

*Borough of Bernardsville, NJ  
Tuesday, April 2, 2024*

## Chapter 13. Tree Protection

**Editor's Note:** Prior ordinance history includes portions of Ordinance Nos. 92-18, 95-1045, 96-1066, 2002-1298, 2004-1372 and 2005-1379.

### ATTACHMENTS

**Attachment 1 - Invasive Species** 

**Attachment 2 - Acceptable Street Trees** 

### § 13-1. PURPOSE.

[Ord. No. 2008-1500 § 1]

A major goal of this Tree Protection Ordinance is to promote a "sustainable community forest" in Bernardsville. The governing body of the Borough of Bernardsville finds that uncontrolled removal of trees causes increased drainage control costs, soil erosion, silt in streams, flooding, enlarged flood plains, air, water and noise pollution, wind damage to property, and elevated air temperatures in summer. The loss of trees reduces ground water recharge, soil fertility, and aquatic and terrestrial habitats for native wildlife. Tree removal, may also reduce the historic incentive to reside in this community because of its rural atmosphere and high quality of life. All of the above lead to the degradation of regional biodiversity and ecosystem instability, rendering land less fit for its most appropriate use and adversely affecting the health, safety and general welfare of the inhabitants of the Borough. Therefore, the Borough of Bernardsville desires to regulate the cutting of trees within the Borough, to regulate the future development of lands which are not fully built upon, to preserve the maximum possible number of trees in the course of site development, to protect larger, older specimens of trees and to encourage innovative design and grading to promote the preservation of existing trees.

The Borough recognizes the need for regulation of properties in areas where large quantities of rainwater are recharged into underground aquifers in order to help ensure the continued sufficiency of the well water for residential and fire control purposes. An important relationship exists among the Borough, the region's water resources, the regulation of steep slopes, tree removal, soil disturbance, stormwater management and land resources generally. Therefore, the appropriate management of these resources is an important health, safety and general welfare concern. The Borough includes the headwaters of both the Upper Raritan and Great Swamp Watersheds.

### § 13-2. APPLICABILITY.

[Ord. No. 2008-1500 § 1; Ord. No. 2010-1561]

No tree shall be cut or otherwise removed from any lands in the Borough of Bernardsville except as permitted by this chapter. All development applications that involve tree removal shall include an application for a tree removal permit for each lot that will result from the application. Any applicant wishing to remove trees upon the property which is the subject of the development application must comply with § 13-10 of this chapter. Any person not filing a development application and wishing to remove trees must comply with § 13-7 of this chapter. No tree that was planted or preserved as part of any approved subdivision or site plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except as permitted by § 13-6 of this chapter.

The filing of a development application shall constitute the applicant's consent for the Tree Conservation Officer, the members of the Shade Tree Committee and the members of the Environmental Commission to enter upon the applicant's land for purpose of inspection.

## § 13-3. DEFINITIONS.

[Ord. No. 2008-1500 § 1; Ord. No. 2010-1561]

The following words and expressions shall have the following meanings, unless the context clearly indicates a different meaning:

### **APPROVING AUTHORITY**

Shall mean the Planning Board or Zoning Board of Adjustment acting pursuant to the authority of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

### **CALIPER (STANDARD MEASURE OF TREE SIZE FOR NURSERY TREES)**

Shall mean the diameter of a tree 12 inches above the ground.

### **DEVELOPMENT APPLICATION**

Shall mean an application filed with the Borough Planning Board or Zoning Board of Adjustment pursuant to the Municipal Land Use Law and the Borough Land Development Ordinances for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.

### **DIAMETER AT BREAST HEIGHT (DBH)**

Shall mean the diameter of the stem of a tree measured at breast height (4.5 feet or 1.37 m.) from the ground

On sloping ground the measure is taken on the uphill side.

### **DRIP LINE**

Shall mean a limiting line, closed polygon, established by connecting a series of perpendicular drop points marking the maximum radius of the crown of a tree.

### **FOOTPRINT**

Shall mean the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

### **HISTORIC TREE**

Shall mean any tree representing or approaching in girth the largest of its species in the State of New Jersey, or dedicated to or commemorating an individual or event, as may be maintained by the State of New Jersey or the Borough of Bernardsville.

### **INVASIVE SPECIES**

Shall mean specific species listed in Appendix A to this chapter<sup>[1]</sup> that are not native to New Jersey and that have been recognized to overwhelm native species, e.g., Norway Maple (*Acer platanoides* L.).

### **LANDSCAPE PLAN**

Shall mean a plan for each approved lot prepared by a New Jersey licensed landscape architect, or an alternative acceptable to the Tree Conservation Officer, which includes the following information:

- a. Location of existing tree canopy within the property boundaries.
- b. Location of individual trees with a DBH equal to or greater than four inches identified by size and species within the area of development/limit of disturbance.
- c. Location of individual trees with a DBH equal to or greater than four inches identified by size and species 20 feet beyond a delineated limit of disturbance line.

