

Donaldson Run Civic Association

September 29, 2022

Katie Cristol, Chair
Arlington County Board
2100 Clarendon Boulevard
Arlington, VV 22201

Re: Forestry and Natural Resources Plan

Dear Chair Cristol:

On behalf of Donaldson Run Civic Association (DRCA), we file these comments on the staff's draft Forestry and Natural Resources Plan, released August 1, 2022.

Our comments reflect DRCA's experience with the expanding and irreparable loss of mature trees resulting from development in our neighborhood. They also highlight certain draft recommendations resulting from the efforts over the past year of an informal working group, convened under the auspices of the Civic Federation. While these draft recommendations have not yet been considered by the Civic Federation, they seek to identify specific reforms to County ordinances and practices designed to stem the accelerating tree loss in the County.

We applaud County staff for identifying the challenges Arlington faces with increased development and the importance of maintaining a commitment to ensuring the many well recognized benefits of increased tree canopy. We share the belief in the biophilic principle of making nature a priority in urban planning (p. 2). We also agree that these benefits should extend throughout all areas of the County regardless of their different demographic characteristics.

Nevertheless, we believe the draft plan fails to communicate the sense of urgency required in light of the rapid loss of trees and green space in the County. It also fails to identify specific steps the County can take to achieve the laudable goals advanced in the plan. Zeroing in on *how* we can achieve these goals is essential in light of where we now find ourselves. We don't have time not to make that effort.

While we address additional steps below, we have the following seven high-level recommendations for your consideration in finalizing the plan:

- The draft plan seeks to ensure "zero loss" of our existing tree canopy (p. 25), while expanding that canopy "where possible" (p. 49). Arlington can and should do better, by walking the walk as well as talking the talk about trees. Our specific recommendations are designed to stem the "significant [tree] losses on private property" (p. 15) documented by the draft (p.24), as well as adding to parklands to honor the commitment made by our predecessors in the 1940s (p. 1). It is distressing to see that the County is now requesting bond authority in the amount of \$22.46

million for local parks and recreation for the next year, *none* of which will be devoted to “Parks and Land Acquisition and Open Space.”

- In connection with the “missing middle” proposal referred to in the draft (p. 30), the June 23 letter to the County Board from the Forestry and Natural Resources Commission (FNRC) expressed serious concerns about that proposal in light of the “already declining tree canopy.” The Commission does not support missing middle changes “when concrete policies to protect our vital natural environment and urban forest have not yet been developed.” These include “zoning changes to reduce building footprints for new construction (whether multi-unit or single-family) in residential areas, an issue the FNRC raised more than two years ago.”
 - Consistent with consensus views expressed in last year’s Online Engagement Summary (see p. 18), the August 1 draft plan does tee up such zoning changes for consideration (p. 31), and we include some additional ones below. However, like the FNRC, **we cannot support any missing middle changes to the Zoning Ordinance that are not preceded by reforms to the 2005 lot coverage provisions of the ordinance.** The need for such reforms long predated any missing middle proposal. Indeed, staff recognized that need at least as far back as the 2014 Stormwater Management Plan. Accordingly, the plan should be revised to recommend reprioritization of these reforms so as to precede, not follow, any “missing middle” changes to the Zoning Ordinance.
 - Apart from the loss of existing mature trees from oversized home footprints (single-family or multi-family), we also note the reduced 20-year future tree canopy protections (p. 30) that would result from adopting the missing middle proposal. **There is no support provided for the wishful thinking that developers will not take advantage of these reduced protections, and will instead “plan[t] beyond the regulatory requirements” to ensure “up to 50%” tree canopy.** Any such assumption runs flatly contrary to DRCA’s repeated experiences.
 - The plan’s analysis of these reduced tree canopy protections also seriously understates the potential scope of these reductions, because **the reductions will also apply to any single-family developments in the new multifamily zoning districts.** As the County has recognized, the state law 10% cap on local tree canopy requirements (Va. Code § 15.2-961) applies to *any* “site zoned 20 or more units per acre.” Under the missing middle proposal, we believe developers of single-family homes would assert that the 20% limit now applicable to them would be reduced to 10% in such zones.
- **Review of site plans for use permits and special exceptions should receive notice and opportunity for input from neighbors and affected civic associations, before staff recommendations on such plans.** The County should implement a public outreach program to alert civic associations and others about the opportunity to participate in such discussions, which could address steps to avoid loss of mature trees.
- **The County should revise its tree preservation ordinance to ensure maximum use of the authority granted under state law.** Va. Code § 10.1-1127.1.
 - When Arlington implemented this authority in 2002, the County Board amended the proposal to give owners of single-family homes – and no other property owners – a veto right (not required by state law) over designation of trees for special protection. While

all property owners have a right to be heard, state law ultimately provides the County Board with authority to override their views.

