

QUESTIONS REGARDING INFILL DEVELOPMENT

04.15.22

1. What bonds are required for by-right infill developments and what are they for?

Cash conservation escrows are required for by-right infill development. They are required for erosion and sediment control – to ensure sediment does not run off site.

2. What does each bond cost the developer?

The cash conservation escrow amount is based on the disturbed acreage of the site. Below is the 2022 Unit Price Schedule (UPS). In addition, stormwater facilities are calculated per the 2022 UPS.

RESIDENTIAL CONSERVATIONS	\$	
Up to 0.5 Acres	\$ 3,000	EA
0.5 - 3.0 Acres	\$ 5,000	EA
3.0 - 5.0 Acres	\$ 7,000	EA
5.0 Acres & gerter	\$ 9,000	EA
Townhouse Conservation - Per Unit	\$ 1,000	EA

STORMWATER FACILITIES	\$	
Bioretention Basins & Filters	\$ 462	CY
Constructed Wetlands	\$ 2,148	CY
Extended Detention Pond (Dry Pond)	\$ 52	CY
Extended Detention and Retention Riser Structure	\$ 519	VLF
Manufactured BMP Systems - Hydrodynamics	\$ 91	CY
Manufactured BMP Systems - Filtering	\$ 126	CY
Permeable Pavement System - Asphalt with gravel base and perforated drains, brick & grass pavers with gravel base	\$ 150	SY
Reforestation	\$ 67,317	AC
Retention Basin (Wet Pond)	\$ 3,350	AC
Tree box filter - with grate and frame 6'x6 & 8'x8', without tree	\$ 4,239	EA
Tree box outfall 4" schedule 40 PVC with gravel backfill	\$ 48	LF
Vegetated Roofs - Aluminum Curbing for 6 & 12 inch depth	\$ 14	LF
Vegetated Roof	\$ 958	SY
Vegetated Swales	\$ 266	CY
Infiltration	\$ 18	CF
Rainwater Harvesting	\$ 44	CF
Access Gate	\$ 3,061	EA
Stormwater Sign	\$ 114	EA

3. Who sets the cost of a bond? Note: we understand these bonds are very cheap.

The Board of Supervisors (BoS) sets all fees.

4. Who determined the costs? How do the citizens get a say in bond costs?

The BOS determined (adopted) the costs and staff calculates each project cost based on the current UPS. Citizens interested in cost adjustments should contact the BOS.

5. When is a builder let off bond? And who makes the decision to let them off and give them their money back?

The builder's cash conservation escrow is released when the site inspector informs staff in Bonds and Agreements (BAC) that the final inspection has been conducted and the work (per the approved plan) is completed. BAC staff then release the escrow.

6. How do by-right bonds differ from bonds for developments requiring PC and BOS approval?

By-right infill development requires a cash conservation escrow. They are required only for erosion and sediment control and are released as described in the answer to question 5. Major developments require bonds because these projects include public infrastructure, i.e., new streets, sewer lines, etc. They are released after BAC staff and the Office of the County Attorney (OCA) determine that they have met all of the requirements of their approved plans.

7. How can bonds be extended to ensure problems don't arise in the future?

Cash conservation escrows are not extended. They are released after the final site inspection. Infill development does not allow for extensions. They are in place with cash for the entirety of the project until it is complete. Only major plans (SP, SD, PI) have Extensions.

8. *Why can't a builder put utilities closer to the home and/or the driveway so trees can be saved?*

The variables that go into determining utility locations include: where they connect to the home, where they connect to the main line, and other site conditions. UFMD frequently works with developers and their engineers to alter utility locations, if they believe a tree can be saved. We have attached the Chapter 122 Tree Preservation Ordinance to explain the specific authority that staff has: https://library.municode.com/va/fairfax_county/codes/code_of_ordinances?nodeld=THCOCOFVI1976_CH122TRCOOR

Pertinent information is provided below for your convenience:

The 10-year tree canopy requirement may be met through the preservation or planting of trees. However, when existing trees meet standards of health, condition, and suitability, and when it is feasible to preserve those trees within the framework of permissible uses, densities, design standards, and construction practices, all efforts shall first be made to meet the tree canopy

requirement through the preservation of trees before tree planting is allowed to meet any portion of the tree canopy requirement. [Underlining by staff for emphasis.]

9. *How many waivers have been given in the past 5 years allowing the removal of trees? Give the names of the builders requesting waivers and give this data by magisterial district.*

To clarify, there are two types of exceptions that builders may apply for: 1) a tree canopy modification/waiver request and 2) a tree preservation deviation request.