- d. Location of individual existing trees (and their drip lines) to remain within the area of development/limit of disturbance identified by size and species. Where clusters of trees exist on the site or are contiguous with adjacent sites, fragmentation of the cluster shall be avoided where possible.
- e. Location, size and species of all required replacement trees (may be on separate plan).
- f. Clear labeling of the area(s) intended for tree/vegetation removal.
- g. Tree protection material details and limit of disturbance line.
- h. All bodies of water, wetlands and wetland buffer areas, including water retention or detention.
- i. Location of all existing and proposed buildings, other structures, driveways and parking areas.

## REPLACEMENT TREE

Shall mean a nursery-grown certified tree, at least three inches caliper, properly balled, marked with a durable label indicating genus, species and variety, and satisfying the standards established for nursery stock and installation thereof, set forth by the most recent publications of the American Association of Nurserymen.

## SILVICULTURE

Shall mean the art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands to meet the diverse needs and values of landowners and society on a sustainable basis.

## SUSTAINABLE COMMUNITY FOREST

Shall mean the capacity of a community forest to maintain its health, productivity, diversity, and overall integrity in the context of human activity and use.

## TREE

Shall mean any self-supporting, single stem, perennial woody plant which reaches a typical height of 12 feet or more at maturity and has a typical mature DBH of four inches or greater.

## TREE CANOPY

Shall mean the top layer or crown of mature trees.

## TREE CONSERVATION OFFICER

Shall mean the officer appointed pursuant to Subsection **13-4.1** below or any of his or her deputies appointed pursuant to Subsection **13-4.2** below or in the absence of both the Tree Conservation Officer and the Deputy Tree Conservation Officers or if both positions are vacant, the term Tree Conservation Officer as used in this chapter shall mean the Chair of the Shade Tree Committee, or his or her designee.

[1] *Editor's Note: Appendix A, referred to herein, is included as an attachment to this chapter.*

# § 13-4. TREE CONSERVATION OFFICER.

## § 13-4.1. Tree Conservation Officer.

[Ord. No. 2008-1500 § 1]

There is hereby established the position of Tree Conservation Officer, to be appointed annually by the governing body. The duties of the Tree Conservation Officer shall include:

- a. Administering and enforcing the provisions of this Tree Protection Chapter.
- b. Attending Shade Tree Committee meetings and providing periodic reports to the Shade Tree Committee and Borough Council with respect to permits issued and other actions taken to enforce

the provisions of the Tree Protection Ordinance.

- c. Making recommendations with respect to the administration and enforcement of the Tree Protection Ordinance to the Shade Tree Committee, Environmental Commission, Planning Board and Board of Adjustment and governing body.

## § 13-4.2. Deputy Tree Conservation Officer.

[Ord. No. 2008-1500 § 1]

The governing body may appoint one or more Deputy Tree Conservation Officers to perform the duties of the Tree Conservation Officer when the Tree Conservation Officer is unavailable to perform the duties and responsibility above.

## § 13-4.3. Chair of Shade Tree Committee to Serve as Tree Conservation Officer.

[Ord. No. 2008-1500 § 1]

In the absence of both the Tree Conservation Officer and the Deputy Conservation Officers or if both positions are vacant, the Chair of the Shade Tree Committee or his or her designee shall perform the duties of the Tree Conservation Officer.

## § 13-4.4. Development Applications.

[Ord. No. 2008-1500 § 1]

In development applications, determinations of the Tree Conservation Officer shall be advisory to the approving authority.

## § 13-5. TREE REMOVAL RESTRICTED.

[Ord. No. 2008-1500 § 1]

Except as permitted in § **13-6**, no person shall remove, or cause to be removed, any tree with a DBH of four inches or greater within the Borough of Bernardsville without a permit as authorized by this chapter.

- a. No person shall destroy or remove any historic or endangered tree without a permit,
- b. No person shall clear an undeveloped or wooded lot without a permit.
- c. No person shall remove any tree within wetlands, flood hazard areas or other areas protected by State or Federal law or applicable EPA or NJDEP regulations without properly issued permits or a woodland management plan approved by the NJ State Forester.

## § 13-6. EXEMPTIONS.

[Ord. No. 2008-1500 § 1; Ord. No. 2013-1626; amended 9-27-2021 by Ord. No. 2021-1896]

The following shall be exempt from the requirements of this Chapter:

- a. In any one calendar year, the removal of three trees with a DBH of between four inches and 10 inches from a residential lot of three acres or less; or five such trees from a residential lot of greater than three acres. No tree with a DBH of greater than 10 inches may be removed without first obtaining a tree removal permit in accordance with this chapter. Invasive species, named in Appendix A, shall not count in these removal limits on the numbers of trees removed.

Editor's Note: Appendix A may be found as an attachment to this Chapter.

