

23-1 CUTTING OR REMOVAL OF TREES.

23-1.1 Definitions.

As used in this section:

Tree shall mean any woody perennial plant having a diameter greater than three (3) inches, measured at a point four and one-half (4 1/2) feet above the ground. In addition, it shall include any living dogwood (cornus florida) and American holly, one (1) inch in diameter or greater.

(1974 Code§ 124-1; Ord. No. 4-82)

23-1.2 Permit Required.

No person shall cut or remove any tree upon any land within the Township unless the person obtains a permit, the same in accordance with the procedure set forth herein, and has the permit in his possession during cutting operations. The permit shall have an expiration date thereon, which shall be in the discretion of the issuing official, based upon the magnitude of the area and the number of trees to be cut or removed. (1974 Code§ 124-2; Ord. No. 4-82)

23-1.3 Exceptions.

The following are hereby exempted from compliance with the provisions of this section:

- a. Any tree located on a tract of land two (2) acres or less in size, upon which tract is erected a single-family dwelling. All residential subdivisions requiring review and approval by the Planning Board or Board of Adjustment and all site plans for commercial, industrial or other nonresidential development or construction requiring site plan approval before either of the Boards are specifically subject to the provisions of this section.
- b. Any tree growing on property used as a nursery, garden center, Christmas tree plantation, orchard, soil conservation farm and any tree removed or cut in accordance with an existing approval or management plan developed by the New Jersey Department of Environmental Protection or any of its agencies, Bureau of Forestry or other professional forester and filed with the Township Code Enforcement Officer or other designated official.
- c. Any tree growing on land actually being used for sanitary landfill operation or for surface mining, provided that necessary approvals for such operations have been granted.
- d. Any dead or diseased tree or any tree that is likely to be a danger to life and property.
- e. Any property upon which the owner has received a farmland tax assessment prior to the removal of any tree.

f. Trees or shrubs removed during the making of an outbounds property survey by a licensed surveyor or his staff.

g. In the Pinelands Area, any tree removed or cut in accordance with a forestry permit issued by the Zoning Officer pursuant to Chapter XXXV, Land Development, Section 35-147, Forestry.

h. The provisions of this section shall not apply to any public employee acting at the request of an abutting homeowner or municipal directive to cut or remove a tree within the public right of way that is creating a hazardous condition. Nothing in this section shall relieve a landowner of any obligations to maintain an abutting sidewalk or curb as set forth in Chapter XVII entitled "Streets and Sidewalks."

(1974 Code§ 124-3; Ord. No. 4-82; Ord. No. 00-29-OAB

§ 1; Ord. No. 01-21-OAB)

23-1.4 Trees Within Public Rights-of-Way.

a. Notwithstanding any provision in this section to the contrary, no person shall cut or remove any tree having a diameter of one and one-half (1 1/2) inches or more, which is located within any public right-of-way in the Township, unless such person has received a permit from the Township Code Enforcement Officer, or such other designated official, to cut or remove such tree. Further, no person shall cut or remove any tree having a diameter of one and one-half (1 1/2) inches or more, which was planted by a developer pursuant to a municipally approved site plan or subdivision unless such person has received a permit from the Township Code Enforcement Officer or such other designated official. As a condition of any such permit referred to above, the permittee shall replace the tree with a tree conforming to the standards set forth in Section 35-48 entitled "Buffers, Screening, Landscaping and Shade Trees" in the land development regulation of the Township of Berkeley as it may be amended. Upon request of the adjacent property owner, the Township is authorized to remove any dead or diseased tree or any tree that is likely to be a danger to life and property from the public right-of-way. The adjacent property owner is not required but is encouraged to replace the removed tree.

b. The provisions of this section shall not apply to any person who is in the process of clearing any public right-of-way in the Township for purposes of improvement of such right-of-way. This provision shall not prevent any resident from trimming back roots of a tree in order to maintain the curbs or sidewalks in the public right-of-way adjacent to their residence. It is the intention of this section to facilitate the obligations of owners of any premises abutting a sidewalk or curb to maintain such sidewalk or curb as set forth in Chapter XVII entitled "Streets and Sidewalks."

c. Notwithstanding any provision in this section to the contrary, no person shall top any tree located within the public right-of-way in the Township or any tree which was planted by a developer pursuant to a municipally approved site plan or subdivision.

d. Permit fees provided for by this section shall be waived in all cases for trees located in the right-of-way or planted by a developer pursuant to a municipally approved site plan or subdivision.

