

**STAFF REPORT**  
**Community Development Department**  
**File Number: APL-16-001**

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**To:** Charlotte County Board of Zoning Appeals  
**From:** Shaun Cullinan, Planning and Zoning Official  
**Report Date:** April 6, 2016 **BZA meeting date: April 13, 2016**

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**General Information / Analysis:**

Connie Bittle, agent for Riverwood Community Development District, has filed an appeal of the Zoning Official's decision to deny a Tree Removal Permit on property located in the Planned Development (PD) zoning district. The tree is located in a landscape median on Tract "C" (Pennyroyal Road), which has been addressed **3299 Pennyroyal Road** in the Riverwood Community, in Port Charlotte (see attached **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Planned Development (PD). This property has a DRI Mixed Use Future Land Use Map (FLUM) designation.

Ms. Bittle submitted a **Tree Permit Application** (Exhibit A) in April of 2015 requesting authorization to remove one Live Oak tree located in the landscape median in Pennyroyal Road. This application was incomplete as submitted because there was no property owner's consent form and no payment for the permit fee. The applicant later sent an \$80 check (see attached **Receipt** Exhibit A-5) and the **Property Owner's Consent** (Exhibit A-6) form in July of 2015.

Although the application was incomplete the Community Development Department's Environmental Specialist inspected the tree and surrounding location on April 28, 2015. Based on the site inspection, condition of the tree, and the County's Land Development Regulations (**Tree Requirements** Exhibit B) the request was rejected due to the fact that none of the five criteria established in section 3-9-100.3(g)(1) had been met. As such, a **Rejection Letter** (Exhibit C) was sent to the applicant on August 6, 2015.

In October Ms. Bittle sent a letter (see **Riverwood Letter** (Exhibit D) appealing staff's rejection of the permit to the Zoning Official. This request included a letter and photographs from Arborist, Jim Yelverton (see **Arborist Letter** (Exhibit E) who basically stated that the tree is in "good health" and "poses no hazard". Mr. Yelverton also commented on the tree's roots affecting the concrete curb and surrounding asphalt and actions that can be taken without removing the tree. Based on a review of staff's decision and the newly submitted **Arborist Letter** (Exhibit E) the Zoning Official agreed with the decision to reject the tree removal permit and is in agreement with Mr. Yelverton's letter and would suggest that the applicant perform root pruning and install a root barrier to direct future root growth downward. The Zoning Official put this determination in writing in a **Memorandum** (Exhibit F) to Ms. Bittle on March 7, 2016. The applicant is now appealing the Zoning Official's decision to the Board of Zoning Appeals according to **Section 3-9-6** (Exhibit G) of the Land Development Regulations.

**Findings:** The considerations by the Board of Zoning Appeals for administrative appeals, according to Section 3-9-6.1(e) of the Charlotte County Zoning Code, are as follows:

1. *Whether or not the appeal is of a nature properly brought to them for a decision, or whether or not there is an established procedure for handling the request other than through the appeal process.*

Finding: The Zoning Official believes this appeal is of a nature properly brought to the Board of Zoning Appeals based on Section 3-9-100.3(q)(3) of the Land Development Regulations.

2. *The intent of the regulation in question.*

Finding: The intent or "purpose" of the regulation in question is stated in **Section 3-9-100(a) Purpose, (3) Tree Requirements (Exhibit H)**.

3. *The effect the ruling will have when applied generally to the intent of the land development regulations.*

Finding: As this appeal is specific to the fact pattern presented here, the ruling should have no effect when applied generally to the intent of the Land Development Regulations.

4. *Staff recommendations, the testimony of the appellant, and testimony of substantially interested parties shall also be considered.*

Finding: The Zoning Official discussed this situation with Staff, and citizens and his finding was to uphold Staff's original determination to not allow the tree to be removed, based on those factors as well as the Arborist's report that no damage was being done to the tree by virtue of its placement in the median, and that other options were available.

**Section 3-9-6 (Exhibit G)** titled *Administrative Appeals* states in **Sub-section 3-9-6.1(a) (Exhibit G-3)** that the BZA may "... reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the Zoning Official ...". This subsection also states that "The BZA may make such order, requirement, decision or determination as shall be proper in the circumstances, and for such purpose shall have all the powers of the officer from whom the appeal was taken."

**Please be advised that the final decision regarding the appeal rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.**

Attachments: Staff Report (2), Area Map, Zoning Map, Aerial Photograph, Tree Permit Application (6), Section 3-9-100.3 Tree Requirements (11), Rejection Letter, Riverwood Letter (2), Arborist Letter (3), Environmental Specialist Memorandum (2), Section 3-9-6 BZA (3) and Section 3-9-100(a)(3)



Community Development

# CHARLOTTE COUNTY

## Location Map for APL-16-001

Charlotte County Government

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21/40/21 Mid-County

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Path: M:\Departments\GIS\Projects\Petition\_Maps\Current\_Planning\2016\Variance\APL\APL-16-001\PCCKTLocationMap\APL-16-001.mxd



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# CHARLOTTE COUNTY

## Zoning Map for APL-16-001



### 21/40/21 Mid-County

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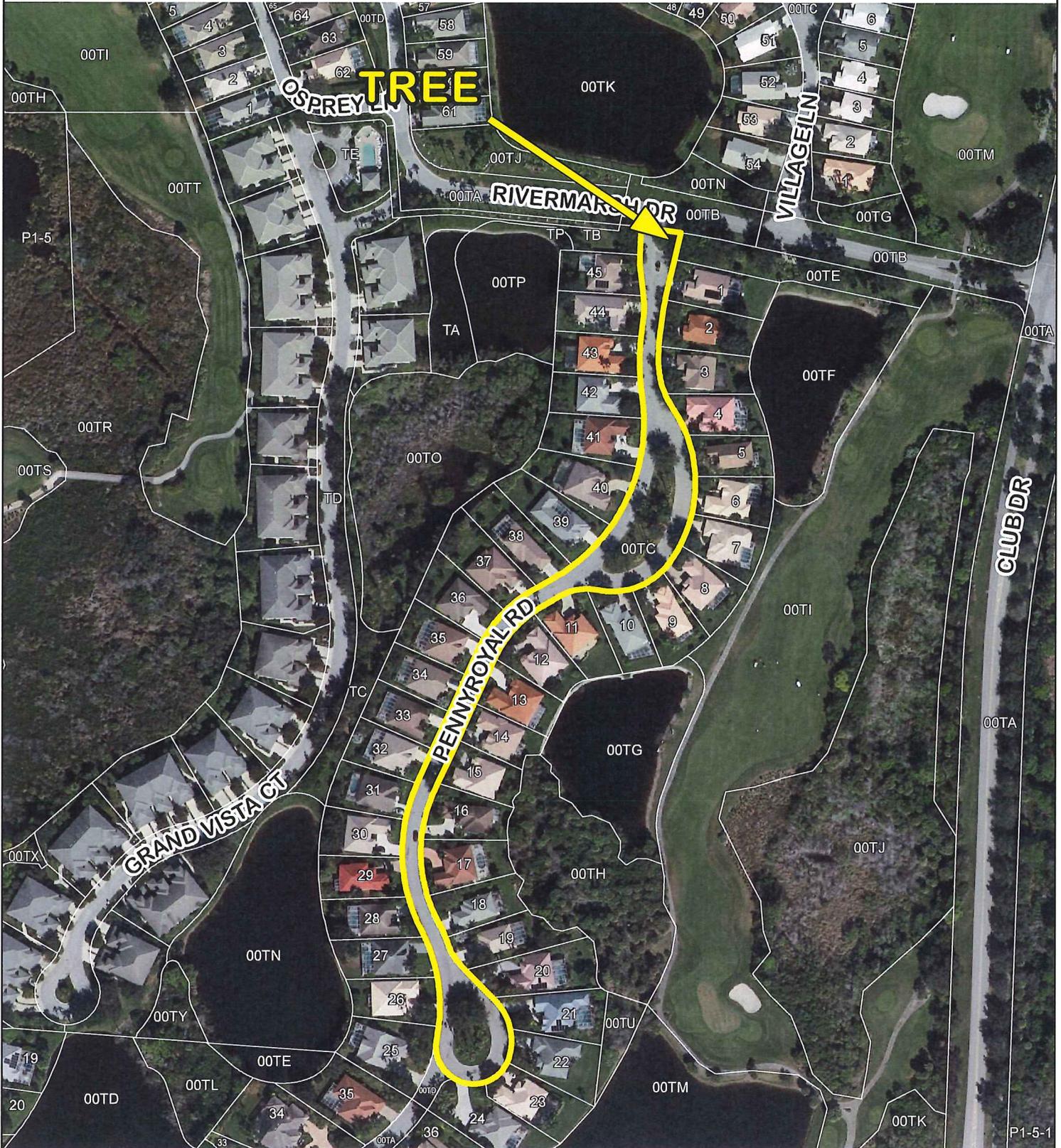
(NOT TO SCALE)