- b. Dead Trees. Provided that any person relying on this exemption without prior consultation with the Tree Conservation Officer must prove to the satisfaction of the Tree Conservation Officer that a removed tree was dead at removal. Removal of more than six "dead" trees shall require prior inspection and approval by the TCO; but not a tree removal permit.
- c. Trees within the limits of cemeteries.
- d. Trees directed to be removed by municipal, County, State or Federal authorities pursuant to applicable law.
- e. Trees within the right-of-way by utility companies for maintenance of utility wires or pipelines in accordance with N.J.A.C. 14:5-9.5 and the pruning of trees within sight easements pursuant to this Code or other applicable law.
- f. Trees in compliance with a woodland management plan that has been approved by NJDEP pursuant to N.J.S.A. 54:4-23.3 and N.J.A.C. 18:15-2.7 as part of an approved farmland assessment and that is on file with the Borough Tax Assessor.
- g. Any activity protected by the Right to Farm Act, N.J.S.A. 4:1 C-9 et seq. or any other State statute or regulation in an area in which local regulation has been preempted.
- h. Trees from golf courses existing at the time of the adoption of this chapter, provided:
  - 1. Such trees are removed pursuant to a United States Golf Association Green Section Turf Advisory Service Report. The Turf Advisory Service Report must be filed with the Borough Shade Tree Committee at least 30 days before any trees are removed under this exemption;
  - 2. Such trees are removed in compliance with a woodland management plan that has been approved by NJDEP pursuant to N.J.S.A. 54:4-23.3 and N.J.A.C. 18:15-2.7 and the Borough Shade Tree Committee.(Removal of trees not included in Subsections 1 and 2 above shall require a tree removal permit.)
- i. Trees removed pursuant to a landscape plan prepared by a licensed landscape architect when the Shade Tree Committee finds that purposes of this chapter would be advanced by a deviation from the requirements of the chapter and the benefits of the deviation would substantially outweigh any detriment. In all such cases, the property owner shall comply with the tree replacement requirements of § 13-14 of this chapter.
- j. Trees severely damaged in a storm-removal of fallen or broken trees that endanger persons, buildings, driveways, roadways, or aerial utilities shall not require a tree removal permit.
- k. Use and development by the Borough of Bernardsville and other governmental entities which are generally exempt from municipal zoning regulations, including but not limited to the Somerset Hills Board of Education, with the permission of the Council, which may impose reasonable conditions.

## § 13-7. TREE REMOVAL, PERMITS FOR PROTECTION ON RESIDENTIAL, COMMERCIAL, INDUSTRIAL AND BUSINESS ZONE LOTS NOT INVOLVING A DEVELOPMENT APPLICATION.

### § 13-7.1. Applicability.

[Ord. No. 1500 § 1; Ord. No. 2012-1619; Ord. No. 2017-1755; amended 9-27-2021 by Ord. No. 2021-1896]

On any residential, commercial, industrial, business or other lot or vacant land where the owner intends to exceed the permitted exemption stated in § 13-6a, but has not filed a development application, the owner shall submit an application for a tree removal permit to the tree conservation officer. No tree removal permit shall be issued unless the applicant has first obtained a zoning permit if one is required by § 12-3A of the Borough Land Use Ordinance. The Tree Conservation Officer shall have 10 business days to review applications submitted pursuant to this section.

## § 13-7.2. Application Form.

[Ord. No. 2008-1500 § 1; Ord. No. 2012-1619]

The application form shall be available from the Tree Conservation Officer and shall include the following information:

- a. Name, address, and telephone number of the owner of the premises and the party performing the removal;
- b. Description of the premises where removal is to take place, including lot and block numbers, and street address if assigned;
- c. A list of all trees to be removed with a DBH equal to or greater than four inches identified by size, genus, including total number of each species to be removed. All trees to be removed shall be clearly marked with at least one inch wide colored tape tied around the trunk;
- d. Purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, trees that are diseased, dead or potentially hazardous, etc.);
- e. A sketch showing the location of each marked tree to be removed;
- f. Such other information as may be required from time to time by the Tree Conservation Officer.

## § 13-7.3. Sketch Data for New Structures and/or Additions.

[Ord. No. 2008-1500 § 1; Ord. No. 2012-1619]

A topographic sketch shall be provided showing the location, genus, and DBH of each tree to be removed with a DBH of four inches or more and showing their proximity to existing and (or proposed) structures and property lines. All trees to be removed shall be clearly marked with at least one inch wide colored tape tied around the trunk. This sketch shall also show each tree to remain, by location, species and DBH, within the limits of disturbance and 20 feet beyond.

## § 13-7.4. Design Requirements for Lots Not Requiring a Development Application.

[Ord. No. 2008-1500 § 1; Ord. No. 2012-1619]

- a. Only trees necessary to permit the construction of buildings or building additions, structures, decks, driveways, septic fields and lawn area may be removed.
- b. The aggregate canopy area of the trees removed shall not cover more than 1/2 acres or 50% of the lot area, whichever is less. Existing native vegetation shall be preserved to the greatest extent feasible.