(1974 Code§ 124-3.1; Ord. No. 4-82; Ord. No. 85-7; Ord. No. 85-40; Ord. No. 95-04; Ord. No. 95-27; Ord. No. 95-31)

23-1.5 Application of Permit.

Any person desiring to destroy, cut or remove any tree regulated by this section shall apply to the Township Code Enforcement Officer, or such other designated official, for a permit to remove such tree or trees. The applicant shall identify the land upon which the tree or trees is located and shall disclose the names and addresses of the owners or tenants and shall identify and place the location of the tree or trees sought to be cut, removed or destroyed and their approximate diameter, type and number. Application forms shall be made available for use. (1974 Code§ 124-4; Ord. No. 4-82; Ord. No. 95-27)

23-1.6 Branch and Stump Removal.

The Township Code Enforcement Officer or such other designated official shall have the discretion to require any person destroying, cutting or removing any tree to be responsible for removing any fragments of branches over one (1) inch in diameter. No stumps, in any event, shall be buried or covered on site or buried or covered on any property in Berkeley Township without the written permission of the Township Code Enforcement Officer or such other designated official. (1974 Code§ 124-5; Ord. No. 4-82; Ord. No. 95-27)

23-1.7 Sketch.

The application for a permit shall be accompanied by a sketch accurately depicting the location and dimensions of the property in question and showing the location of the trees in question and setting forth the lot and block number. The existing vegetation shall also be shown. (1974 Code§ 124-6; Ord. No. 4-82)

23-1.8 Annual Permits.

- a. Annual permits may be issued to property owners for harvesting timber for home consumption. The permit shall run from the calendar year January 1 to December 31 of each year. The applicant shall submit to the Township Code Enforcement Officer or such other designated official proper proof of ownership. In order to protect the property owners of the Township of Berkeley, the permit must be in the possession of the cutter at all times as an indication of authorization.
- b. A permit issued under this section may be revoked by the Township Code Enforcement Officer or such other designated official where there are violations of this chapter, any conditions imposed by the Code Enforcement Officer or such other designated official or any violations of representations made by the applicant.
- c. One (1) permit shall be issued for each separate Tax Map lot, unless the same are contiguous.

(1974 Code§ 124-7; Ord. No. 4-82; Ord. No. 95-27)

23-1.9 Standards.

The Township Code Enforcement Officer or such other designated official shall have the discretion to inspect the site. He shall determine whether the applicant shall be granted a permit and shall then act favorably or unfavorably thereon. The officer or such other designated official shall apply the following standards in making this determination:

- a. Trees of six (6) inches or less in diameter shall be given special consideration to allow for natural reforestation.
- b. Any tree of historical significance or otherwise significant by reason of its rarity or environmental significance shall be given special consideration and shall not be cut or destroyed unless there is no possible alternative.
- c. For industrial, commercial property and for major subdivisions, the site plan or subdivision is to be submitted to the Township Code Enforcement Officer or such other designated official. In addition to trees provided for protective screening and required by existing ordinances, the trees in the vicinity of boundary lines shall not be removed. Existing trees must be incorporated into the site plan or subdivision where possible. Any changes in a site plan or subdivision subsequent to original approval must be resubmitted to the Township Code Enforcement Officer or such other designated official for reapproval.
- d. State standards for tree protection shall apply.
- e. In all cases, the Township Code Enforcement officer or such other designated official shall seek to prevent the excess destruction, removal and cutting of trees so as to prevent soil erosion, increased dust conditions, drainage problems and lack of drainage control and resultant deterioration of property values.

(1974 Code§ 124-8; Ord. No. 4-82; Ord. No. 95-27)

23-1.10 Fees.

- a. The fees for an annual permit shall be: twenty-five (\$25.00) dollars for the removal of fifty (SO) trees or less, and fifty (\$50.00) dollars for the removal of more than fifty (SO) trees. All other fees shall be as follows:
- b. The fee for removal of one (1) to ten (10) trees shall be ten (\$10.00) dollars.
- c. For removal of more than ten (10) trees, the fees shall be: an additional ten (\$10.00) dollars shall be charged for the removal of each additional ten (10) trees or any part thereof, i.e., twenty (\$20.00) dollars for removal of eleven (11) to twenty (20) trees. The maximum fee for the removal of more than forty (40) trees shall be fifty (\$50.00) dollars.

d. In all events, the fee for tree removals in major subdivisions shall be ten (\$10.00) dollars per acre or any portion thereof.