Community Development

# CHARLOTTE COUNTY

## 2014 Aerial View for APL-16-001



21/40/21 Mid-County

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(NOT TO SCALE)



Permit # 20150712714

### CHARLOTTE COUNTY TREE PERMIT APPLICATION

Select from the following:  Tree Preservation  Tree Removal Authorization  No Tree Affidavit  Memorandum of Exemption of Fees

Job Address: INTERSECTION OF RIVERMARSH + PENNY ROYAL

Parcel ID # \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Subdivision: ROYAL OAKS

Contractor or Owner/Builder: RIVERWOOD CDD - COMMON Contractor License #: \_\_\_\_\_

Mailing Address: 4250 RIVERWOOD DR. Phone: \_\_\_\_\_

Check all that apply: Residential \_\_\_\_\_ Commercial X Individual Trees \_\_\_\_\_ Lot Clearing \_\_\_\_\_  
Other (specify) CENTER ISLAND TREE REMOVAL

1. Tree Preservation:  
Will any trees be preserved on site? Yes \_\_\_\_\_ No X

I certify that 0 (number) of trees on the above-described property are to be preserved/protected according to the methods set forth in the Charlotte County Tree Code, Chapter 3-2-191. (Provide four (4) site plans.)

2. Tree Removal Authorization:  
Will any trees be removed from the site? Yes X No \_\_\_\_\_

I request that 1 (number) trees on the above-described property and indicated on the attached site plan be removed utilizing the Tree Removal Authorization as provided in the Charlotte County Tree Code, Chapter 3-2-192. (Provide four (4) site plans) Indicate reason for removal:

3. Memorandum of Exemption of Fees:

I certify that 0 (number) trees on the above-described property are exempt from Tree Removal Authorization and removal fees as provided by the tree protection requirements of the Charlotte County Tree Code, Chapter 3-2-193. (Provide four (4) site plans) Indicate reason for removal:  
SEE ATTACHED. STUNTED TREE CONFINED TO 12' WIDE AREA WHOSE EXCESSIVE ROOT BALL PREVENTS VISIBLE LANDSCAPE

4. No Tree Affidavit: THIS REQUEST IS IDENTICAL IN SCOPE & REASON TO APPROVED PERMIT 20140101453 EXCEPT 1 TREE VS 4.  
There are NO TREES currently located on site. (Use affidavit below)

Signature of Applicant \_\_\_\_\_ Printed Name of Applicant \_\_\_\_\_

State of Florida, County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_  
as identification and who *did* / *did not* take an oath.

Signature of Notary \_\_\_\_\_ Notary's Printed Name \_\_\_\_\_ Commission Number \_\_\_\_\_

I agree to assume full responsibility for the removal of said trees(s) and for compliance with all applicable County and State regulations regarding the proper disposal of brush and yard trimmings. Further, I will replace trees as required by the Charlotte County Code.

Environmental Inspection: \$ 55.00  
Residential Tree: \$ 70.00  
Commercial Tree\*: \$ 80.00  
\*Plus total # of caliper inches removed 15 x \$1.00: \$ 15.00  
Total Fee: \$ 185

Applicant's Signature: Couise Butler, Mgr. RPA Date: 4/20/15

Authorized County Official: \_\_\_\_\_ Date: \_\_\_\_\_

An approved barricade inspection must be obtained in order to receive credit for tree preservation.  
To request a barricade inspection, call (941) 743-1204 or (941) 743-1205.

Tree Permit Application  
( Exhibit A-1 )

In regard to the attached tree removal permit request  
**Royal Oaks, a Riverwood Community**

Please refer to the two photographs attached:

- (1) View of the entry island from the side showing the effect of many years of root growth in the confined area causing the roots to "ball up" and prevent healthy growth of landscaping plants. Can also see some of the concrete curb cracking caused, we believe, by the tree roots
- (2) Artist's rendition of the replacement Fox Tail Palm tree and landscaping suited to healthy growth in the sun allowed by the replacement tree.

The tree we wish to remove and replace is a Live Oak tree with a caliper of only 15 inches even though it is over 20 years old. If it was not badly stunted the caliper would be 25 inches +. The roots have ingrown so badly that they do not permit landscaping plants to grow properly. We have a tree that should have a growing diameter of approximately 30 ft. cramped into a 12 ft. wide island. This island is the first view one gets of our neighborhood as they enter it. We want to turn this eyesore into an attractive entrance to Royal Oaks.

We seek your permission to replace this tree as shown.

Tom Finnicum  
RO Restoration Committee Chrm  
[tomfinnicum@aol.com](mailto:tomfinnicum@aol.com)  
941-625-1927  
302-737-3728

Bruce Barnes  
VP Royal Oaks Neighborhood Association  
[verbarnky@aol.com](mailto:verbarnky@aol.com)  
859-229-5562

**Tree Permit Application  
( Exhibit A-2 )**

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**Tree Permit Application  
( Exhibit A-3 )**



Tree Permit Application  
( Exhibit A-4 )



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OFFICIAL RECEIPT

Trans Number : 182169

Date Issued. : 07/21/2015

Application No. : 20150712714

Project Name : N/A

Received From : Bruce Barns

Applicant :

DBA : RIVERWOOD COMMUNITY DEV DIST

Address : 210 N UNIVERSITY DR

STE 702

Coral Springs, FL, 33071-6530

PAYMENT INFO

Method of Payment Fee / Description	Ref Doc	Amount Paid	Comment
<b>Check</b>			
COM_TREE COMMERCIAL/MULTI FAMILY TREE PERMIT	2830	\$80.00	
		<b>\$80.00</b>	Total Check

Total Receipt Amount: \$80.00

Change Due: \$0.00

Cashier ID : GARCIAA

APPLICATION INFO

Application #	Invoice #	Invoice Amt	Job Address
20150712714	220304	\$80.00	4250 RIVERWOOD DR, PORT CHARLOTTE, FL, 33953 Owner : RIVERWOOD COMMUNITY DEV DIST

Total Amount : \$80.00

Tree Permit Application ( Exhibit A-5 )

Community Development Department

Permitting | Licensing | Building Code | Plans Examiner | Inspections

18400 Murdock Circle | Port Charlotte, FL 33948

Phone: 941.743.1201 | Fax: 941.743.1213



# Community Development

Zoning Division  
18400 Murdock Circle, Port Charlotte, FL 33948-1094  
Phone: (941) 743-1964 (941) 743-1230  
Fax: (941) 743-1598  
www.charlottecountyfl.gov

## Tree Permit Application

### Affidavit of Applicant

I, the undersigned, being first duly sworn, depose and say that I am the owner, attorney, attorney-in-fact, agent, lessee or representative of the owners of the majority of the property described and which is the subject matter of the proposed application; that all answers to the questions in this application, and all sketches, data and other supplementary matters attached to and made a part of the application are honest and true to the best of my knowledge and belief. I understand this application must be complete and accurate before the application may be considered, and that if I am not the owner of the property, I have attached a notarized authorization from the owner(s) to submit with this application.

State of FLORIDA, County of CHARLOTTE The foregoing

instrument was acknowledged before me this 27 day of JULY, 2015.

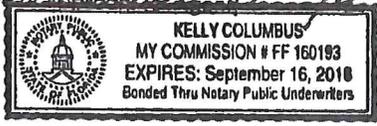
by COONIE BATTLE, REA MANAGER who is personally known to me or; has produced \_\_\_\_\_ as identification and who did / did not take an oath.

Kelly Columbus  
Signature of Notary

Coonie Battle, Mgr REA  
Signature of Applicant

Kelly Columbus  
Printed Name of Notary

FF160193  
Commission Number



### Property Owner's Consent

I, RITA ALDERSON, property owner of RIVERWOOD CDD

do hereby give ROYAL OAKS, # permission to file this application to allow the use of Tom FINICUM, PRESIDENT

this property for: REMOVAL OF THE OAK IN THE CENTER ISLAND ON PENNY ROYAL AT RIVER MARSH.