## § 13-7.5. Tree Removal Criteria.

[Ord. No. 2008-1500 § 1; Ord. No. 2012-1619]

In addition to the Design Requirements stated above in Subsection **13-7.4b**, the Tree Conservation Officer may grant a tree removal permit based upon one or more of the following circumstances:

- a. Where the location of a tree provides no other reasonable alternative but to place a structure outside the permitted building setbacks.
- b. Where the location of a tree negatively impacts an existing septic field.
- c. Where no other reasonable alternative exists for the placement of a building, building addition, structure, septic field, stormwater management structures, driveway, deck, patio, the lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements in the vicinity of a tree.
- d. Where the location or growth of a tree inhibits the enjoyment of any existing outdoor pool, patio or deck.
- e. Where the location, angle or growth of a tree makes it a hazard to structures or human life.
- f. Where the location is in close enough proximity to a residential structure that if it were damaged or uprooted as the result of extreme weather conditions such as high winds or heavy snow, it would likely result in damage to that structure and/or injury to the occupants thereof.

## § 13-7.6. Site Protection.

[Ord. No. 2008-1500 § 1]

Site protection measures shall be provided in accordance with Subsection **13-9.2**.

## § 13-7.7. Tree Replacement.

[Ord. No. 2008-1500 § 1]

Except for existing individual, residential lots, tree replacement shall be provided in accordance with the provisions of § **13-14**.

## § 13-7.8. Issuance of Building Permit.

[Ord. No. 2008-1500 § 1]

Whenever a building permit is required for a structure which will necessitate the removal of a tree or trees protected by this chapter, the Construction Code Official or subcode official shall not issue such a permit until the requirements of this chapter have been fulfilled and a tree removal permit has been issued. No Certificate of Occupancy shall be issued until the Tree Conservation Officer confirms that all requirements of this chapter have been fulfilled.

## § 13-8. REVIEW STANDARDS.

[Ord. No. 2008-1500 § 1]

In accordance with the design requirements provided in this chapter, unless otherwise indicated herein, a tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- a. Where the area proposed for tree removal is to be occupied by: a building or other structure; a street or roadway; a driveway (when no other site is available); a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line easement, or right-of-way; or where the area of tree removal is 20 feet or less from either side of, or around the perimeter of any of the foregoing, whichever is applicable.

- b. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection a of this subsection:
  - 1. If the continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought, or on adjoining or nearby property.
  - 2. If the area where such tree or trees are located has a cut, depression or fill of land, or the topography of the land is of such a character as to be injurious or dangerous to such tree or trees, or to a tree or trees located nearby.
  - 3. If the removal of trees is for the purpose of conducting silviculture activities, which activities include, but are not limited to, the harvesting of trees in accordance with a forest management plan and the thinning out of a heavily wooded area, with some trees to be removed and other trees to remain.
- c. Upon an express finding by the approving authority or Tree Conservation Officer that the proposed tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or, development of remaining trees or shrubs on the property of the applicant or upon adjacent property, soil erosion, sedimentation and dust, drainage or sewerage problems and dangerous or hazardous conditions.
- d. The approving authority or Tree Conservation Officer shall have the power to affix reasonable conditions to the granting of a tree removal permit.

## § 13-9. TREE REMOVAL REQUIREMENTS FOR DEVELOPMENT APPLICATIONS.

[Ord. #2008-1500 § 1; Ord. No. 2010-1561]

Each application to the Planning Board or Zoning Board of Adjustment for approval of a major or minor subdivision or any site plan or any variance that requires the removal of trees shall include an application for a tree removal permit. A separate application shall be filed for each lot that will result from the application. The application form shall be available from the Tree Conservation Officer, the Secretary of the Shade Tree Committee and the administrative officers of the Planning Board and Zoning Board of Adjustment and shall include the information listed in Subsections **13-7.2** and **13-7.3**, as well as a landscape plan (as defined in § **13-3** above).

### § 13-9.1. Design Requirements for Subdivisions and Site Plans.

[Ord. No. 2008-1500 § 1]

- a. To the greatest extent practicable, large trees eighteen inch DBH and larger), tree rows and hedgerows should be preserved. Only those trees necessary to permit the construction of buildings, structures, streets, stormwater management structure, driveways, deck, patio, the lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements shall be removed. Existing vegetation shall be preserved to the greatest extent feasible. Invasive shrubs shall be removed to the greatest extent practicable.
  - 1. On all residential lots, natural screening and woodlands between lots, along property lines and between buildings shall be preserved to the greatest extent feasible.
  - 2. On residential lots greater than one acre, the width of the natural screening and woodlands shall be 50 feet along any portion of the lot bordering a road, whether public or private, and 25 feet along all other property lines.
- b. No more than 50% of existing tree canopy within the property boundaries shall be removed. The location of the remaining tree canopy to be preserved shall be noted on the landscape plan. Steep slope limits of disturbance shall supersede this section when appropriate.



