



**§ 170-54. Definitions.**

The following words and expressions, as used in this article, shall have the following meanings unless the context indicates a different meaning:

**BOARD** — The Planning Board or Zoning Board of Adjustment, as the case may be.

**CALIPER** — The diameter of a tree trunk measured in inches at a height of four feet above ground level. When multiple trunks are joined together below a height of four feet, the caliper shall be deemed to be 75% of the sum of the calipers of the individual joined trunks.

**DRIPLINE** — A limiting line on the ground below a tree that is established by the maximum horizontal reach of the tree's branches.

**PERSON** — An individual, firm, association, partnership, corporation or other legal entity.

**REMOVE OR REMOVAL** — Any cutting down, poisoning, adversely pruning, topping, or any other action otherwise diminishing the vigor of or destroying a tree.

**REPLACEMENT TREE** — A nursery-grown tree, having a caliper of not less than 3.5 to 4.0 inches if deciduous, or a height of not less than eight to nine feet if coniferous, properly balled and marked with a durable label showing genus, species, variety, watering and fertilization requirements.

**ROOT PROTECTION ZONE** — An area extending 360° around a tree trunk for the greater of either the distance from the tree trunk to the dripline or a distance equal to caliper multiplied by one foot; but never less than eight feet in radius.

SHRUB — A woody plant ordinarily having several stems arising from its base and lacking a single trunk. A shrub is not a tree.

TREE — Any deciduous or coniferous species, normally having a single trunk, for which the typical mature height is 10 feet or greater or for which the typical mature caliper is 3.5 inches or greater.

TREE INVENTORY PLAN — A plan prepared in compliance with § 170-55C to show the trees present on a site.

TREE REMOVAL PERMIT — The permit required to be obtained before the removal of any tree not exempt from the requirements of this article.

TREE REPLACEMENT PLAN — A plan prepared in compliance with § 170-55C to show the trees to be preserved on a site and the replacement trees to be planted.

**§ 170-55. Tree removal permit.**

The protection, preservation and replacement of trees, and control of their destruction or injury, are necessary to protect the benefits to the community which trees provide. Such benefits include, but are not limited to, reducing air, noise and water pollution; reducing flooding; preventing erosion; providing natural habitat for wildlife and birds; providing aesthetic and scenic beauty; and protecting and enhancing property values and the community's image. Therefore:

- A. No person shall remove any deciduous tree having a caliper of six inches or greater, or any coniferous tree having a height greater than nine feet, unless authorized by a tree removal permit.
- B. Submission of application.
  - (1) An application for a tree removal permit shall be submitted to the administrative officer and (except as provided in § 170-60 in respect of exempt properties) shall consist of the following, prepared and submitted in like manner as for an application seeking subdivision or site plan review:
    - (a) The application form;
    - (b) A tree inventory plan;
    - (c) A tree replacement plan;
    - (d) A nonrefundable application fee of \$150 per acre to which the application applies; and
    - (e) An escrow deposit fee of \$500 (in addition to any escrow deposit fee under § 170-52B to cover the costs of any expert that may retained by the Board. Such fee shall be maintained by the Township Treasurer in the same manner as technical review escrow deposits.

- (2) If tree removal is proposed in connection with an application for development, the tree removal permit application shall be submitted with the application for development.
- C. The application form shall be available from the administrative officer and shall include the following when submitted:
- (1) The name and address of the owner of the site.
  - (2) If the applicant is not the owner, the name and address of the applicant, and the written consent of the owner.
  - (3) The name and address of the person who will do the work of removal.
  - (4) The street address and Tax Map block and lot numbers of the site.
  - (5) The following plans, drawn at a scale of not more than 50 feet to the inch.
    - (a) A tree inventory plan prepared and signed by a licensed New Jersey land surveyor showing:
      - [1] For each deciduous tree having a caliper of six inches or more, and for each coniferous tree having a height of nine feet or more; the location of the tree on the site, the species, the caliper and whether the tree is proposed to be removed; and
      - [2] The location of existing streams, brooks, ponds or wetlands.
    - (b) A tree replacement plan, based upon the tree inventory plan and prepared and signed by a New Jersey certified tree expert or other expert showing:
      - [1] The location, species and size of each existing tree to be preserved; and
      - [2] The proposed location, species and size of each proposed replacement tree.
- D. At the time of submitting the application other than an application under § 170-60, the applicant shall also provide eight copies of the application to the Livingston Environmental Commission, which body shall make its recommendations to the Board within 30 days thereafter. The Board may take such recommendations into consideration in acting upon the application.
- E. If the administrative officer finds an application to be incomplete, the applicant shall be notified thereof within 45 days of submission of such application or it shall be deemed to be properly submitted.
- F. The time period for grant or denial of an application for a permit shall be 90 days after the application submitted has been determined, or deemed, to be complete, or within such further time as may apply to any application for development with which the application is connected or as may be consented to by the applicant.
- G. A tree removal permit may be granted with conditions.