State of FLORIDA, County of CHARLOTTE The foregoing

instrument was acknowledged before me this 29th day of JULY, 2015.

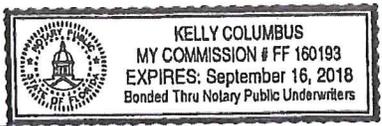
by RITA ALDERSON who is personally known to me or; has produced \_\_\_\_\_ as identification and who did / did not take an oath.

Kelly Columbus  
Signature of Notary

Rita Alderson  
Signature of Owner

Kelly Columbus  
Printed Name of Notary

FF160193  
Commission Number



\*This page does NOT n

or a building permit!

Tree Permit Application  
( Exhibit A-6 )

### Sec. 3-9-100.3. - Tree requirements.

- (a) **Applicability.** The terms of this section shall apply to any native or non-native tree, as listed in Exhibit 8: List of Approved Tree Species. This section shall also apply to the tree removal, protection, and tree planting requirements of a development.
- (1) On-site inspection for conformance with the requirements of this section shall be conducted by the Charlotte County Code Compliance Division (or its equivalent successor) in order to receive a certificate of occupancy (C.O.).
    - a. The BCC shall establish, by resolution, appropriate fees to defray the cost of enforcing the provisions of this section.
    - b. All trees preserved or planted per this section must remain preserved in perpetuity.
    - c. If the requirements of this section are not met at the time of final inspection, a reinspection fee, in an amount established by resolution, will be assessed for any additional inspections.
    - d. Any tree regulated by this section that dies, sustains major damage, or contracts a disease, such that its restoration to a sound condition is impractical, must be replaced by a tree of comparable size and type or a combination of trees having an equal number of tree points. Compliance may be determined by a follow-up inspection that may occur at the discretion of the county.
    - e. Any tree which is required as a replacement to the original C.O. tree is also subject to a follow-up inspection, following its installation.
  - (b) This section shall not apply to the following:
    - (1) Properties which meet all of the following criteria:
      - a. The primary principal use is bona fide agriculture;
      - b. The property is zoned for agriculture;
      - c. The future land use map (FLUM) designation is agriculture; and
      - d. The property is not within a development of regional impact (DRI).
    - (2) Developments which received final site plan approval or building permits prior to September 15, 1992, excluding the provisions of section 3-9-100.3(e), heritage trees.
    - (3) Developments, alterations, or additions of one thousand (1,000) square feet or less.
    - (4) Interior remodeling or modifications.
    - (5) Commercial plant and tree nurseries, where plants and trees are grown and/or sold for horticultural purposes.
    - (6) Removal of trees as part of an approved management activity within a preserve or resource conservation area.
    - (7) Cemeteries.
  - (c) Minimum tree requirements.
    - (1) For all development regulated by this section, tree points must be preserved or planted according to Exhibit 6: Tree Points for Development Types. A list of trees acceptable for the purpose of this section is provided in Exhibit 8: List of Approved Tree Species.
    - (2)

**Tree Requirements  
( Exhibit B-1 )**

For all landscaping purposes, trees found in the most recent edition of the "Florida-Friendly Landscaping Guide to Plant Selection and Landscape Design," produced by the University of Florida/IFAS, but not listed in Exhibit 8: List of Approved Tree Species may be permitted at the discretion of the zoning official or his/her designee. The applicant must demonstrate that the tree is appropriate for the location. These trees may be considered for tree points.

Exhibit 5: Tree Points

Tree caliper (inches)	Retained Native (Except Palms)	Installed Native (Except Palms)	Non-Native* (Installed or Retained)	Native Palms (Minimum 6' clear trunk)	Preserved or Planted Wax Myrtles (Minimum 6' tall with at least one 2" stem) or 25 sq. ft. Palmetto
2.0	1.0	1.0	0.5	0.5	0.5
3.0	<u>1.5</u>	<u>1.5</u>	1.0	0.5	N/A
4.0	3.5	2.5	<u>1.5</u>	0.5	N/A
5.0	4.0	3.0	2.0	0.5	N/A
6.0	4.5	3.5	2.5	0.5	N/A
7.0	5.0	4.0	3.0	0.5	N/A
8.0	5.5	4.5	3.5	0.5	N/A
9.0**	6.0	5.0	4.0	0.5	N/A

**Tree Requirements  
( Exhibit B-2 )**

\* From Exhibit 8: List of Approved Tree Species.

\*\* Add 0.5 points for every inch thereafter (except in the case of Palms, Wax Myrtles, and Palmetto).

Exhibit 6: Tree Points for Development Types

Development Type	Number of Tree Points Required
Residential, commercial, and industrial	1 tree point for every 2,000 square feet of development site

Outdoor-oriented recreational activities which require open space and are available to the general public	1 tree point for every 4,000 square feet of development site
Manufactured home parks within a Manufactured Home Park (MHP) Zoning District	2 canopy trees per manufactured home site*

\* Palms shall not be considered canopy trees for the purpose of satisfying the tree requirements for manufactured home parks within a manufactured home park (MHP) zoning district.

\* Manufactured home parks in MHP zoning district may not "buy out" tree points.

- (3) In order to count toward the minimum tree point requirement, a preserved or planted tree must have a minimum height of eight (8) feet measured from the existing grade to the highest point of the foliage and a minimum caliper of two (2) inches measured twelve (12) inches above the existing grade.
  - a. Trees preserved within the minimum required rear and side yard setbacks of the development site may be counted toward the tree point requirement. Trees may be planted anywhere within the development site, including the minimum required rear and side yard setbacks, except where otherwise prohibited by the provisions of this section. A single phase of phased development shall be considered a development site and all the points shall be calculated within that phase.
  - b. Trees preserved or planted within easements may be counted toward the tree point requirement.
    - 1. If a preserved tree located within an easement is removed during the lawful development activity within the easement for which the easement was intended, this loss shall not be held against the landowner or against the conditions of this section, and no action shall be taken against the rightful user of the easement for which it was intended.
    - 2. A list of acceptable trees for tree planting in utility easements near power lines is set forth below in Exhibit 7: Recommended Trees for Planting under Power Lines.

Exhibit 7: Recommended Trees for Planting Under Power Lines

Bottlebrush	<i>(Callistemon spp.)</i>
Crape Myrtle	<i>(Lagerstroemia indica)</i>
Loquat	<i>(Eriobotrya japonica)</i>
Silver Dollar Eucalyptus	<i>(Eucalyptus cinerea)</i>

**Tree Requirements  
( Exhibit B-3 )**

Sweet Acacia	<i>(Acacia farnesiana)</i>
Wax Myrtle	<i>(Myrica cerifera)</i>

3. Trees planted or preserved within easements shall not interfere, at or before maturity, with power, cable television, or telephone lines, sewer or water pipes, or any other existing or proposed overhead or underground utility service. Location of underground utility lines shall be determined prior to easement planting.
  4. In the event that a tree is planted within an easement and is removed during lawful development activity within the easement for which the easement was intended, this loss shall be the responsibility of the property owner, the tree shall be replaced, and no action shall be taken against the rightful user of the easement for which it was intended.
    - c. Trees planted to meet the minimum tree point requirements of this section may not be planted within county rights-of-way.
- (4) While all preserved native palms may be counted toward a development's tree point requirement, no more than twenty-five (25) percent of the required tree points may be obtained from planted native or non-native palms.
  - (5) No more than fifty (50) percent of the required tree points may be obtained from approved non-native trees except that non-native palms shall not count for more than twenty-five (25) percent of total required points per section 3-9-100.3(c)(4).
  - (6) No more than twenty-five (25) percent of the required tree points may be obtained from approved Wax Myrtle which has been planted or preserved.
  - (7) No more than twenty-five (25) percent of the required tree points may be obtained from the approved square footage of preserved Palmetto.
  - (8) Replacement trees must carry plastic tags identifying their species. These tags must be retained until the C.O. is granted.

**(d) Tree removal.**

- (1) Prior to the removal of any tree with a caliper four (4) inches or greater, or palm with a clear trunk six (6) feet or greater, the landowner or his/her agent must receive a tree removal authorization signed by an authorized county official.
- (2) All applicants proposing development must submit the following to the Department at the time of application for building permits and prior to any development activity:
  - a. A tree survey consisting of a scaled drawing indicating:
    1. Development site boundaries.
    2. Location of all individual trees, other than prohibited species, which have a caliper four (4) inches or greater; the trees' common names; and their approximate calipers measured with a caliper or forestry diameter tape twelve (12) inches from existing grade.
- 3.