- c. No more than 10% of existing trees with a DBH equal to or greater than 10 inches within the area of development/limit of disturbance shall be removed unless the applicant shall replant trees removed in accordance with § 13-14.
- d. Input from a designated subcommittee of the Board and/or from the Shade Tree Committee shall be requested for recommended areas of tree preservation.
- e. Landscape standards may be waived by the Board when trees and/or shrub masses are preserved and/or relocated on site that duplicate or essentially duplicate the landscape requirements contained in this section.
- f. The approving authority shall have the option of requesting a conservation easement to protect any or all trees or tree canopy areas to remain on site.

## § 13-9.2. Site Protection for Development Applications.

[Ord. No. 2008-1500 § 1; Ord. No. 2010-1561]

- a. Tree protection measures and the limit of disturbance line shown on the landscape plan (as defined in § 13-3 above) shall be installed in the field with snow fencing or other durable material and verified by the Tree Conservation Officer or other designated official prior to soil disturbance.
- b. Protective barriers shall be self-supporting and shall not be supported by the plants they are protecting. Barriers shall be a minimum of four feet height and shall last until construction is complete.
- c. Chain link fence may be required for tree protection if warranted by site conditions and relative rarity of the plant.
- d. Snow fencing used for tree protection shall be firmly secured along the drip line, but no less than six feet from the trunk when the drip line is less than six feet.
- e. The grade of the land located within the drip line shall not be raised or lowered more than six inches unless compensated by welling or retaining wall methods; and in no event shall welling or retaining wall methods be less than six feet from the trunk of a tree.
- f. No soil stockpiling, storage of building materials, construction equipment or vehicles shall be permitted within the drip line or within six feet of any remaining trees, whichever is greater.
- g. Any clearing within the drip line, or within six feet of the trunk of a remaining tree, whichever is greater, shall be done by hand-operated equipment.
- h. Where a tree that has been noted for preservation is severely damaged and unable to survive, tree replacement shall occur as provided in § 13-14.

## § 13-9.3. Submission to Shade Tree Committee; Tree Removal Permit; Variances and Waivers.

[Ord. No. 2008-1500 § 1; Ord. No. 2010-1561]

- a. All development applications that involve tree removal shall be submitted to the Shade Tree Committee for its review. The Shade Tree Committee shall complete its review and submit a report to the approving authority stating whether the applicant's proposal complies with the requirements of this section. Failure of the Planning Board or Zoning Board of Adjustment to make such informational copy available to the Shade Tree Committee shall not invalidate any hearing or proceeding.

- b. The Shade Tree Advisory Committee may delegate this review responsibility to a subcommittee or the Tree Conservation Officer.
- c. If the applicant's plan satisfies the requirements of this chapter, the Shade Tree Committee, or its delegate, shall issue a tree removal permit upon completion of an application and payment of all required fees. The Planning Board or Zoning Board of Adjustment, however, may alter the terms of the tree removal permit as part of its approval of the development application.
- d. In accordance with the Municipal Land Use Law and the Borough Land Development Ordinances, the Planning Board and Zoning Board of Adjustment may grant variances and waivers from the requirements of this section.

## § 13-10. TREE REMOVAL PERMIT APPROVAL; TIME LIMITS.

[Ord. No. 2008-1500 § 1]

- a. Where the tree removal permit application is submitted as a part of an application for major subdivision, minor subdivision or site plan approval or other development application, the time for approval shall be governed by the time limits set forth in the MLUL.
- b. Where the tree removal application is made in connection with a residential, commercial, business or industrial lot that does not require a development approval, the Tree Conservation Officer shall act on the application within 30 days of its receipt or within such additional time as is consented to by the applicant. Failure to act within 30 days, or an extension thereof, shall be deemed to be an approval of the application and, thereafter, a tree removal permit shall be issued.
- c. Approval by default with regard to major subdivision, minor subdivision and site plan applications, shall not be deemed to be a waiver of a tree removal permit.

## § 13-11. DURATION OF TREE REMOVAL PERMITS.

[Ord. No. 2008-1500 § 1]

Tree removal permits granted under the terms and conditions of the chapter shall run with the land, and shall remain in force and effect for the following periods of time, and not thereafter. Once the permit has expired, a new application must be submitted for review and a new permit issued.

- a. If granted for a lot or parcel of land for which no building permit is required - one year from the date of issuance.
- b. If granted for a lot or parcel of land for which a building permit is required, but for which no development approval is required by the Planning Board or Zoning Board of Adjustment until expiration of the building permit granted with such tree removal permit.
- c. Except as provided in Subsections **d** and **e** below, if granted for a lot or parcel of land for which a development approval from the Planning Board or Zoning Board of Adjustment is required as a condition precedent to obtaining a building permit - until expiration of the site plan approval, or expiration of the building permit issued after such development approval, whichever is later.
- d. If granted for a lot or parcel of land for which minor subdivision is sought — one year from the date of granting such minor subdivision.
- e. If granted for a lot or parcel of land for which preliminary approval of a major subdivision is sought — until expiration of such approval.