A tree canopy *modification/waiver* request is submitted to the Director of Land Development Services (LDS) to administratively waive the 10-year tree canopy requirement. Any modification/waiver approvals by LDS are based on site constraints that prevent the 10-year tree canopy from being met. Between April 1, 2017 and April 12, 2022, the Urban Forestry Management Division (UFMD) received 7,720 development-related site plans. Of these, 19 Tree Canopy Modifications/Waivers were submitted and approved.

A tree preservation *deviation* request is submitted to UFMD to administratively allow for a deviation from the tree preservation-portion of the 10-year tree canopy requirement. The 10-year tree canopy requirement can also be met with new trees, but the County works with developers to maximize tree preservation to meet the tree canopy requirement. During calendar year 2021, UFMD reviewed 1,859 grading plans (1,447 were infill plans and 64 were major plans). Of these, there were 167 deviation requests were made and 158 were approved. In the Mt. Vernon District, UFMD reviewed 184 plans, of which 25 deviations were requested. All 25 were approved.

Regarding the request for builders' names, this will require more time because plan modifications/waivers and deviations are typically in the name of the builders' engineer. Due to the staff time required to research the names of the builders, a FOIA request will have to be submitted and fees will mostly likely be assessed. If the timeframe can be reduced to a year or two, then the cost would be less. If you are interested in submitting a FOIA request, please submit it to ldsfoia@fairfaxcounty.gov.

10. *What laws, ordinances or Countywide policies exist that state trees must come down because a branch may fall on a neighboring property?*

No laws, ordinances, or Countywide policies require the removal of a tree because a branch may fall on a neighboring property. Chapter 46 of the County Ordinance: Health and Safety Menaces defines a public health or safety menace as "any condition which might endanger the health of the public." If the neighboring property is a private residential lot this is not considered public. A dispute between two private property owners regarding a tree is considered a civil issue and is not subject to Chapter 46. Circumstances in which a tree or tree part is considered a threat to the public involve areas open to the general public. Listed conditions considered health and safety menaces in Chapter 46 include "trees or parts thereof in danger of falling." If a branch is the part identified as likely to fail then only the branch would be required to be removed. Pruning, not removal of the tree, would be specified to abate the hazard.

11. Is the County notifying the neighbors of a potential tree branch issue? And does staff ask them for their opinion regarding tree removal? If the County is concerned about getting sued, then why not have the neighbor sign a document stating they have been notified and agreed to let the tree stay?

There is no required notification of a potential tree branch issue. During the plan review process, if a shared tree (on a lot line) or offsite is proposed to be removed due to construction activities associated with the development site, the developer is required to provide proof of notification to the affected property owner(s) as a condition of plan approval.

If the tree is not associated with the plan review/land development process, and is associated with Chapter 46, please see the answer provided in question number 3.

12. What arborist (County or builders) is making the tree health determinations? Who on County staff verifies the arborist's decision?

During the plan review process, the initial determination is made by a consultant on behalf of the developer (there is no requirement that this determination be made by a certified arborist). This is part of the tree inventory and conditions analysis that is required as part of the grading plan submittal. Upon receiving a plan for review, a County Urban Forester will generally visit the site and make their own determination. If there is a disagreement over the condition of a tree, further coordination will occur between County staff, the developer, and their consultant until a consensus is reached.

UFMD staff are certified by the International Society of Arboriculture (ISA), the primary professional organization for arborists and urban foresters. Several UFMD certified arborists also hold the Tree Risk Assessment Qualification (TRAQ) which is a separate credential administered by ISA.

13. Why not require the builder to plant trees in neighbors' yards if a neighbor wants a tree when the lot is clear cut?

Fairfax County has no authority to require any plantings, on a single-family lot, other than what is required to achieve the 10-Year Canopy Coverage for the lot being developed. If a neighbor wants a tree planted, that is a private civil matter between that individual and the developer.

14. Why are neighbors not notified of by-right development ahead of time? Just because the construction may be allowed by right doesn't mean there won't be major disruption to a street/community such as (noise, heavy equipment blocking streets and impacting children playing, dog walkers, dirt on roadways, and major tree removal etc.)

The County Ordinance has no provisions for notifications to neighbors (or others) for by-right development. The Board of Supervisors would need to adopt a new Ordinance to require such postings. An Ordinance was considered by the Board on January 18, 2017 -- but failed on a 5-5 vote.