**Tree Requirements  
( Exhibit B-4 )**

A scaled drawing superimposed on the tree inventory illustrating all proposed and existing improvements; which trees are to be removed; and which trees are to be preserved.

- b. In cases where a tree survey is submitted for a single-family property and is found to be incomplete or incorrect, the county reserves the right to require a signed and sealed tree survey.
  - c. For development requiring site plan review committee approval, tree surveys must be completed by a certified arborist or signed and sealed by registered landscape architect, professional engineer, surveyor, or similar professional.
  - d. Proof that removal of trees is consistent with tree removal criteria in section 3-9-100.3(g) or tree removal authorization exemptions in section 3-9-100.3(h). If it is determined that the trees to be removed are exempt from removal fees, a memorandum of fee exemption will be issued as proof of compliance. Environmental review fees apply if a site inspection is conducted by county staff, if applicable.
  - e. A fee shall be charged for each caliper inch of tree which has been granted tree removal authorization. These fees shall be placed into the native tree replacement fund pursuant to section 3-9-100.3(j).
- (3) In the event that no trees exist on the development site, the applicant shall not be required to provide the tree inventory. In lieu of this requirement the applicant shall submit a notarized "no tree affidavit."
- (4) Absolutely no speculative clearing is allowed. Applicant must have either a building permit or final site plan approval prior to county staff authorizing any clearing or tree removal activities.
- (5) For development requiring site plan review committee approval, all documentation listed above and a landscape plan illustrating the incorporation of both preserved and planted trees, as applicable, into the proposed development must be submitted at the time of preliminary plan submittal.
- (e) Heritage trees. No person shall cut down, remove, relocate, or in any way damage a heritage tree. These trees shall be protected without regard to their location or the date of final development approval.
- (1) The zoning official or his/her designee shall exempt a heritage tree from the terms and provisions of this section if:
- a. The tree is in advanced stages of decline. Staff reserves the right to request a determination from a certified arborist;
  - b. The tree is located where a structure or improvement allowed as a permitted principal use under zoning regulations is to be located and the applicant has made every effort to accommodate the heritage tree within the design of the structure or improvement. It is the intent of this provision that a permit shall be granted for the removal of a heritage tree only after the applicant has demonstrated an effort to design and locate the proposed structure or improvements to prevent the removal a heritage trees consistent with the permitted use of the property;
  - c. The tree is causing substantial structural or infrastructural damage, to be determined by a qualified engineer of record. The applicant must demonstrate that alternative remedies such as root barriers or trimming are not feasible.

(2)

**Tree Requirements**  
**( Exhibit B-5 )**

All heritage trees shall be replaced on a DBH inch for DBH inch basis. When the zoning official or his/her designee determines that site-specific conditions limit or prevent the replacement of trees on site, the applicant shall pay one hundred fifty dollars (\$150.00) per DBH inch not replanted to the native tree replacement fund.

- (3) Encroachment under a heritage tree will be allowed only to the extent provided by this section.
- (4) Heritage trees on existing developed properties may be exempt from the DBH inch replacement and one hundred fifty dollars (\$150.00) per DBH inch fee requirements if the tree is in advanced stages of decline as determined by a certified arborist, or is causing significant structural damage as determined by a professional engineer, or as approved for removal under subsection b above.

**(f) Tree preservation and protection.**

- (1) Where healthy trees of appropriate location, species, and quality exist on-site prior to development, efforts shall be made to preserve such trees permanently at natural grade in accordance with the following:
  - a. Prior to the site clearing phase of development, the trees to be preserved shall be protected by the construction of barriers.
  - b. The barriers shall be constructed of wooden (or equivalent) posts at least two (2) inches by two (2) inches, and shall be implanted in the ground deep enough to be stable. The barriers shall be visible, with at least three (3) feet showing above the ground. The protective posts shall be placed not more than six (6) feet apart and shall be linked together using lumber; erosion fabric; net or plastic fence material, or snow fencing. Stakes strung with line or flagging shall not be considered a protective barrier.
  - c. Barriers shall be placed at least six (6) feet from the trunk of any protected palm.
  - d. For tree species other than palms, barriers will be placed at the drip line, except as allowed in an area of encroachment as defined in section 3-9-100.3(f).
  - e. In situations where Palmetto (*Serenoa repens*) occurs as a dense understory to existing oaks, pines, or palms, the existing Palmetto may be used as a living barricade for tree preservation, provided such Palmettos are retained to the dripline of the proposed preserved tree throughout construction. If the minimum square footage (25 sq. ft.) of Palmetto is then retained after construction, such Palmetto may qualify for additional tree points in accordance with section 3-9-100.3(c).
  - f. Where clusters of trees or large areas are to be protected, the area may be designated by barriers placed at the drip line from the outermost trees of the cluster or within the allowable area of encroachment. If the outermost trees are palms, the barrier shall be placed at least six (6) feet from the trunks of the outermost palm.
  - g. Barriers will remain in place until all construction activity, except landscaping, within the protected areas is complete.
  - h. Trees not protected in the manner defined by this section throughout the construction period will not be considered preserved for purposes of this section, except for trees so located that they are one hundred (100) feet or more from the farthest point of development activity.
  - i.

**Tree Requirements  
( Exhibit B-6 )**

No equipment, vehicles, construction materials, temporary structures or buildings, machinery, fill soil, sod, debris, fuel, paint, solvent, oil, thinner, asphalt, cement, grout, or construction chemical of any kind will be placed, allowed to enter, or be stored within the protective barriers established around protected trees or protected areas.

- j. All anchor straps and wood shall be removed after a minimum of six (6) months and a maximum of one (1) year period as long as the tree has been properly established.
  - k. Temporary sanitation facilities shall not be located within the tree protection areas.
  - l. No damaging attachment, wires (other than support wires for a tree), signs or permits shall be fastened to any tree protected by this section.
- (2) In the event that the preservation techniques referenced in this section are deemed impracticable, trees and tree roots may be encroached upon provided that such encroachment complies with the following conditions:
- a. No more than one-half (½) of the radius of the tree canopy is impacted. This encroachment shall occur on no more than one (1) side of the tree.
  - b. No more than one-third (1/3) of all tree roots found at the outermost limits of the tree's drip line are encroached upon.
  - c. The remaining area of the tree's roots shall be protected by barriers at the drip line throughout construction and shall remain in preconstruction condition during and after construction.
  - d. Paved areas of allowable encroachment shall use techniques that provide for aeration and irrigation of the root system. These techniques include:
    - 1. Substituting gravel or pebbles for typical fill soils; and
    - 2. Using pervious or porous paving materials in the areas of encroachment.
  - e. Supplemental irrigation shall be provided throughout construction in order to mitigate tree stress induced by this encroachment.
- (3) If the development utilizes construction techniques such as pilings or piers, which will not impact tree root systems, the area of allowable encroachment may be exceeded.
- (4) In no event shall a damaged tree, a dead tree, a tree not protected in accordance with the provisions of this section, or a tree not included in Exhibit 8: List of Approved Tree Species, be counted as a preserved or planted tree for purposes of this section.
- (5) On-site inspection for conformance with the provisions of this section shall be conducted by the code compliance division inspectors or authorized county official at any time during a site's development.

**(g) Criteria for issuance of tree removal authorization.**

- (1) Tree removal authorization shall be granted only when an authorized county official has determined that the removal is consistent with one (1) or more of the following criteria:
- a. Trees pose a safety hazard to pedestrian or vehicular traffic or cause disruption to public utility services.
  - b. Trees pose a safety hazard to buildings or structures which cannot be remedied by trimming.
  - c. Trees completely prevent access or cross access to a lot or parcel.
  - d.

**Tree Requirements  
( Exhibit B-7 )**

Trees prevent development or physical use. It is the intent of this provision that a permit shall be granted for the removal of any tree when the applicant has demonstrated an effort to design or locate a proposed site improvements so as to minimize the removal of trees.