## § 13-12. INSPECTION.

[Ord. No. 2008-1500 § 1]

- a. Prior to taking final action upon any tree removal permit application, an inspection-of the site shall be made by the Tree Conservation Officer and/or the Shade Tree Committee.
- b. Prior to any tree removal, all such trees shall be individually marked with 3/4 inch colored tape tied around the tree and areas to be cleared must be clearly identified for inspection by the Tree Conservation Officer. In the case of proposed new dwelling construction on a wooded lot, the four corners of the building envelope shall be clearly staked. The Tree Conservation Officer shall not enter upon contiguous and neighboring lands without permission of the property owners.
- c. The Tree Conservation Officer shall periodically inspect the site throughout the duration of construction in order to ensure compliance with this chapter.

## § 13-13. NOTICE OF COMMENCEMENT OF TREE REMOVAL.

[Ord. No. 2008-1500 § 1]

- a. For any tree removal permit involving required replacement plantings, the holder of a tree removal permit shall notify the Tree Conservation Officer in writing at least four business days in advance of when the tree removal activity will commence.
- b. The notice shall also include advice as to the manner of disposal of the removed trees.
- c. Removed diseased trees shall not be turned into mulch chips and applied to the site, but shall be disposed of in a manner so as not to spread disease to other trees.

## § 13-14. TREE REPLACEMENT AND REFORESTATION.

### § 13-14.1. Tree Replacement.

[Ord. No. 2008-1500 § 1; amended 10-28-2019 by Ord. No. 2019-1822]

- a. The replacement of trees shall occur as prescribed in the following table:

| DBH of Existing Tree Removed    | Number of Replacement Trees<br>(3 inches caliper)  |
|---------------------------------|--|
| Less than 6 inches              | 1  |
| Between 6 inches and 18 inches  | 2  |
| Between 18 inches and 24 inches | 3  |
| Between 24 inches and 30 inches | 5  |
| Between 30 inches and 36 inches | 7  |
| Over 36 inches                  | 10<br>Add 3 replacement trees for every 3 inches and round up. As an example, a 39-inch tree would require 13 replacement trees. |

- b. All required replacement tree(s) shall be of nursery grade quality, balled and burlapped and planted on the site from which trees were removed. Relief from any portion or all of the on-site replacement requirements may be granted by the approving authority. Any relief shall be based upon practical physical difficulties and undue hardship related to conditions of the site from which the trees are to be removed. The approving authority shall solicit the comments and recommendations of the Borough Engineer in determining whether the relief requested by the applicant should be granted.

- c. Instead of replanting trees on the removal site, an applicant may request that the approving authority permit the applicant to contribute to the Borough Tree Trust Fund as established by this chapter. The contribution, in lieu of planting trees, shall be in an amount reasonably established by the Shade Tree Committee from time-to-time as the fair market value of replacement trees which meet the standards set forth in this section. No more than 75% of tree replacement may be by way of contribution.
- d. The genus of the replacement tree(s) shall be the same as the genus removed from the site or other genera as approved by the Shade Tree Committee.
- e. The planting of all replacement trees shall be done by or supervised by a certified arborist.

## § 13-14.2. Relief from Tree Replacement Requirements.

[Ord. No. 2008-1500 § 1]

- a. For all new dwellings, trees removed from the following areas shall not require replacement:
  - 1. The footprint of the dwelling and a twenty-foot wide zone surrounding the footprint;
  - 2. Septic system;
  - 3. Stormwater management structures;
  - 4. Drinking water wells;
  - 5. Driveway to garage;
  - 6. Access required by the Fire Official or approving authority (e.g., K-turn space).
- b. For undeveloped lots less than one acre, the Shade Tree Committee may grant appropriate relief from replacement planting based on the advice of a New Jersey licensed landscape architect retained by the lot owner.
- c. For new dwellings on lots under three acres, not under current NJ DEP approved Woodland Management Plans, the Shade Tree Committee may grant replacement relief based on the advice of a New Jersey Approved Forester or a NJ Certified Tree Expert retained by the owner. The advice shall be based on planting enough new trees to provide a sustainable woodland consistent with the adjacent neighborhood.
- d. For new dwellings on lots of three acres or more, that prior to subdivision, were under a current NJDEP approved Woodland Management Plan, the Shade Tree Committee may grant replacement relief based on the advice of the DEP qualified expert who prepared the current plan retained by the owner. The advice shall be based on a sustainable woodland consistent with the adjacent neighborhood.
- e. For new dwellings on lots of three acres or more, that prior to subdivision, were not under current NJDEP approved Woodland Management Plan, the Shade Tree Committee may grant replacement relief based on the advice of an New Jersey licensed expert retained by the owner. The advice shall be based on a sustainable woodland consistent with the adjacent neighborhood.
- f. For any of the situations above the Shade Tree Committee may retain a New Jersey licensed expert of its own to advise the Shade Tree Committee at the applicant's expense.