- H. The administrative officer may grant or deny an application for a tree removal permit not submitted in connection with an application for development. A tree removal application submitted in connection with an application for development shall be referred to the Board with the application for development.

**§ 170-56. Permitted removal; required protection; replacement of trees.**

A. Tree removal.

- (1) The removal of trees shall be conducted in such a manner as to minimize the risk of harm to other trees, to life and to property.
- (2) Each tree permitted to be removed shall be marked in advance with a tag or other prominent marking of high visibility.
- (3) All parts of removed trees, and all debris or residue, including trunk stubs, shall promptly be physically removed from the site. On-site burial or burning is not permitted.
- (4) Every reasonable measure shall be taken to avoid the removal of deciduous trees with a caliper in excess of 36 inches, coniferous trees with a caliper in excess of 12 inches, and all trees within 15 feet of side and rear property lines. In the discretion of the Board, or in the discretion of the administrative officer when the permit is not sought in connection with an application for development, such measures may include, but are not limited to, changes in the location of proposed infrastructure and improvements, and in the size or number of lots on the site.
- (5) No tree removal pursuant to a granted tree removal permit shall be commenced without written notice to the administrative officer received at least three business days prior to the date of commencement. No work pursuant to a permit shall take place on Saturdays, Sundays or legal holidays without express written approval of the administrative officer. Weekday activities shall be conducted only between 7:30 a.m. and 5:00 p.m.

B. Tree protection. The following protections shall be applicable during tree removal operations, during other site preparation, and during construction of improvements on the site.

- (1) Each tree to be preserved shall be protected by erection of snow fencing, or other appropriate high-visibility barrier, around the outer limit of the root protection zone.
- (2) Clusters or groups of trees to be preserved may be served by a common protective barrier placed at a distance from the cluster or group which protects the outer limit of the root protection zones of the trees on the perimeter of the cluster or group.
- (3) The grade of land located within the root protection zone shall not be raised or lowered more than three inches unless compensated for by welling or retaining wall methods, but in no event shall welling or retaining walls be installed less than eight feet from the trunk of the tree.

- (4) No soil, excavated materials, building materials or construction equipment shall be stored, and no such equipment shall be operated, within the root protection zone.
  - (5) All work done within the root protection zone shall be accomplished with hand tools only.
  - (6) No washdown of vehicles or equipment shall be performed within 50 feet of any tree to be preserved.
  - (7) On property for which major subdivision approval has been granted for residential development, except as required for construction of streets and on-site improvements, permitted removal of trees on any individual lot shall not be carried out until a building permit has been issued for such lot.
- C. Tree replacement. Replacement trees, in kind or of such other species as the Board may find appropriate, shall be provided as follows:
- (1) One for each removed tree which had a caliper of six to 10 inches.
  - (2) Two for each removed tree which had a caliper of more than 10 but less than 15 inches.
  - (3) Three for each removed tree which had a caliper of at least 15 but not more than 20 inches.
  - (4) Four for each removed tree which had a caliper of at least 20 but not more than 24 inches.
  - (5) Six for each removed tree which had a caliper of at least 24 but not more than 27 inches.
  - (6) Eight for each removed tree which had a caliper of at least 27 but not more than 30 inches.
  - (7) Ten for each removed tree which had a caliper of at least 30 but not more than 33 inches.
  - (8) Twelve for each removed tree which had a caliper of at least 33 but not more than 36 inches.
  - (9) For each removed tree which had a caliper in excess of 36 inches, one replacement tree for each three inches of caliper of the removed tree.
- D. Negligent removal or damage. If any tree to be preserved is negligently removed or so severely damaged as to necessitate its removal, the replacement obligation for that tree shall be three times the obligation established in Subsection C above for a tree of that caliper.
- E. Continuing obligation to preserve. Whenever the Board approves a tree removal permit in connection with an application for development, the resolution of approval shall include a condition that the subdivision deed shall contain language, approved by the Board Attorney, which requires the obligation to preserve trees to follow title. In every

such instance, the new residential lots shall not come within the exemption provided by § 170-53A or B.