- e. Diseased trees or trees so weakened by age, storm, fire or other injury so as to pose a danger to persons, property, improvements, or other trees.
- (2) Authorization to remove a tree(s), when granted, shall be confined to the tree(s) specifically identified for removal as permitted. Removal of a tree(s) must be performed within six (6) months from the date of issuance of the tree removal authorization or during the development activity for which final SPR approval was granted. Speculative clearing is not permitted.
  - (3) Nothing in this section shall be construed to require the removal of any trees by the applicant.
- (h) Tree removal authorization; exemptions.
- (1) The following categories shall be considered exempt from tree removal authorization requirements and per caliper inch fees as provided in this section:
    - a. Removal of any tree(s) with less than a four-inch caliper and any palm with less than six (6) feet of clear trunk.
    - b. Dead trees.
    - c. Trees listed as Category I or II on the most recent edition of the Florida Exotic Pest Plant Council's Invasive Plant List.
    - d. The removal of trees located within the footprint and within six (6) feet of the footprint of any building construction at the time of construction.
    - e. Lawful development activities within existing (existing prior to effective date) utility, drainage, and road rights-of-way or easements, for the purposes for which they were reserved, and the expansions of existing (existing prior to effective date) road easements, including associated retention ponds.
    - f. The trimming, cutting, or other alteration to any existing tree, provided such activities are consistent with sound horticultural practices.
    - g. In the event of an emergency such as the approach and imminent landing of a hurricane, windstorms, flood, freezes, fire, or other disasters, the county administrator or his/her designee retains the authority to temporarily waive the requirements of this section.
- (i) Tree replacement. Qualifying, existing trees shall be preserved whenever feasible in order to meet the tree point requirements of this section. Whenever the removal of trees on a development site would result in failure to meet the minimum tree point standards, approved replacement trees shall be planted in sufficient number and size to meet these standards, and the following conditions shall apply:
- (1) All trees selected to meet the requirements of this section shall be chosen from Exhibit 8: List of Approved Tree Species. Other tree species, except prohibited species, may be included on the development site, but shall not be counted toward meeting the requirements of this section. Trees planted in compliance with section 3-9-100.1, buffers, or section 3-9-100.2, landscaping, may be used to help satisfy the requirements of this section, provided they meet the criteria set forth in this section.

**Tree Requirements**  
**( Exhibit B-8 )**

- (2) All trees used in conformance of this section shall meet or exceed the standards for Florida No. 1 as provided by Grades and Standards for Nursery Plants, Part II, Palms and Trees; most recent edition; State of Florida, Department of Agriculture, Tallahassee.
- (3) The property owner(s) shall be responsible for installing all trees in a sound, professional manner and in accordance with accepted good horticultural techniques, including, but not limited to the following:
  - a. Grow bags and containers shall be completely removed from the root ball prior to planting.
  - b. Burlap shall be sliced in both directions on the sides of the root ball and removed from the top one-third (1/3) of the root ball.
  - c. All twine or wire shall be cut off from around the trunk at the top of the root ball.
  - d. Trees shall be mulched to a minimum depth of two (2) inches and a maximum depth of four (4) inches with organic mulch at least to the perimeter of the root ball.
  - e. The owner(s) or their agent(s) shall provide sufficient soil and water to sustain healthy growth of all trees.
- (4) Trees with a caliper of four (4) inches or more shall be anchored for a period of at least one (1) year. Single staking of trees shall be prohibited.
- (5) In the event the property owner is not residing in Charlotte County at the time of C.O. issuance, and (i) chooses to install his/her own trees; or (ii) is not available to care for the newly planted trees, the property owner may, upon written request, post a security deposit either as cash or certified check that is equivalent to the established dollar amount for the development's required number of tree points (i.e., the "buy-out" fee). This cash security deposit is valid for ninety (90) days from the issuance of the C.O.
  - a. Upon inspection and written approval from the code compliance inspector that all tree installation has been met within the allotted ninety-day period, the posted security deposit will be refunded within five (5) working days.
  - b. Should the property owner fail to properly install the required number of tree points in the allotted time, the money will be placed into the native tree replacement fund without further refund.

**(j) Native tree replacement fund.**

- (1) The public works department is hereby authorized and directed to administer a native tree replacement fund which consists of monies collected as payment for tree removal authorization and in lieu of planting or preserving trees on developed properties. The community development department is hereby authorized and directed to collect the monies for payment of the native tree replacement fund. Thus, an applicant shall pay to the department a sum determined by multiplying the number of required tree points which they wish to be excused from preserving or planting on a development site times the native tree replacement fee, said fee to be established by resolution of the BCC.
  - a. The department shall keep records of the monies received pursuant to this section.
  - b. The board shall establish, by resolution, a program administered by the public works department which shall apply monies received to the planting of native trees, native shrubs, mulch, installation, design, and irrigation on lands or easements of the county or

**Tree Requirements  
( Exhibit B-9 )**

other government-owned lands. Non-substantive amendments may be made from time to time without action by the BCC as deemed necessary for the administration of the program.

- (k) Slope variance. Notwithstanding other county requirements, and in order to facilitate the policy that preservation is more desirable than replacement, if preservation cannot be accomplished in conjunction with a 6:1 slope but can be accomplished by using a 4:1 slope, then such is authorized. The construction of tree wells and the use of stemwall construction may be used and is encouraged whenever possible to prevent changes in the grade within the drip line of protected trees.
- (l) Water retention/recharge areas. As an additional alternative to present slope requirements, when the use of water retention/recharge areas can be accomplished on-site and is beneficial to trees to be preserved, such retention/recharge areas may be used.
- (m) Prohibited trees. The planting of any prohibited species of tree, as identified in the most recent edition of the Florida Exotic Pest Plant Council's Invasive Plant List as a Category I Invasive Species, shall be strictly prohibited. The planting of trees identified as a Category II Invasive Species is strongly discouraged.
- (n) Banyan trees (*ficus benghalensis*). The planting of banyan trees within fifty (50) feet of any structure or right-of-way is prohibited.
- (o) Prohibited practices. The following practices or procedures shall be considered unlawful in the county, except where exempted:
  - (1) It shall be unlawful practice for any person, firm or agency to "top" or allow to be "topped", or severely prune, so as to appear stunted, any tree.
    - a. All tree pruning shall be conducted according to the most recent edition of the National Arborist Association standards, which are hereby incorporated by this reference.
    - b. Trees severely damaged by storms or other causes, or certain trees under utility lines or other obstructions where other pruning practices are impractical may be exempted from this section.
  - (2) It shall be unlawful for any person, firm, or agency to climb any living tree, using the practice known as "spiking" or "spurring". The practice of "spurring" or "spiking" shall be allowed only to achieve the total removal of a tree for reasons authorized by this section.
- (p) Voluntary planting. The provisions of this section shall not be interpreted to restrict, regulate, or limit the voluntary planting of any tree, other than prohibited trees, in the county. The provisions of this section govern only the planting of trees which are required to be planted or retained as required by this section.
- (q) Variance, appeal and penalty.
  - (1) The board of zoning appeals (BZA) may, upon appropriate application in writing, vary or waive the terms and provisions of this section due to unreasonable hardship in specific cases. The criteria for a variance are as follows:
    - a. Unique or peculiar conditions or circumstances apply to the property.
    - b. The strict literal enforcement of the terms of this regulation would result in demonstrable and undue hardship or deprive the property owners of rights commonly enjoyed by other property owners.
    - c. The requested variance is the minimum modification of th

**Tree Requirements  
( Exhibit B-10 )**

- d. The requested variance is compatible with all other county regulations.
- (2) The preservation of any approved tree over eighteen (18) inches DBH may be considered by the appropriate county official as the basis for the granting of a variance from the literal application of the provisions of this section and other county regulations.
- (3) Any party aggrieved by the administrative interpretation or enforcement of this section may appeal to the BZA pursuant to section 3-9-6 of the Charlotte County Code.
- (4) Penalties for violation.
- a. Each preserved tree destroyed or suffering detrimental alteration during construction must be replaced by either a tree of comparable size and type, or by tree replacement conditions as provided by this section, before issuance of a C.O.
- b. No C.O. or power release shall be issued for any development until all applicable approval or restoration plan conditions have been accomplished.
- c. Failure to comply with any provisions of this section shall be referred to the code enforcement board, which has the power to levy a fine not to exceed two hundred fifty dollars (\$250.00) per day for each day the violation occurs.
- d. If an individual fails to obtain the appropriate authorization for any tree removal prior to development, the department may require a fine, which will vary depending on the number of offenses within the calendar year.
1. For a first offense, the fee is four (4) times the original tree removal fee. In the case of tree removal fee exemptions, the fee is four (4) times the standard processing fee.
2. For a second offense in one (1) calendar year, the fee is four (4) times the original tree removal fee plus one hundred fifty dollars (\$150.00). In the case of tree removal fee exemptions, the fee is four (4) times the standard processing fee plus five hundred dollars (\$500.00).
3. For multiple offenses within one (1) calendar year, the fee is four (4) times the original tree removal fee plus one thousand dollars (\$1,000.00) for each occurrence. In the case of tree removal fee exemptions, the fee is four (4) times the standard processing fee plus one thousand dollars (\$1,000.00).
- (5) If an individual falsifies information on any tree form, or does not post the tree permits on the subject property, the department may require a fine, which will vary depending on the number of offenses within a calendar year.
- a. For a first offense, a written warning.
- b. For a second offense in one (1) calendar year, the fine is fifty dollars (\$50.00).
- c. For multiple offenses within one (1) calendar year, the fine is one hundred fifty dollars (\$150.00) for each occurrence.
- (6) For violations to any prohibited practice or planting a prohibited tree, the department may require a fine, which will vary depending on the number of offenses within a calendar year.
- a. For a first offense, a written warning requiring the removal of the prohibited tree.
- b. For a second offense in one (1) calendar year, the fine is one hundred dollars (\$100.00) and the violation will be forwarded to the code enforcement division to open a code case requiring the removal of the prohibited tree).
- c.

