

§ 23-2. TREE REMOVAL/REPLACEMENT.

§ 23-2.1. Purpose. [Ord. No. 03-25-OAB § 1]

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.

§ 23-2.2. Definitions. [Ord. No. 03-25-OAB § 2; amended 8-19-2024 by Ord. No. 24-38-OA]

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

AGRICULTURAL USE — Shall mean as currently defined in Section 35-3.

APPLICANT — Shall mean any person as defined below who applies for approval to remove trees regulated under this section.

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 regards to the provisions of this section, and with inspection and enforcement of the tree removal and protection requirements of this section.

CRITICAL ROOT RADIUS (CRR) — Shall mean the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6" DBH would have a CRR = 6" X 1.5' = 9'.

DIAMETER AT BREAST HEIGHT — Shall mean the diameter of the trunk of a mature tree generally measured at a point 4 1/2 above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 1/2 foot height, the DBH shall be measured at the highest point before any division.

DIAMETER AT POINT OF MEASUREMENT — Shall mean the diameter of a replacement tree measured at a point on the tree six 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 feet from the trunk, whichever is greater.

HAZARD TREE — Shall mean a tree or limb thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.

- a. Has an infectious disease or insect infestation.

- b. Is dead or dying.
- c. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective.
- d. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.).
- e. Is determined to be a threat to public health, safety and or welfare by a certified arborist or Licensed Tree Expert (LTE).

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.

PERSON — Shall mean any individual, resident, corporation, utility, company, partnership, firm or association.

PLANTING STRIP — Shall mean the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.

PREFERRED TREES — Shall mean those trees enumerated in Section 35-4816 through 9.

RESIDENT — Shall mean an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree regulated by this section is removed or proposed to be removed.

SPECIMEN TREES OR RECORD TREE — Shall mean as currently defined in Section 35-3.

STREET TREE — Shall mean a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, such as islands, medians and pedestrian refuges.

TREE — Shall mean any woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

TREE CALIPER — Shall mean the diameter of the trunk of a young tree, measured six inches from the soil line. For young trees whose caliper exceeds four inches, the measurement is taken 12 inches above the soil line.

TREE FARM — Shall mean a tract of woodland of at least five 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 — Shall mean to kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, overmulching or improper mulching and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

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.

§ 23-2.3. Compliance. [Ord. No. 03-25-OAB § 3]

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.

§ 23-2.4. Tree Removal/Replacement Plan Required. [Ord. No. 03-25-OAB § 4; amended 8-19-2024 by Ord. No. 24-38-OA]

- 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. Any person who removes one or more street trees with a DBH of 2.5 inches or more shall be subject to the requirements of this chapter.
- c. Any person who removes one or more tree as defined as "Tree Removal," with a DBH of six inches or more per acre shall be subject to the requirements of this chapter.
- d. 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.
- e. 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 50% of the side and rear yard setbacks for the zone shall be submitted to the Zoning Officer.
- f. 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.
- g. 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.

§ 23-2.5. Exceptions and Exemptions. [Ord. No. 03-25-OAB § 5; amended 8-19-2024 by

Ord. No. 24-38-OA]

Under this section, the following trees may be removed without filing a tree removal/replacement plan. Proper justification shall be provided, in writing, to the municipality by all persons claiming an exception:

- 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.
- g. Any trees removed pursuant to an NJDEP or EPA approved environmental cleanup, or NJDEP approved habitat enhancement plan.
- h. Approved game management practices, as recommended by State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.
- i. Hazard trees may be removed with no fee or replacement requirement.

§ 23-2.6. Tree Removal/Replacement Plan. [Ord. No. 03-25-OAB § 6; amended 8-19-2024 by Ord. No. 24-38-OA]

- a. Replacement Trees shall:
 1. Be replaced in kind with a tree that has an equal or greater DBH than tree removed.
 2. Be planted within 12 months of the date of removal of the original trees or at an alternative date specified by the municipality.
 3. Be monitored by the applicant for a period of two years to ensure their survival and shall be replaced as needed within 12 months, and
 4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.
- b. 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 inch equals 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 50% 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 10% 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 16 inches or greater on the site, within the 50% 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.

§ 23-2.7. Other General Regulations. [Ord. No. 03-25-OAB § 7; 8-19-2024 by Ord. No. 24-38-OA]

- 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 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 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 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 inches of fill is required around trees, the trees must be protected

by an air well six 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 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 15% 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 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.
10. If the Municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred then the applicant shall do the following:
 - (a) Plant replacement trees in a separate area approved by the municipality.
 - (b) Pay a fee determined by the Municipality. This fee shall be placed into a fund dedicated to tree planting and continue maintenance of trees.

§ 23-2.8. Permits. [Ord. No. 03-25-OAB § 8]

- 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.

§ 23-2.9. Enforcement. [Ord. No. 03-25-OAB § 9; amended 8-19-2024 by Ord. No. 24-38-OA]

- 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 Township Engineer, 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 Township Engineer shall contact Code Enforcement. 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.

§ 23-2.10. Appeals. [Ord. No. 03-25-OAB § 10]

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 30 days of receipt of such decision, appeal to the approving board or the Superior Court as provided by the Municipal Land Use Law.

§ 23-2.11. Violations and Penalties. [Ord. No. 03-25-OAB § 11]

Any person violating any of the provisions of this section shall be subject to a fine not to exceed \$1,000 or imprisonment for a term not to exceed 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.