**§ 170-57. Payments to Open Space Trust Fund.**

When a tree removal permit is granted as part of approval of an application for development of a site and that development will result in inadequate open space thereon for the planting of all the replacement trees required, in lieu of planting the number of replacement trees the site is or will be incapable of accommodating the applicant shall make a cash contribution to the Township's Open Space Trust Fund<sup>3</sup> to be used solely for the preservation and planting of trees. In arriving at the determination of such number of trees and the cash contribution, the Board shall take into consideration the written opinion of an expert provided by the applicant and, in the Board's discretion, an expert consultant selected by the Board. The costs of all experts shall be borne by the applicant. The cash contribution per tree shall be the estimated cost of purchase and planting if it were to be planted on the site.

**§ 170-58. Performance and maintenance guaranties; variances.**

- A. Performance guaranty. A performance guaranty, in an amount determined by the Township Engineer to cover the cost of performing the tree replacement plan and such soil stabilization as he shall find necessary, shall be submitted by the applicant upon issuance of a tree removal permit.
- B. Maintenance guaranty. Notwithstanding any limitations that may be set forth elsewhere in this chapter, following completion of performance of the tree replacement plan, the permit holder shall post a maintenance guaranty with the Township. Such guaranty, which may be a surety bond, shall not exceed 15% of the total costs of performing the tree replacement plan and shall be in effect for a period of three years after the planting of the last replacement tree on the site. The maintenance guaranty shall provide that any replacement tree that dies prior to or during the guaranty period will be replaced in kind (or by such other species as may be approved by the administrative officer) within the current or next planting season, and at the same size as it had reached at the time of death, except that if it died more than three years after planting, its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to a replacement tree which is removed because of damage or disease.
- C. Variances or deviations. When considering the grant of a variance or deviation from any requirement of this chapter, maximization of preservation of trees under this article will be recognized by a Board as furthering the public good.

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3. Editor's Note: See Ch. 6, Art. V, Open Space Trust Committee.

**§ 170-59. Enforcement; violations and penalties.**

- A. The administrative officer may suspend any tree removal permit when there has been a false or misleading application or when it appears that the terms of the permit or the plans are not being complied with.
- B. The Township may institute an action in the Superior Court for injunctive relief restraining the continuation of any unlawful tree removal and/or requiring any person engaged in or responsible for such removal to replace all trees removed with replacement trees in a manner which meets the requirements of this article.
- C. Each day in which a person engages in tree removal without a permit or in violation of a permit shall be a separate violation. Each tree removed without a permit or in violation of a permit shall be an additional separate violation. Any person convicted in Municipal Court of violation of this article shall be subject to a fine of up to \$1,000 per violation. At the discretion of the Municipal Court Judge, the person may be subject to imprisonment for not more than 90 days, or community service for not more than 30 days, in addition to any fine.

**§ 170-60. Tree removal permits for exempt residential lots.**

- A. The owner of a residential lot otherwise exempt under § 170-53A(1) or (2) shall not, under risk of liability for penalties provided for in § 170-59, remove any tree with a caliper of 36 inches or more unless authorized by a tree removal permit. The permit application shall be available from the administrative officer and shall be signed by the owner. However, the application need only include the following to be complete:
  - (1) The name and address of the owner of the lot.
  - (2) The name and address of the person who will do the work of removal.
  - (3) The street address and Tax Map block and lot number of the lot.
  - (4) The caliper and species of the tree sought to be removed.
  - (5) The proposed species and location of the replacement trees.
- B. Each tree proposed to be removed shall be marked with a tag or other prominent marking of high visibility so that the administrative officer can confirm its location.
- C. No tree removal permit shall be issued under this section unless failure to grant the permit would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, an owner seeking to accomplish an otherwise permissible accessory structure or expansion of a residence.
- D. The application and a nonrefundable application fee of \$50 shall be submitted to the administrative officer. If the administrative officer finds the application to be incomplete the applicant shall be notified thereof within 10 days after its submission, or it shall be deemed to be complete. The administrative officer shall grant or deny the application within 30 days after it is complete. Any tree removal permit granted may be with conditions and shall be subject to the regulations contained in §§ 170-56 and 170-57 as if

the permit were granted by a Board. If required replacement trees cannot or will not be planted on the lot, the owner shall make a contribution to the Open Space Trust Fund to be used solely for the preservation and planting of trees. The contribution shall be an amount which the administrative officer accepts as the estimated cost of purchasing and planting the replacement trees on the lot.