**Tree Requirements  
( Exhibit B-11 )**

## Nocheck, Elizabeth

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**From:** Nocheck, Elizabeth  
**Sent:** Thursday, August 06, 2015 1:03 PM  
**To:** riverwoodmanager@comcast.net  
**Subject:** Permit # 20150712714 - Royal Oaks

Good afternoon Connie,

Thank you for submitting the tree removal permit application for the oak tree at the entrance of the Royal Oaks neighborhood (Permit # 20150712714). After careful review of the application and a site inspection conducted on April 28, 2015, by Jamie Scudera, Environmental Specialist for Charlotte County, we are unable to grant authorization to remove the tree in question as it does not meet the requirements set forth in Section 3-9-100.3(g) Criteria for Issuance of Tree Removal Authorization, which I have provided below.

### Section 3-9-100.3: Tree Requirements

#### (g) Criteria for issuance of tree removal authorization.

- (1) Tree removal authorization shall be granted only when an authorized County official has determined that the removal is consistent with one or more of the criteria below:
  - a. Trees pose a safety hazard to pedestrian or vehicular traffic or cause disruption to public utility services.
  - b. Trees pose a safety hazard to buildings or structures which cannot be remedied by trimming.
  - c. Trees completely prevent access or cross access to a lot or parcel.
  - d. Trees prevent development or physical use. It is the intent of this provision that a permit shall be granted for the removal of any tree when the applicant has demonstrated an effort to design or locate a proposed structure improvement so as to minimize the removal of trees.
  - e. Diseased trees or trees so weakened by age, storm, fire or other injury so as to pose a danger to persons, property, improvements, or other trees.
- (2) Authorization to remove a tree(s), when granted, shall be confined to the tree(s) specifically identified for removal as permitted. Removal of a tree(s) must be performed within six months from the date of issuance of the tree removal authorization or during the development activity for which final SPR approval was granted. Speculative clearing is not permitted.
- (3) Nothing in this section shall be construed to require the removal of any trees by the applicant.

Please feel free to contact me with any questions or concerns.

Kind regards,

## Elizabeth Nocheck

Planner II, Landscape Review Specialist

Community Development Department

18400 Murdock Circle

Port Charlotte, FL 33948-1094

phone: 941.764.4920 fax: 941.743.1598

Please click [www.charlottecountyfl.gov](http://www.charlottecountyfl.gov) to visit the Charlotte County homepage

"To Exceed Expectations in the Delivery of Public Services"

**Rejection Letter  
( Exhibit C )**

**Riverwood Community Association**  
4250 Riverwood Dr., Port Charlotte, FL 33953  
941-764-6663 Office / 941-625-7806 Fax  
RiverwoodManager@comcast.net

October 20, 2015

Charlotte County  
Community Development Department  
Current Planning and Zoning Division  
18400 Murdock Circle,  
Port Charlotte, FL 33948-1094

To whom it may concern:

Attached is an appeal application for the removal of a live oak at the Entrance to Royal Oaks Neighborhood in Riverwood.

The Royal Oaks Community has agreed by petition to remove the stunted oak that is causing curb and road way damage as a result of its placement by the developer in an island too small for its placement.

The Royal Oaks Community has approached the Riverwood Community Association Board, requesting approval for said singular oak tree removal and the RCA Board gave permission for its removal.

The Royal Oaks Community has approached the Riverwood Community Development District and has requested and obtained approval for the removal of the singular live oak tree, as signified by the signature of the Chairman of the Board of Supervisors on the original permit application to remove said oak.

The Royal Oaks Community applied for a permit to remove said oak, which was denied by Charlotte County.

Other live oaks in similar locations were approved for removal by Charlotte County within the Riverwood Community.

The Royal Oaks Community has other common area islands that are planted with a number of live oaks; in addition the individual homes within Royal Oaks have live oaks planted on them.

Riverwood Community Association and Riverwood Community Development District have on its property approximately 1100 live oak trees in the common areas alone, not counting the countless number of oaks on the owner's lots within Riverwood.

The Riverwood Community is very environmentally sensitive to its surroundings and works diligently to take care of the trees, lakes and preserves on its property. This is not a community that is unaware of its surroundings or takes the plantings for granted. Riverwood spends a lot of money annually on maintaining the landscaping. Riverwood is a stage one Audubon Community and working to stage 2. As you can see Riverwood is an environmentally responsible citizen of Charlotte County and Port Charlotte. The Residents of Riverwood are stewards for the environment.

**Riverwood Community Association**

4250 Riverwood Dr., Port Charlotte, FL 33953

941-764-6663 Office / 941-625-7806 Fax

[RiverwoodManager@comcast.net](mailto:RiverwoodManager@comcast.net)

This particular tree is badly placed, it is flanked by other oaks on either side of the roadway, it is doing damage to the curb and asphalt roadway, and the community is asking to remove this particular tree.

We hope that the Planning and Zoning Division will take all of these factors into consideration and approve this request.

Thanking you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Connie Bittle, Mgr. RCA". The signature is written in a cursive style.

Connie Bittle, CMCA, AMS, PCAM  
Manager, Riverwood Community Association  
For the RCA Board of Directors



jim yelverton  
consulting arborist

September 3, 2015

Riverwood Community Association  
4250 Riverwood Drive  
Port Charlotte, Florida 33953  
Attn: William Veater

Re: Royal Oaks Entrance

Dear Mr. Veater,

As you requested I have inspected the tree in the entry median of Royal Oaks at the corner of Pennyroyal Road and Rivermarsh Drive. The median is oblong in shape, approximately 32' long and 12' wide surrounded by a concrete curb and asphalt. Approximately 19' from the front and centered from side to side is a 12.5" diameter Live Oak (*Quercus virginiana*). This Live Oak appears to be in good health but only has fair vigor. The twig growth and overall size I observed is somewhat stunted indicating the tree may be under stress. The likely explanation for this distress is that the tree is reaching the limit of the soil volume of the space. Trees can adapt and survive in this limited growth space condition for long periods therefore in my opinion the tree poses no hazard and is in no serious jeopardy at this time.

The curb and surrounding asphalt (*see enclosed photos*) are showing signs of root damage. This damage, in my opinion, is likely caused by roots from this tree. Since this Live Oak is approximately 1/3 its mature size the root damage can be expected to continue as the tree grows.

There are three alternative actions you may consider. The first is to do nothing. This problem is very common with street trees and is usually a more serious problem for the surrounding pavement than the tree. This situation can be dealt with by occasional curb and asphalt repair. Trees can adapt to these conditions with time therefore if you choose this course of action I would recommend periodic observations of the trees health and vigor. The second option is to root prune along the sides of the median, just behind the curb, and install a 24" deep root barrier to direct the roots downward. The goal here is to force the roots deep enough to not affect the curb or asphalt. The third option would be to remove the tree and replace with a smaller maturing species.

I hope you find this information useful. If you have any questions please feel free to contact me.

