

**30-5.34. Tree protection. [Added 8-23-2016 by Ord. No. O-13-2016]**

**30-5.34.1. Title.**

This section shall be known as and may be cited as the "Environmental Tree Protection Ordinance of the Borough of Monmouth Beach."

**30-5.34.2. Purpose.**

The purpose of this section is to preserve trees and woodlands throughout the Borough and to restrict the removal of trees, thereby maintaining the beauty and character of the Borough, preventing erosion, and restricting any action that could create a hazard to persons or properties while balancing a private property owner's right to develop privately owned lands.

**30-5.34.3. Definitions and word usage.**

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**APPLICANT** — Any person making application to the Tree Conservation Officer for a tree protection permit.

**CLEAR-CUTTING** — The removal of more than 20% of the total number of trees, six inches in caliper or greater, of any type of trees within an area on a lot and located outside of the necessary footprint as defined below.

**DIAMETER AT BREAST HEIGHT (DBH)** — The diameter of a tree measured at breast height, which is approximately 4 1/2 feet above the ground. The diameter of a multitrunked tree shall be 2/3 of the sum of the diameters of all trunks but not less than the diameter of the largest trunk. Diameter shall be calculated to be 1/3 of the circumference for the purpose of this definition.

**EMERGENCY** — Any unforeseen circumstance or occurrence, the existence of which constitutes a clear and immediate danger or hazard to person or property.

**MITIGATION PLAN** — A plan prepared by a qualified person acceptable to the Tree Conservation Officer showing the planting of replacement trees on the property on which tree removal activity is taking place or on other properties within the Borough. Said plan must depict, in a manner acceptable to the Tree Conservation Officer, a reasonable scheme for the ultimate full replacement of trees removed.

**NECESSARY FOOTPRINT** — The portion of the lot located within a line drawn 15 feet outside the limits of any existing principal structure or any proposed principal structure for which site plan approval has been granted or a valid building permit or other necessary municipal approval exists and within five feet outside the limit of any existing accessory structure or any proposed accessory building and/or accessory structure for which site plan approval has been granted or a valid building permit or other necessary municipal approval exists.

**ORNAMENTAL TREE** — See "tree, ornamental."

**PERMITTEE** — Any person who has been issued a permit pursuant to the terms and conditions of this section and who is obligated to fulfill all the terms of this section.

**PERSON** — Any person, firm, partnership, association, corporation, company, or public or private organization of any kind other than those exempted from the provisions of this section.

**SPECIMEN TREE or SIGNIFICANT SPECIMEN TREE** — Any tree or ornamental tree with a diameter at breast height (DBH) exceeding 60% of that of the largest similar tree listed in either of these references: Monmouth County's Largest Trees, prepared and updated annually by the Monmouth County Shade Tree Commission, or New Jersey's Big Trees, prepared and updated biannually by the Division of Parks and Forestry of the New Jersey Department of Environmental Protection.

**THINNING** — The removal of undesirable, competitive, diseased or damaged trees so as to improve the development of the remaining trees on a lot.

**TREE** — Any living deciduous or coniferous (evergreen) tree which is six inches in caliper or greater, with a normally anticipated mature height of 20 feet or greater.

**TREE CONSERVATION OFFICER** — The person designated by resolution of the Borough Council to administer and enforce this section. If no such person is designated, the Borough Engineer shall act as Tree Conservation Officer.

**TREE EXPERT** — A specialist in trees or tree care whose qualifications are acceptable to the Tree Conservation Officer.

**TREE, ORNAMENTAL** — Any living dogwood, American holly, native laurel and any other small decorative tree with a normally anticipated mature height of six feet or greater (including, but not limited to: birch, Japanese maple, cherry, crabapple, and magnolia).

**TREE, STREET** — Any deciduous hardwood shade tree located within the Borough or county right-of-way.

#### **30-5.34.4. Prohibited activities.**

The activities described in this subsection and any substantially similar activity are prohibited activities:

- a. Removing, causing or permitting the removal of any significant specimen tree, as defined in Subsection 30-5.34.3 above, without first obtaining variance relief.
  1. Removing, causing or permitting the removal of any tree having a trunk diameter of six inches' DBH or larger without first obtaining a tree removal permit.
  2. Removing, causing or permitting the removal of any ornamental tree having a size as follows:
    - (a) One inch DBH or larger for any dogwood (*cornus florida*) or American holly (*illex opaca*);
    - (b) Two and one-half inches' DBH or larger for any other ornamental tree.
  3. Clear-cutting or the removal of more than 20% of the total number of trees, six inches

in caliper or greater, of any size or type of trees within an area on a lot and located outside of the necessary footprint as defined in Subsection 30-5.34.3 or removal of 20% of the trees on slopes steeper than 15%.

