for public greenway use in a PUD or conservation development may count one and one-half times towards satisfying minimum common or natural open space, as applicable to the requirements of Section 17.36.070.B or 17.12.090.
- B. Multifamily development in the RM and mixed-use districts may achieve a twenty-five percent bonus in achievable density derived from that amount of land area dedicated for public greenway use. Area dedicated for public greenway use in a PUD development may count one and one-half times towards satisfying the minimum common open space requirement of Section 17.36.070B; all protected trees within the area of dedication may count one and one-half times in satisfying the tree density requirements of Section 17.24.100.
- C. Nonresidential development may be granted a floor area ratio (FAR) bonus of twenty-five percent for that amount of land area dedicated for public greenway use. All protected trees within the area of greenway dedication may count one and one-half times in satisfying the tree density requirements of Section 17.24.100.

Section 12. That Chapter 17.40 of the Metropolitan Code is hereby amended to modify the list of Sections/Tables in subsection 17.40.340.A as follows:

17.12.090 (conservation development)

Section 13. That Chapter 17.40 of the Metropolitan Code is hereby amended by deleting the introductory paragraph of Section 17.40.380 and replacing it with the following:

Requests for exceptions from the hillside development standards of Chapter 17.28 shall be administered and decided in conformance with the requirements of this article. The board shall have no authority to vary lot areas within platted residential developments utilizing lot area averaging or conservation development provisions of Chapter 17.12.

Section 14. That Chapter 17.40 of the Metropolitan Code is hereby amended by deleting subsection 17.40.470.A.2. and replacing it with the following:

2. Except for development approved pursuant to 17.12.090 Conservation Development each application for a tree removal permit shall be accompanied by a tree survey based upon current information. An application for a tree removal permit for a Conservation Development approved pursuant to 17.12.090 shall submit a tree survey for any trees located outside of the natural areas required to be preserved in open space. The survey shall show the location, size and type of retained, protected and heritage trees upon the site, including common or scientific names. The survey shall indicate which retained, protected and heritage trees are intended for removal and/or grubbing and which will be left undisturbed. A final site plan prepared to the same scale shall be submitted which illustrates the following:

- a. The locations of existing and proposed buildings, layout of roads, utilities, parking areas for vehicles, storage areas for construction materials, and other items that disturb or compact the soil in tree root zones.
- b. Existing and proposed grades and subsequent erosion control measures to prevent siltation over the roots of protected and heritage trees and appropriate tree protection fencing for those trees.
- c. For a conservation development approved pursuant to 17.12.090 survey plans shall locate and label all natural areas to be preserved and show and label the limits of disturbance.
- d. For a conservation development approved pursuant to 17.12.090, the site analysis plan shall be included with the submittal.

Section 15. Be it further enacted that this ordinance shall take effect immediately after its passage and such change be published in a newspaper of general circulation, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

INTRODUCED BY:

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