Sincerely,



Jim Yelverton

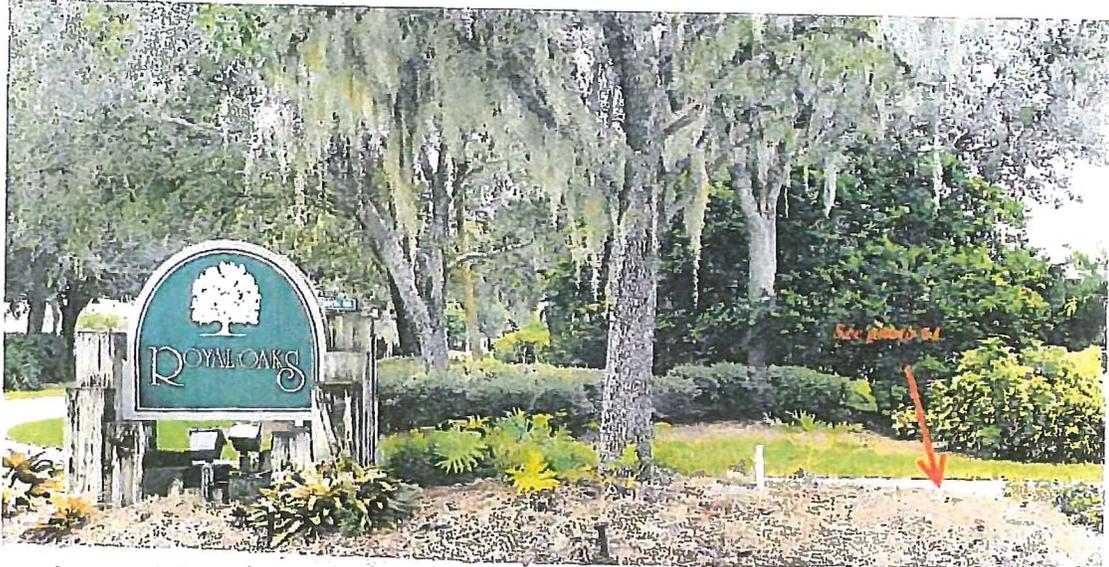
*Jim Yelverton Consulting Arborist  
ISA Certified Arborist FL# 5655A  
ISA Tree Risk Assessment Qualified  
Member American Society of Consulting Arborist*

Enclosure

**Arborist Letter  
( Exhibit E-1 )**

Page 1 of 3

**Photo #1**



See photo #2

Cracks in the curb and asphalt

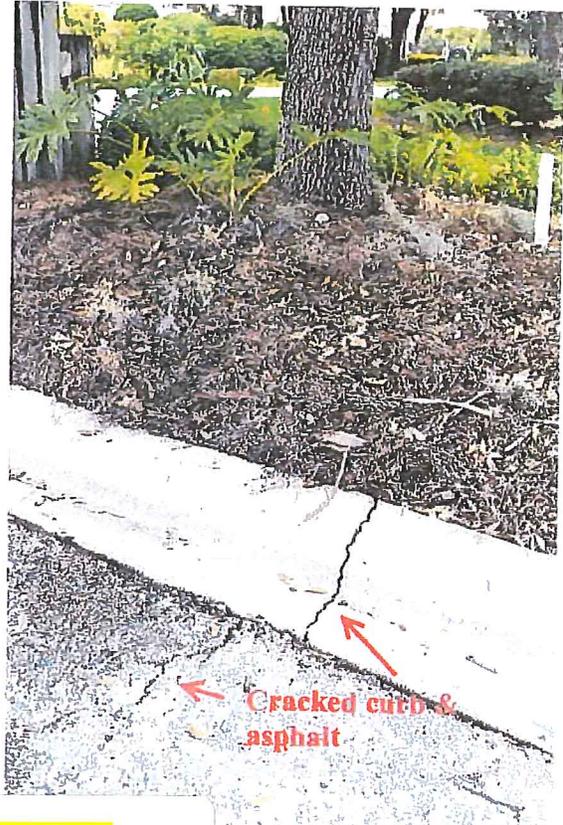
See photo #3

**Photo #2**



Cracked asphalt

**Photo #3**



Cracked curb & asphalt

**Photo #4**





## MEMORANDUM

Date: March 7, 2016  
To: Ms. Connie Bittle  
From: Shaun Cullinan, Planning and Zoning Official  
Subject: Appeal of Tree Removal Authorization Rejection – Royal Oaks Median Tree

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Ms. Bittle,

This letter is in regards to your appeal of the rejection of tree removal authorization for the oak tree located in the median island of the Royal Oaks subdivision entrance. In order for authorization of tree removal to be granted, the tree in question must meet one or more of the following criteria, provided under *Section 3-9-100.3(g) Criteria for issuance of tree removal authorization*

- (1) Tree removal authorization shall be granted only when an authorized County official has determined that the removal is consistent with one or more of the criteria below:
  - a. Trees pose a safety hazard to pedestrian or vehicular traffic or cause disruption to public utility services.
  - b. Trees pose a safety hazard to buildings or structures which cannot be remedied by trimming.
  - c. Trees completely prevent access or cross access to a lot or parcel.
  - d. Trees prevent development or physical use. It is the intent of this provision that a permit shall be granted for the removal of any tree when the applicant has demonstrated an effort to design or locate a proposed structure improvement so as to minimize the removal of trees.
  - e. Diseased trees or trees so weakened by age, storm, fire or other injury so as to pose a danger to persons, property, improvements, or other trees.
- (2) Authorization to remove a tree(s), when granted, shall be confined to the tree(s) specifically identified for removal as permitted. Removal of a tree(s) must be performed within six months from the date of issuance of the tree removal authorization or during the development activity for which final SPR approval was granted. Speculative clearing is not permitted.

### Community Development

Zoning Division

18400 Murdock Circle | Port Charlotte, FL 33948-1068

Phone: 941.743.1964 | Fax: 941.743.1598

**Memorandum  
( Exhibit F-1 )**

(3) Nothing in this section shall be construed to require the removal of any trees by the applicant.

Based on the application submitted, inspections by County staff, and the report provided by certified arborist Jim Yelverton, the tree does not meet the criteria for removal authorization. The report provided by Mr. Yelverton, dated September 3, 2015, states "Trees can adapt and survive in this limited growth space condition for long periods therefore in my opinion the tree poses no hazard and is in no serious jeopardy at this time". Mr. Yelverton's primary recommendation listed in the report is to "Do nothing. This problem is very common with street trees and is usually a more serious problem for the surrounding pavement than the tree. This situation can be dealt with by occasional curb and asphalt repair."

Should you wish to further appeal this determination to the Board of Zoning Appeals, please contact Ken Quillen, Planner III, at 941-623-1073.



Shaun Cullinan  
Planning and Zoning Official

**Community Development**

Zoning Division

18400 Murdock Circle | Port Charlotte, FL 33948-1068

Phone: 941.743.1964 | Fax: 941.743.1598

**Memorandum**  
**( Exhibit F-2 )**

**Sec. 3-9-6. - Board of zoning appeals (BZA) powers and duties; procedures.**

- (a) *Creation and appointment of the board of zoning appeals.* As part of the zoning organization and implementation of the land development regulations, the board of county commissioners, also referred to as the BCC, has created a board of zoning appeals, also referred to as the BZA. The BZA shall have five (5) members, appointed by the BCC, one (1) of whom shall be appointed from each of the five (5) county commission districts. No member of the BZA shall be an elected official of Charlotte County. No less than one (1), nor more than two (2), member(s) of the BZA shall also be a member of the planning and zoning board. To provide for BZA continuity of membership through staggered terms, the terms of members appointed from commission districts 1, 3, and 5 shall expire on the fourth Tuesday of November, 2016. Members appointed from commission districts 2 and 4 shall be deemed to have been appointed to terms expiring on the fourth Tuesday of November, 2014. Thereafter, all terms shall run for a term of four (4) years, and the filling of any vacancy occurring in any office shall be for only the remainder of that term. The manner of appointment, or removal and filling of board vacancies shall be by majority vote of the BCC.
- (b) *Organization.* The BZA shall elect from its membership a chair, vice-chair, and secretary, who shall serve a term of one (1) year and shall be eligible to succeed themselves. The BCC has adopted rules of procedure for the transaction of the business of the BZA and the zoning official shall maintain a record of all its resolutions, transactions and decisions on all matters. All transactions and decisions shall be a public record and available for public inspection.
- (c) *Procedures.* The chair, or in their absence, the vice-chair or secretary, shall chair meetings, and compel the attendance of witnesses. All testimony given shall be under oath. All decisions regarding appeals, the issuance of a special exception or variance by the BZA shall be quasi-judicial in nature. All meetings of the BZA shall be open to the public. The zoning official shall keep minutes of BZA meetings, showing the vote of each member on each question, and indicating, also, the absence of any member, or legal abstention from voting. The results of all of the official actions of the BZA shall become a public record in the office of the zoning official.
- (d) *Education and travel expenses.* Members of the BZA shall receive no salaries or other compensation for their services as such members. However; if they choose, members of the BZA may be reimbursed for expenses, including but not limited to training, education, and mileage driven, according to county policy.
- (e) *Expenses and fees.*
- (1) The cost and expenses of operation of the BZA shall be in manner as provided for the planning and zoning board as adopted for such board.
  - (2) The BCC is authorized, empowered, and directed to establish by resolution a schedule of reasonable fees to be charged by the BZA and all such sums received shall be deposited in the general fund of Charlotte County.
- (f) *Authority.* The BZA is designated by the BCC to hear, and have final authority on, the following applications.
- (1) Hear and decide administrative appeals when it is asserted there is an error in any order, requirement, decision, or determination made by the zoning official in the administration, enforcement, or interpretation of this Code.