4. Undertaking, causing or permitting any activities, including occupancy, demolition or construction, on, or adjacent to, any lot which may damage, or otherwise causing or permitting any damage, injury or disfigurement to, any tree or ornamental tree described in Subsection a above.
- b. Removing or damaging any street tree without authorization from the Borough of Monmouth Beach.

**30-5.34.5. Permit required.**

- a. No person shall engage in, nor allow, permit or direct any person to engage in, the removal of any tree six inches in caliper or greater unless a tree protection permit is first obtained from the Tree Conservation Officer.
- b. No person shall engage in, nor allow, permit or direct any person to engage in, any prohibited activity, as defined in Subsection 30-5.34.4 above, unless a variance is first obtained from the Combined Land Use Board and a tree protection permit is subsequently obtained from the Tree Conservation Officer.

**30-5.34.6. Permit application requirements. [Amended 3-21-2023 by Ord. No. O-05-23]**

- a. Application for a tree protection permit shall consist of:
  1. A fully and accurately completed application form provided by the Borough.
  2. A plan showing the location of all existing trees six inches in caliper and greater within 10 feet of the proposed limits of disturbance (including all trees located within the necessary footprint) and all proposed tree removal in sufficient detail to identify the nature and limits of the proposed tree removal, including, but not limited to, the location, species and diameter of all tree removals and the limits of all existing and proposed principal structure's accessory structures in relation to any removals and any proposed grade changes. All trees described in Subsection 30-5.34.4a1 or 2 shall be shown on a plan if construction or any disturbance is proposed within 10 feet of the canopy line of such trees. For removals of five or fewer trees on a lot where the principal use is an existing single-family dwelling, the plan may be provided using a legible sketch, detailed narrative, a Tax Map reproduction, a copy of an existing survey or a similar drawing with field measurements and dimensions provided by the property owner or the owner's agent. For other removals, the plan shall be prepared by a qualified professional acceptable to the Tree Conservation Officer.
  3. A narrative description of the property owner's reasons for removing the trees, including a description of any alternates considered.
  4. A signed evaluation and recommendation from a tree expert, whose qualifications are acceptable to the Tree Conservation Officer, shall be provided if the reasons for the removal include the removal of dead or diseased trees or a horticulturally advantageous

thinning or an overgrown area.

5. A tree protection permit application fee:
  - (a) For applications on a lot containing an existing single-family dwelling, not subject to a contract to sell, an option or agreement to buy or a similar agreement, and where no change of title has taken place within the prior calendar year:
    - (1) Fifty dollars for removal of five or fewer trees; or
    - (2) One hundred dollars for removal of between six and 10 trees; or
    - (3) One hundred fifty dollars for removal of between 11 and 20 trees; or
    - (4) Two hundred dollars for removal of over 20 trees.
  - (b) For all other applications:
    - (1) Two hundred dollars for removal of five or fewer trees; or
    - (2) Two hundred dollars, plus \$25 for each tree removed over five trees.
  - (c) Fees may be waived or modified by the Borough Council for charitable, public or quasi-public agencies or for eleemosynary institutions or in unusual and exceptional circumstances.
  - (d) Costs for the Borough's independent expert evaluation shall be borne by the applicant.
- b. The applicant will place or cause to be placed, in a highly visible manner, a one-inch-wide yellow paint dot on the trunk of each tree proposed for removal, to aid the Borough in evaluating the proposed removals.
- c. The Tree Conservation Officer may seek the advice of such Borough officials, agencies, committees, boards, commissions, and independent Borough tree expert as the Officer may believe necessary in evaluating a permit application.
- d. After evaluation of an application, the Tree Conservation Officer will take one of the following actions within the time set forth:
  1. If the Officer determines that the permit application is incomplete, unclear, inaccurate or otherwise deficient, the Officer shall so advise the applicant and return the permit application within 10 days of the date of application. The applicant may revise, supplement and/or resubmit the application, which will then be treated as a new application, except no additional fee is required.
  2. If the Officer determines that the proposed activity is permitted by the standards set forth in Subsection 30-5.34.7, a permit shall be issued within 30 days of the date of application.
  3. If the Officer determines that the proposed activity is prohibited by the standards set forth in Subsection 30-5.34.4, the application may be referred to the Combined Land

Use Board for review and recommendation pursuant to N.J.S.A. 40:55D-25b(3) within 60 days of the date of application. The Officer shall issue or deny a permit for a prohibited activity within 90 days of the application.