{1974 Code§ 124-9; Ord. No. 4-82)

23-1.11 Appeal.

Any person shall have the right to appeal the decision of the Township Code Enforcement Officer or other designated official to the Business Administrator within ten (10) days of the date of the decision. The appeal shall be delivered to the Township Clerk and shall be in the form of a written appeal notice, setting forth the reasons for the appeal and attaching copies of all relevant documentation. The Township Business Administrator shall hear the appeal and shall decide the same in writing within thirty (30) days after the filing of the appeal or within such other period as the appellant may consent to. The Township Business Administrator may reverse, modify, remand or affirm the decision. (1974 Code§ 124-10; Ord. No. 4-82; Ord. No. 95-04; Ord. No. 95-27)

23-1.12 Enforcement.

This section shall be enforced by the Township Code Enforcement Officer or such other designated official acting in his place or by the Police Department or Construction Code Official or any subcode official. (1974 Code§ 124-11; Ord. No. 4-82; Ord. No. 95-27)

23-1.13 Violations and Penalties.

Any person who violates any provision of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5. In the event that the statutes of the State are amended to provide greater penalties, this section may be construed to authorize and permit the imposition of the maximum fine, imprisonment or community service. The purpose of this penalty clause is to provide the maximum penalty permitted by law. (1974 Code§ 124-12; Ord. No. 4-82; Ord. No. 88-48; New)

23-2 TREE REMOVAL/REPLACEMENT.

23-2.1 Purpose.

The purpose of this section is to control and regulate indiscriminate, uncontrolled and excessive removal, clear-cutting and destruction of trees. A further purpose is to control, protect, conserve, regulate and prevent conditions which cause increased surface drainage, degradation of water resources, decreased groundwater recharge, adverse sedimentation and soil erosion. All of these conditions are, and will be, a detriment to public safety, health and welfare.

(Ord. No. 03-25-OAB § 1)

23-2.2 Definitions.

As used in this section, the following terms shall have the meanings indicated:

Agricultural use shall mean as currently defined in Section 35-3.

Approved plan shall mean a tree removal plan or forestry management plan which has been approved by the Planning Board, Board of Adjustment or other Township agency as provided for in this section. The approving authority shall have the authority to seek the advice and/or recommendation of the Township Environmental Commission and Shade Tree Committee.

Conservation Officer. The Director of Planning, or his or her designee shall be appointed and designated Conservation Officer. This official shall be charged with the inspection of sites upon which there is an application for subdivision or site plan approval in regard to the provisions of this section, and with inspection and enforcement of the tree removal and protection requirements of this section.

Diameter at breast height shall mean the diameter of an existing tree measured at a point no greater than forty-eight (48) inches above the downhill side. This phrase may appear in this section as the abbreviation "DBH."

Diameter at point of measurement shall mean the diameter of a replacement tree measured at a point on the tree six (6) inches from ground level on the downhill side. This phrase may appear in this section as the abbreviation "DPM."

Dripline shall mean a limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree but not less than six (6) feet from the trunk, whichever is greater.

Historic tree shall mean any tree dedicated by the Township Council commemorating an individual or event.

Inventory of historic and/or specimen trees shall mean a list of trees identified as being historic or specimen trees. Such list shall be maintained in the office of the Township Clerk and Zoning Officer. The Environmental Commission and Shade Tree Committee may provide input to the Township Council, Planning Board, Board of Adjustment, Historic Sites Committee and other Township departments in compiling said list. The inventory shall be kept on file in the Township Clerk's office and Zoning Office for public review. The Environmental Commission and Shade Tree Committee shall be guided by New Jersey Department of Environmental Protection regulation N.J.A.C. 7:7E-3.37 when making a determination of specimen trees.

Preferred trees shall mean those trees enumerated in Section 35-48.L.6 through 9.

Specimen trees or record tree shall mean as currently defined in Section 35-3.

Tree shall mean any woody perennial plant having a diameter greater than six (6) inches, measured at a point four (4) feet above the ground and the Dogwood, Ironwood, American Horn Beam, Eastern Red Cedar, White Cedar, White Oak, and American Holly trees having a diameter greater than two and one-half (2 1/2) inches, measured at a point four (4) feet above the ground.

Tree farm shall mean a tract of woodland of at least five (5) acres dedicated by its owner to the growing and harvesting of forest crops and certified by the American Tree Farm System through the New Jersey Tree Farm Committee.