## § 13-14.3. Borough Tree Trust Fund.

[Ord. No. 2008-1500 § 1]

- a. Tree Trust Fund. All contributions to the Borough Tree Trust Fund pursuant to Subsection **c** of Subsection **13-14.1** above shall be deposited in a separate interest-bearing Tree Trust Fund. All interest accrued in the Tree Trust Fund shall only be used on eligible tree replacement and maintenance activities.
- b. Use of the Money.
  1. The Borough may use revenues and interest collected from the Tree Trust Fund for any purpose which promotes the planting and maintenance of trees in the Borough. Such activities include, but are not limited to: planting trees in the Borough rights-of-way, in Borough parks and on other public lands.
  2. No more than 20% of the revenues collected from the Borough Tree Trust Fund shall be expended on consultant fees necessary to develop or implement a tree planting and maintenance program.
  3. Expenditure of funds from the Borough Tree Trust Fund shall be approved by resolution of the governing body authorizing the expenditure of funds by dedication by rider pursuant to N.J.S.A. 40A:4-39. A copy of that resolution must be sent in duplicate to the Division of Local Government Services for the director's approval.

## § 13-14.4. Time Limit for Planting Replacement Trees or Making Contribution to Tree Trust Fund.

[Added 10-28-2019 by Ord. No. 2019-1822]

- a. In the case of tree removal permits issued pursuant to § **13-7** above for trees on residential, commercial, industrial and business zone lots not involving a development application, the applicant shall plant all replacement trees required by Subsection **13-14.1** above, or make the contribution to the Tree Trust Fund permitted by Subsection **c** of Subsection **13-14.1**, within one calendar year from issuance of the related permit.
- b. In the case of tree removal permits issued pursuant to § **13-9** above in connection with applications to the Planning Board or Zoning Board of Adjustment (the Board) for approval of a major or minor subdivision or any site plan or any variance that requires the removal of trees, the applicant shall plant all replacement trees required by the Board, and make any contribution to the Tree Trust Fund authorized by the Board in lieu of planting replacement trees, within the time allowed by the Board.

## § 13-15. FEES.

[Ord. No. 2008-1500 § 1]

A review fee of \$25 shall accompany each application for tree removal. For the development of vacant property, or redevelopment of a property with a demolished dwelling, an additional fee of \$100 per acre or portion thereof shall be paid. The maximum additional fee under this section is eight \$800.

## § 13-16. APPEAL PROCEDURE.

[Ord. No. 2008-1500 § 1; amended 8-10-2020 by Ord. No. 2020-1847]

- a. Any person who is aggrieved by the action of the Tree Conservation Officer or any other municipal official in the enforcement of the Tree Protection Ordinance may file a written appeal with the Shade Tree Committee. Such appeal shall be made within 10 days of the written decision of the Tree Conservation Officer (or other municipal official). The Shade Tree Committee shall hear the appeal at a public hearing within 30 days after the appeal is filed. Notice of the hearing date shall be given by the applicant to the Building Inspector, Tree Conservation Officer, the Environmental

Commission and the owners of all real property as shown on the current tax duplicates. The Shade Tree Committee may reverse, affirm, or modify such action of the Tree Conservation Officer, or other municipal official.

- b. Appeals from decisions of the approving authority shall be taken in accordance with the Municipal Land Use Law and the Borough Land Development Ordinances.

## § 13-17. STREET TREES IN RIGHT-OF-WAY.

### § 13-17.1. Planting Permitted.

[Ord. No. 2008-1500 § 1]

This section allows the planting of street trees by adjacent property owners provided that the selection and location of said trees are in accordance with provisions listed in the following subsections and are approved by the Shade Tree Committee.

### § 13-17.2. Official Listing.

An official listing of acceptable street tree species is set forth in Appendix "B" which is attached hereto and which is incorporated herein by reference. No species other than those included in Appendix "B" may be planted on Borough rights-of-way without written permission of the Shade Tree Committee. Appendix "B" also contains the required spacing of trees and the required distances from curb lawns and sidewalks.<sup>[1]</sup>

[1] *Editor's Note: Appendix B, referred to herein is included as an attachment to this chapter.*

### § 13-17.3. Planting Distance from Corners and Fire Hydrants.

[Ord. No. 2008-1500 § 1]

No street tree shall be planted closer than 35 feet from any street corner, measured from the point of nearest intersecting curbs or curblines. No street tree shall be planted closer than 10 feet from any fire hydrant.