- The County Board should charge the FNRC with making annual proposals for such tree designations, for consideration by the County's urban forester, who should provide a written explanation to the Board and the public on action to accept or reject such proposals.

■ **The County should strengthen its Chesapeake Bay Preservation Ordinance as follows, to comply with state law requirements:**

- Clarify that *any* exception to the prohibition against land development within an RPA to must be considered not by staff, but by the Chesapeake Bay Ordinance Review Committee.
- Prohibit the installation, within an RPA, of any facilities designed to collect and treat runoff from an individual lot or some portion of the lot. This would deter use of such mitigation to facilitate removal of trees.
- Update and expand the County's RPA designations, with full use of the "other lands" provision as permitted under state law and the County's ordinance (61.5(B)(1)(e)).
- Accelerate the September 2024 deadline required by state law (HB 504, sponsored by Delegate Hope, and implementing regulations VAC 25-830-130, 25-830-155) to increase protections designed for "preservation of mature trees" and "climate change" imperatives.

■ We agree that **Arlington's General Assembly delegation should introduce legislation to amend the tree canopy provisions of Va. Code § 15.2.961 to grant Arlington County unrestricted authority to impose tree canopy coverage requirements in reviewing development plans.**

Whatever the situation may be in other areas of Virginia, in this high density and accelerating redevelopment area we need stronger tools to address the accelerating stormwater management and other impacts of tree loss.

- Governments speak to their real priorities through their budget and capital investment choices and commitments. As noted above, the County's bond issue for parks and recreation should reflect the need to acquire and preserve more of our dwindling green space. Too often, the County opts out of opportunities to do so the way our predecessors did (p. 1). The destruction of trees to make way for intensive development of the Febrey-Lothrop site in Dominion Hills is a tragic example of this lost opportunity. Nor should we rely on incentivizing private developers to undertake the creation of such public goods, with often unacceptable tradeoffs.

In addition, we have the following recommendations on the draft plan:

- As the draft notes (p. 15), 84% of the trees in Arlington are on private rather than public land. Accordingly, the priorities in the final plan should focus more on protecting mature trees and future tree canopy on private land.
- The lot coverage reform proposals (p. 31), which will apply to both existing single-family and any future multi-family developments, should also include reducing overall lot coverage percentages in each R district, revisiting the detached rear garage and front porch exceptions, and accounting for oversized lots in smaller (e.g., R-5 and R-6) districts to avoid dwarfing adjacent homes.

- Under no circumstances should reduced lot coverage footprints be traded off for *increasing* the 35-foot height limit for residential structures. This would defeat a critical purpose of zoning – to prevent “interfering by . . . height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes.” *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926), cited, e.g., in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2071-72 (2021). Indeed, there is widespread recognition that the current height limit is far too generous, because among other things it fails to account for the steep slopes in the county (by using calculations based on the average height of four corners of the structure), and counts only half the height of gabled homes.
- Landscape standards (1.2.6) should also incorporate the most recent ISA standards for tree preservation during development. While it may have been updated, see N. Matheny and J. Clark, *Trees and Development: A Technical Guide to Preservation of Trees During Land Development* (1998).
- Based on what we see from development in our neighborhoods, county enforcement of tree preservation requirements during this period of accelerated residential teardown and redevelopment is inadequate. While this problem may be exacerbated by lack of resources, and by inadequate communication between developers and their crews, our experience has been that lax enforcement sends the wrong message to them and they lack any real incentive to comply with best practices. See, e.g., Letter from DRCA to County Manager re 4009 N. 25th Street, July 28, 2020. The County should also seek General Assembly action to increase the relatively modest penalties now imposed for construction-related violations, including loss of required licenses.
- Such enforcement can be enhanced by requiring (as with subdivision plans) that tree preservation plans filed with the County be provided to neighbors and the relevant civic association. The County Attorney has now reversed prior rulings by staff that such plans are exempt from FOIA requests, but proactive efforts to make these plans available in advance of County action on them would be more effective, by getting this information in the hands of those most affected by it.
- We agree that tree canopy requirements under existing law need strengthening (1.2.6) by preventing subsequent owners from removing trees planted to comply with such requirements. This requirement should be coupled with post hoc reviews of these plans to determine whether they have achieved their tree canopy targets after the specified 20-year period.
- On public lands, we agree that the County needs to increase its attention to (and thus funding of) maintenance of trees after they are planted (pp. 60, 69). Proactive maintenance programs should include regular solicitation of input by the relevant civic association(s).

Thank you for your consideration of these comments.

Sincerely yours,

Bill Richardson
President
Donaldson Run Civic Association

cc: Forestry and Natural Resources Commission