Tree removal/replacement plan shall mean a plan of tree removal and/or planting in accordance with the provisions of this chapter.

Tree replacement shall be in accordance with Section 35-48.

(Ord. No. 03-25-OAB § 2)

23-2.3 Compliance.

No person shall cut or remove any tree upon any land within the Township except as provided by subsection 23-2.5 unless such removal is done in accordance with regulations and provisions of this section. (Ord. No. 03-25-OAB § 3)

23-2.4 Tree Removal/Replacement Plan Required.

a. A tree removal/replacement plan shall be filed with every development application for approval of a subdivision, site plan, planned development, conditional use or variance or prior to any other

development requiring tree removal or requiring tree replacement, except as otherwise provided in subsection 23-2.5 hereof.

b. Where a lot or tract is proposed to be developed for use as a single-family residence and the property is part of an approved plan, the developer must develop the lot in compliance with approved plan.

c. Where a lot or tract is proposed to be developed for use as a single-family residence and the property is not part of an approved plan, the owner must submit a tree removal plan for approval. A plan to clear no more than fifty (50%) percent of the side and rear yard setbacks for the zone shall be submitted to the Zoning Officer.

d. No building subcode permit shall be issued for the construction of any structure unless and until the owner files with the Zoning Officer a tree removal/replacement plan and obtains the required approval.

e. No certificate of occupancy shall be issued unless tree removal/replacement is in accordance with the approved plan and all trees to be replaced have been planted in accordance with the approved plan or a surety guaranteeing planting has been posted with the Township Clerk.

(Ord. No. 03-25-OAB § 4)

23-2.5 Exceptions and Exemptions.

Under this section, the following trees may be *removed* without filing a tree removal/replacement plan:

a. Any tree which is part of a nursery, forestry operation, Christmas tree farm or orchard, is not a component part of a subdivision or site plan and complies with N.J.S.A. 54:4-23.5.

b. Any tree which is part of a cemetery.

c. Trees directed to be *removed* by any municipal, County or State authority pursuant to law.

d. Trees cut as part of the operation of a tree farm, according to a forestry management plan. Prior to any harvesting, the owner(s) of property subject to such a program must seek approval of a forestry management plan. Owner(s) must file the forest management plan with the Planning Board signed by the forester developing the plan.

e. Trees *removed* in the development of ponds or lakes when supervised by the Soil Conservation Service and/or the Federal or State Forestry Service. Owners of property subject to such a program must file with the Planning Board a letter setting forth the above, signed by the appropriate supervising agency.

f. Trees removed in conjunction with the clearing of land which is assessed as farm and which is actively devoted or to be devoted to agricultural and horticultural uses as defined herein.

(Ord. No. 03-25-OAB § 5)

23-2.6 Tree Removal/Replacement Plan.

a. Where the application is in conjunction with an application for development approval, the replacement plan shall include the following:

1. A site plan, at a scale of one (1) inch equals fifty (50) feet or less, showing the location of existing wooded areas and clearly marked boundaries of the plots used to determine the average wooded acre for the site. For each plot, there shall be a demonstration that no more than fifty (50%) percent of the side and rear yard setbacks applicable to the zone shall be disturbed, cut or removed. The site plan shall include the lot and block numbers, the street address, if assigned, and a certification of compliance with the requirements of this section.
2. The location of streams and watercourses.
3. The locations of slopes of greater than ten (10%) percent where any tree removal is proposed.
4. The location(s) on the tract where tree removal is to take place.
5. The total acreage of the tract.
6. The total number of wooded acres designated for development within the tract.
7. Notwithstanding permitted estimates of the quantity of trees to be removed, all trees with a DBH of sixteen (16) inches or greater on the site, within the fifty (50%) percent sample plot and outside the sample plot shall be specifically identified by location, species and common name. All efforts shall be made to preserve such trees throughout the tract, including, where practical, relocation of infrastructure, roadways and buildings.
8. A Township approved method of disposal of removed trees, toppings and slash. The burning or burying of trees or parts of trees is prohibited. Disposal methods shall conform with all municipal, State and Federal regulations.

(Ord. No. 03-25-OAB § 6)

23-2.7 Other General Regulations.

a. Criteria for Plan Approval and Compliance. Review by the Planning Board, Board of Adjustment, Zoning Officer and Conservation Officer shall be guided by the following standards and requirements:

1. Trees may be removed where the proposed paved portion of a parking area and ten (10) feet beyond is planned. In off-street parking areas, other than for a single residential dwelling, islands of trees must be left in the manner provided for by the Land Development Ordinance. No paving of any impervious nature shall be placed around the base of the trunk of the tree within ten (10) feet, and the grade shall be such that drainage of rainwater will keep the root area watered without pooling. Excess water shall be admitted to dry wells or storm sewers in the parking lot or drained by acceptable means.