4. In issuing permits under this section, the Officer and or Combined Land Use Board may impose reasonable permit conditions necessary to effectuate the purposes of this section.
- e. Any applicant aggrieved by any decision taken by the Tree Conservation Officer in the administration and/or enforcement of this section may, within 10 days of the date of action of the Officer, appeal to the Combined Land Use Board. The Planning Board may establish procedures to hear such appeals and shall render a decision affirming, reversing and/or modifying the decision or action of the Tree Conservation Officer within 90 days of the date of appeal. In hearing such appeals, the Board may seek the opinion of the Shade Tree Committee, the Environmental Commission or any other state, county or municipal agency or official.

### **30-5.34.7. Review of applications.**

- a. When reviewing applications, the Tree Conservation Officer will, after inspecting and evaluating the conditions on the site and adjacent properties and consulting with such other officials, agencies, committees, boards and commissions as the Officer deems appropriate, determine if the activity proposed is prohibited or permitted in accordance with this section.
  1. Prohibited activities include:
    - (a) Clear-cutting as defined by Subsection 30-5.34.4 of this chapter.
    - (b) Removal of a significant specimen tree.
    - (c) Any action which will substantially increase the potential of erosion as defined by the applicable Soil Conservation District standards.
    - (d) Any action inconsistent with other land use approvals or regulations affecting the site.
    - (e) Any action which would create a potential hazard to persons or properties.
  2. Permitted activities include:
    - (a) Removal and/or thinning of any trees less than six inches in caliper.
    - (b) Tree removal within the necessary footprint as defined in Subsection 30-5.34.3.
    - (c) Any action, including tree removals, required or permitted pursuant to subdivision, site plan and/or variance approval granted by a municipal agency acting under the Municipal Land Use Law and local ordinances.
    - (d) Removal of dead, dying or diseased trees or which constitutes a horticulturally advantageous thinning of an existing overgrown area with the approval of the Borough's Tree Conservation Officer.
  3. Restricted activities include:

- (a) All tree removal activities which are not permitted are prohibited. Applications may propose a combination of prohibited and permitted activities. In such cases, the Tree Conservation Officer may segregate the activities proposed and take the appropriate action on each type of activity.
  - (b) Applications for restricted activities shall be referred to the Combined Land Use Board in conjunction with applications under the jurisdiction of the Zoning Board of Adjustment for consideration of variance approval.
- b. The Combined Land Use Board shall consider these factors in hearing applications for variances concerning a restricted activity:
  1. Whether the proposed cutting or removal would impair the growth and redevelopment of the remaining trees on the applicant's property or adjacent property.
  2. Whether the proposed cutting or removal would change existing drainage patterns.
  3. Whether the proposed removal would allow soil erosion or increase dust.
  4. Whether the proposed removal would constitute a significant change in the screening between existing or proposed buildings on contiguous lots or the aspect of the lot as viewed from the adjacent public road.
  5. The overall effect of removal of such tree(s) on the physical and aesthetic value of the property and the neighborhood.
  6. Whether proposed changes in the topography of the area where such tree(s) are located will have a land configuration which shall be deemed injurious to the trees or other trees located nearby so as to require welling, construction of an aerification system, or tree removal or replacement.
  7. Whether the proposed changes in topography are required to comply with the minimum base flood elevation as shown on the FEMA Flood Insurance Rate Maps.
  8. Whether a mitigation plan is required. The purpose of such a plan shall be the ultimate replacement on the property of the trees being removed, giving due consideration to a reasonable maturity period for new plantings, and the maintenance at all times of at least 20% of the existing trees (outside of the necessary footprint) on a lot in the existing state.
  9. Whether alternative plans, which eliminate or reduce undesirable impacts but provide reasonable use of the property, are possible, technically practicable and financially feasible. In particular, the Board will consider if the removal of any trees is unavoidable and whether tree removal in excess of 20% is unavoidable.
  10. Whether reasonable application of the standards of this section creates a substantial hardship for the applicant, prohibiting reasonable use of the property consistent with the Planning and Development Regulations, and whether, therefore, a variance should be granted for one or more of the standards.
  11. In appropriate circumstances, an applicant may be required to post performance

guarantees, performance cash bonds and/or maintenance guarantees assuring compliance with the provisions of any tree protection permit and this section and assuring provision of replacement plantings required by any mitigation plan or damaged or removed contrary to the terms of any tree protection permit or this section.

