

Township of Berkeley, NJ
Thursday, October 17, 2024

Chapter 23. Protection of Trees

§ 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]

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 regards 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 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 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.

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 inches, measured at a point four 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 2 1/2 inches, measured at a point four feet above the ground.

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/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]

- 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.

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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]

- 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.

§ 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]

- 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.

§ 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.