2. Trees may be removed in private rights-of-way and driveways within ten (10) feet of each side of the planned paved area. Alignment of the driveways should be planned to save as many trees as reasonably possible.
3. If no area other than a wooded area or area with trees can be found to accommodate the sewerage system and disposal field meeting the approval of the Board of Health, necessary tree removal shall be permitted.
4. Where more than three (3) inches of fill is required around trees, the trees must be protected by an air well six (6) feet in diameter as needed around the trunk to prevent the intrusion of soil. Tile pipe must radiate like spokes from the well to provide oxygen to the roots. The top of the well must extend six (6) inches above the graded level. If the tree is of a species that is known to be sensitive to root disturbance or change in drainage or the owner prefers to remove the tree, it may be removed and must be replaced with another tree from the preferred tree list in another or the same area after the fill has stabilized.
5. Tree removal from any slope of fifteen (15%) percent or greater, watercourse protection and 100-year flood plan area is prohibited unless approved by the New Jersey Department of Environmental Protection.
6. No tree removal is permitted that will expose utility substations, transmission towers, junkyards, landfill operations and other similar structures or operations except where trees are dead or diseased and/or endanger life or property.
7. No healthy tree that is special by virtue of history, unusual size or age or is a rare species should be removed except as may be required for the protection of health, safety or public welfare, or if its location prevents the reasonable development of property.
8. No trees on public rights-of-way, parks or public areas are to be removed by private individuals or utilities except as approved by the Director of Public Works or pursuant to Section 23-1.
9. Unless proven necessary, staging areas shall not be closer than one hundred fifty (150) feet to the centerline of any public road. "Necessary" means that no other area is available due to topography, soil conditions or unfavorable effect on a woodlot as certified by a consulting forester. Loading of trucks is permitted at the roadside and a loading area must be constructed off the roadway where possible. After any cutting operation is complete, any road modifications and changes in the right-of-way must be restored.

(Ord. No. 03-25-OAB § 7)

23-2.8 Permits.

- a. Permits are required in connection with obtaining an approved plan. Permits shall be issued by the applicable authority as set forth herein.

b. No approval shall be granted by the Board or Conservation Officer if the authority finds that the proposed removal or destruction is contrary to the best interests of the public health, safety or general welfare.

(Ord. No. 03-25-OAB § 8)

23-2.9 Enforcement.

a. The tree removal/replacement plan provided for in subsection 23-2.6 of this section shall be insured by the performance and maintenance guarantee requirements of the Municipal Land Use Law and Section 35-41 of the Land Development Ordinance of the Township of Berkeley. Such guarantees shall be for ensuring erosion and sediment controls, grading, drainage and other on-site improvements and landscaping.

b. The requirements of this section may be enforced by the Conservation Officer, who shall inspect or require adequate inspection of all sites upon which there is an application for site plan or subdivision, all applicable tree removal or destruction and soil removal incidental thereto, and for compliance with other pertinent conditions of approval from the Planning Board/Zoning Board. Upon ascertaining a violation of this section, the Conservation Officer shall refer charges in the Municipal Court as provided in this section. In addition to other remedies, the Director of Code Enforcement and Construction, Zoning Officer or other proper municipal official may institute any appropriate legal action to prevent a continuing violation of the terms of this section.

(Ord. No. 03-25-OAB § 9)

23-2.10 Appeals.

Any person aggrieved by the decision of any officer, board or body, relative to the provision hereof, may, pursuant to the provision of this section, within thirty (30) days of receipt of such decision, appeal to the approving board or the Superior Court as provided by the Municipal Land Use Law.

(Ord. No. 03-25-OAB § 10)

23-2.11 Violations and Penalties.

Any person violating any of the provisions of this section shall be subject to a fine not to exceed one thousand (\$1,000.00) dollars or imprisonment for a term not to exceed ninety (90) days, or both, upon conviction, in the discretion of the judicial officer before whom such matter is heard. If the violation is of a continuing nature, each incident or day which it continues shall constitute an additional, separate and distinct offense.

(Ord. No. 03-25-OAB § 11) CHAPTER XXIII PROTECTION OF TREES