**Section 3-9-6, BZA  
( Exhibit G-1 )**

- (2) Special exception uses under this Code, subject to reasonable safeguards, in particular circumstances.
  - (3) Grant time extensions and variances from the dimensional requirements of these land development regulations shall not be contrary to the public interest where, in specific cases and owing to special circumstances, a literal enforcement of the provisions of the regulations will result in unnecessary and undue hardship.
  - (4) The BZA shall not issue or grant variances or special exceptions which will permit a land use in a zone or district in which such use is forbidden by the land development regulations.
- (g) *Decisions of the BZA.* All decisions of the BZA shall require an affirmative vote of the majority of board members present and voting on the matter, unless stated otherwise in this Code. Tie votes shall not carry the motion made. As soon as possible after the BZA has made their decision the zoning official shall mail a decision letter to the applicant documenting the decision of the BZA including their reasons for a denial or any conditions adopted as conditions of approval. The zoning official shall also create a notice of approval, which shall be recorded in the office of the clerk of the circuit court and made a part of the official records of Charlotte County.
- (h) *Appeal to circuit court or county commission.*
- (1) Any person or persons, corporation, or other entity aggrieved by any decision of the BZA may, within thirty (30) calendar days after such decision has been documented by the zoning official in a decision letter, but not thereafter, apply to the circuit court of the county for appropriate relief. There shall be no right to apply to the circuit court for relief on account of any order, requirement, decision, determination or action of the zoning official unless there shall first have been an appeal to the BZA. It is the intention of the BCC that all administrative steps provided in this Code with regard to appeal and review shall be taken before any application may be made to the courts for relief with respect to matters or things appealable and reviewable hereunder.

(Ord. No. 2014-043, § 1(Exh. A), 11-25-14)

**Editor's note—** Ord. No. 2014-043, § 1(Exh. A), adopted Nov. 25, 2014, amended § 3-9-6 in its entirety to read as herein set out. Former § 3-9-6, pertained to board of zoning appeals; powers and duties; procedure, and derived from Minutes of Dec. 8, 1981, § 10; Res. No. 85-112, § 1, adopted June 18, 1985; Res. No. 87-256, § 4, adopted Oct. 20, 1987; Ord. No. 87-257, §§ 2, 3, adopted Oct. 20, 1987; Ord. No. 88-39, § 1, adopted Oct. 25, 1988; Ord. No. 89-50, § 1, adopted June 22, 1989; Ord. No. 90-16, § 1, adopted March 27, 1990; Ord. No. 94-52, § 1, adopted Nov. 3, 1994.

## Section 3-9-6, BZA ( Exhibit G-2 )

**Sec. 3-9-6.1. - Administrative appeals.**

- (a) *Appeals of denial by zoning official to the BZA.* The BZA may, upon proper application, public notice and public hearing reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination made by the zoning official in the administration, enforcement or interpretation of any of these land development regulations. The BZA may make such order, requirement, decision or determination as shall be proper in the circumstances, and for such purpose shall have all the powers of the officer from whom the appeal was taken.
- (b) *Application.* An appeal to the BZA following a denial from the zoning official shall be in writing on forms provided by the community development department, and shall be filed with the community development department within thirty (30) calendar days after the date on the decision letter notifying the applicant of the administrative decision or determination by the zoning official. The appeal shall be submitted with the applicable fee, accompanied by all documents, plans and other papers constituting the record, and specify the grounds for the appeal.
- (c) *Action by county staff.* Upon receipt of a written appeal, the zoning official shall determine the date, time and place of the public hearing, and shall give published notice as well as written mailed notice by first class mail to all substantially interested parties at least fifteen (15) calendar days prior to the date of the public hearing. The zoning official shall transmit to the BZA all documents, plans and other papers or other records upon which the decision appealed from is based. At the public hearing of an administrative appeal the zoning official shall present the facts of the case and explain the decision made, after which any person may appear and be heard under oath. The final action by the BZA shall be documented by the zoning official in a decision letter to the applicant, copies of which shall be kept on file. The zoning official shall also create a notice of approval, which shall be recorded in the office of the clerk of the circuit court and made a part of the official records of Charlotte County. A copy of the recorded notice of approval shall also be mailed to the applicant.
- (d) *Action by applicant.* The applicant shall appear at the public hearing in person, or by agent or attorney, to testify under oath before the BZA, present their case for the appeal, and answer questions asked of them.
- (e) *Considerations for appeals.* In reaching its decision, the BZA shall consider the following criteria as well as any other issues which are pertinent and reasonable.
- (1) Whether or not the appeal is of a nature properly brought to them for a decision, or whether or not there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
  - (2) The intent of the regulation in question.
  - (3) The effect the ruling will have when applied generally to the intent of the land development regulations.
  - (4) Staff recommendations, the testimony of the appellant, and testimony of substantially interested parties shall also be considered.

(Ord. No. 2014-043, § 1(Exh. A), 11-25-14)

**Section 3-9-6, BZA  
( Exhibit G-3 )**

**Sec. 3-9-100. - Buffers, landscaping, and tree requirements.****(a) Purpose.**

- (1) **Buffers.** The purpose of the buffering provisions is to establish standards for transitional landscape buffers and screening. Certain uses of property when abutting each other may be incompatible and create conflicts that may be reduced or eliminated by transitional buffers. These standards are intended to provide a comprehensive and consistent, yet flexible framework for providing adequate transitional buffer areas and screening between abutting incompatible uses. These standards are intended to improve the appearance of the county by eliminating or minimizing potential nuisances such as noise, lighting, unsightly buildings and structures, the visibility of outdoor aspects of intensive land uses, and off-street parking and loading areas, as well as assist in soil conservation and the natural control of air and water pollution and ensure the compatibility of different land uses over time.
- (2) **Landscaping.** The purpose of the landscaping provisions is to establish standards for landscaping areas associated with parking, traffic circulation, and other vehicular use. These standards are intended to provide a comprehensive and consistent, yet flexible, framework for landscaping intended to improve the appearance of the county by creating green space where development occurs, enhance soil conservation and the natural control of air, thermal, and water pollution, and ensure the compatibility of different land uses over time.
- (3) **Tree requirements.** The purpose of the tree requirements provisions is to establish standards for the planting, preservation, and removal of trees. These standards are intended to provide a comprehensive and consistent, yet flexible framework for tree requirements intended to improve the appearance of the county by encouraging the proliferation of native trees and native vegetative cover, as well as relocation or replacement where necessary, and to control and eliminate invasive non-native species. Protection of trees and native vegetation is intended to promote carbon dioxide absorption, oxygen production, dust filtration; reduction of noise, wind, and glare; soil stabilization and enrichment; erosion prevention, surface drainage improvement and aquifer recharge; water pollution reduction, wildlife habitat, energy conservation, temperature moderation, the economic enhancement of improved and vacant lands; scenic beauty, quality of life, and the health, safety, welfare, and well-being of the county.

- (b) **Definitions.** Unless otherwise specifically stated in this section, or unless otherwise clearly indicated by the context, the following terms when used in this section shall have the meanings indicated as follows:

**Abutting:** see "Adjacent".

**Access aisle:** the principal means of vehicular ingress and egress to abutting property from a street, right-of-way, or easement.

**Active use park:** all recreational parks with the exception of those used primarily as nature trails, mitigation banks, or for environmental study and interpretation.

**Section 3-9-100  
Tree Requirements  
( Exhibit H )**