**30-5.34.8. Tree mitigation requirements.**

- a. Not more than the number of tree(s) as set forth in Exhibit A shall be removed on any lot unless the tree(s) are replaced with tree(s) the total DBH of which is equal to at least 30% of the total DBH inches of the tree(s) removed.

**Exhibit A**

**Maximum Number of Trees that Can be Removed Without Tree Mitigation Requirements**

<b>Zone</b>	<b>Number of Trees</b>
A-1 Zone	2
A Zone	3

- b. No replacement tree shall have a DBH less than two inches.
- c. All replacement trees shall be installed on the subject site. If, in the opinion of the Tree Conservation Officer, sufficient space is not available on the subject property, the trees may be installed on an alternate site within the Borough, acceptable to the Tree Conservation Officer; however, the Tree Conservation Officer may waive this requirement when, in its opinion, it is in the best interest of the Borough, subject to the applicant posting a contribution in the amount of \$500 per tree. Funds collected by the Borough from applicants as a result of waivers shall be maintained in a shade tree account, the proceeds of which shall be available to install and maintain shade trees throughout the Borough.
- d. Tree replacement and/or tree mitigation shall be shown on a landscape plan or other document that shall be prepared by a qualified professional, acceptable to the Tree Conservation Officer.
- e. The Tree Conservation Officer shall seek the advice of such Borough officials, agencies, committees, boards, commissions, or independent Borough tree experts as the Officer may believe necessary in evaluating the mitigation plan.
- f. An applicant shall be required to post performance cash and maintenance guarantees to assure compliance with the provisions of any tree protection permit and this section and assuring provision of replacement plantings required by any mitigation plan or trees damaged or trees removed contrary to the terms of any tree protection permit or this section.

**30-5.34.9. Protection of existing trees and street trees.**

In connection with any construction, subsequent to tree clearing but prior to the start of other construction, snow fencing or other protective barrier acceptable to the Construction Official and/or Tree Conservation Officer shall be placed around trees and street trees that are not to be

removed. The protective barrier shall be placed at the dripline (or canopy line) of any tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction material shall be placed within any areas so protected by barriers. Any landscaping or utility activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor. Tree protection measures shall be in place prior to the issuance of any tree removal permit or building permit.

#### **30-5.34.10. Emergency action.**

In the event of an emergency, any person otherwise subject to this section, having responsibility, jurisdiction and/or authority to cure, remedy or mitigate dangerous, hazardous, inconvenient, unhealthy or obnoxious conditions resulting from the emergency, may, without first applying for and obtaining a permit under this section, take any lawful action which is otherwise a tree removal activity. However, such person, or the agent or designee of such person, shall apply for a tree protection permit not later than the end of the second succeeding business day after any tree removal activity takes place and may not proceed with nonemergency work, including restoration, until a permit is obtained.

#### **30-5.34.11. Persons exempt.**

This section shall not apply to prohibited activities by:

- a. The Borough or those acting under the control and direction of the Borough, including any person acting pursuant to a specific agreement or contract approved by the Borough Council.
- b. Federal, state or county agencies or those acting under their control and direction.
- c. Entities having, by their charters and the laws of the state, authority to engage in a prohibited activity without the consent of the Borough, but only insofar as the purpose to which such authority extends; in all other respects, such entities shall comply with this section.
- d. Commercial nurseries and similar established legally operating uses.
- e. Properties operating under a silviculture or forestry management plan approved by the State of New Jersey.
- f. Utility companies within public rights-of-way when such companies are operating under the jurisdiction of the public agency controlling the rights-of-way.

#### **30-5.34.12. Violations and penalties.**

- a. Any person(s), firm(s), or corporation(s) who violates any provision of this section shall, upon conviction thereof in municipal court, be punished by imposition of the penalties as permitted by law. The property owner shall be subject to a fine of not less than \$200 nor more than \$2,000 and replacement of the tree, consistent with the requirements of this section. Each instance of engaging in a separate tree removal activity, in violation of this section, including specifically each tree removed, shall be deemed a separate offense.
- b. In addition, the Borough may institute a civil action for injunctive or other relief to enforce the provisions of this section, including requiring the replacement of all trees illegally

removed and/or, at the option of the Borough, the payment of a contribution to allow equivalent mitigation on public land.