### § 13-17.4. Planting Distance from Utility Lines.

[Ord. No. 2008-1500 § 1]

No street tree other than those species listed as small trees in the official list may be planted under or within 10 lateral feet of any overhead utility wire, or over or within five lateral feet of any underground water line, sewer line, transmission line, or other utility.

## § 13-18. PUBLIC TREES.

### § 13-18.1. Prohibited Acts.

[Ord. No. 2008-1500 § 1]

No person shall do any of the following acts to any tree on a street without the prior permission of the Shade Tree Committee.

- a. Prune, climb with spikes, break, damage, remove, top or kill.

- b. Disturb or interfere in any way with any tree root — including limiting in any way free access to air or water of the root zone (for example excessive mulching).
- c. Fasten any rope, wire, sign or other device. Nothing herein shall prevent any government agency from affixing in a manner approved by the Shade Tree Committee a public notice upon a tree in connection with administering governmental affairs.
- d. Remove or damage any guard or device placed to protect any tree or shrub.
- e. Raze, remove or renovate any structure if deemed by the Shade Tree Committee to be damaging to any street tree.
- f. Place or distribute on or within the drip line of any tree any chemical deleterious to tree health, except as required for public safety by the governing body.
- g. Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.
- h. Remove soil, either for trenching or otherwise, within the drip line of any shade tree.
- i. Construct new sidewalks and/or driveways with any material whatsoever within five feet to the base of a tree.

## § 13-18.2. Borough's Rights; Property Owners' Responsibilities.

[Ord. No. 2008-1500 § 1]

- a. Pruning of Trees. The Borough of Bernardsville shall have the right to prune any tree or shrub which leans or spreads from private property when it interferes with the proper spread of light from a street light onto a roadway or interferes with visibility of any traffic control device or sign, or otherwise presents a hazard to public safety.
- b. Removal of Dead or Diseased Trees. The Borough of Bernardsville shall have the right to cause the removal of any dead or diseased trees on private property within the Borough when such trees constitute a hazard to life and property on public roadways or public lands. The Shade Tree Committee will notify in writing the owner of such trees. Removal shall be done by said owners at their own expense within 60 days after the date of service of notice. In the event of failure of the owners to comply with such notice, the Borough of Bernardsville shall have the authority to remove such trees and charge the cost of removal on the owners' real property tax. When such trees are removed, trunks shall be cut as close to the ground as practicable. Removal shall be in compliance with the Tree Protection Ordinance of the Borough of Bernardsville.

## § 13-18.3. Applicability to Tree Removal Construction Companies; Permit Required.

[Added 9-27-2021 by Ord. No. 2021-1896]

All provisions of this Chapter shall apply to any person removing trees on behalf of any other person, including all tree removal construction companies, all persons in the business of removing trees or construction. It shall be unlawful for any person or company to remove or cause to be removed any tree or undertake any work for which a permit is required pursuant to this Chapter unless a valid permit therefore is in effect, such removal or work shall constitute a violation of this Chapter and shall subject the person or company violating this section to all penalties provided in § 1-5 of this Code.

## § 13-19. INTERFERENCE WITH SHADE TREE COMMITTEE OR TREE CONSERVATION OFFICER.

[Ord. No. 2008-1500 § 1]

It shall be unlawful for any person to prevent, delay or interfere with the Shade Tree Committee or the Tree Conservation Officer or any of their agents while they are performing their duties pursuant to this chapter and other sections of the Borough Code.

## § 13-20. PENALTIES.

[Ord. No. 2008-1500 § 1]

Any person violating any provision of this chapter shall be subject to the penalties set forth in § 1-5 of the Borough Code, except that the minimum fine which may be imposed for a violation shall be \$100. The destruction, cutting or removal of each tree in violation of the provisions of this chapter shall be considered as a separate offense and subject to a separate penalty for each offense.

In addition to the penalties listed above, when regulated tree(s) are removed without a tree removal permit or when regulated tree(s) not permitted to be removed under the terms of an issued permit are removed, the affected areas shall be replanted to the satisfaction of the appropriate municipal authority in accordance with § 13-14 of this chapter. In the case of such a removal on a construction site, the Zoning Enforcement Officer shall immediately issue a "stop work" notice which will remain in force until the property owner provides a replanting plan which is satisfactory to the appropriate municipal authority. In addition, a certificate of occupancy shall not be issued on same property until the Tree Conservation Officer has verified that replanting has been satisfactorily completed.

## § 13-21. EFFECTIVE DATE; RETROACTIVE APPLICATION.

[Ord. No. 2008-1500 § 1]

This section shall take effect immediately, and sections 13-1 through 13-16 inclusive shall be retroactive to January 1, 2003. Outstanding tree replacement requirements may be reduced by the Shade Tree Committee as provided in Subsection 13-14.2a; however, the Tree Conservation Officer may require as-built drawings overlaid on the original landscape plan to enable accurate calculation of appropriate relief.