

**AN ORDINANCE AMENDING CHAPTER 165 OF THE REVISED GENERAL
ORDINANCES OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS, STATE
OF NEW JERSEY**

BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 165, Section 98 Tree Preservation is hereby amended as follows:

§ 165-98. Tree Preservation.

- A. The Borough of Wharton finds that the development of unimproved or vacant land for the purpose of erecting home sites has resulted in indiscriminate and excess cutting of trees upon tracts of land and has resulted in creating increased surface drainage and soil erosion, thereby increasing municipal costs to control drainage within the Borough. It further finds that such excessive removal and destruction of trees impairs the proper occupancy of existing residential areas and impairs the stability and value of improved and unimproved real property in such areas, with attendant deterioration of conditions affecting the health, safety and general welfare of the inhabitants of the Borough, and further finds that regulation of the indiscriminate removal of trees is within the police power of the Borough.
- B. Definitions. For purpose of this section, the following words shall have the meanings indicated:

APPLICANT – Any “person”, as defined below, who applies for approval to remove trees regulated under this ordinance.

APPROPRIATE DECISIONAL AUTHORITY – The municipal entity, either the Zoning Officer or Planning Board, to which the application for tree removal permit is submitted.

CRITICAL ROOT RADIUS (CRR) – The zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6" DBH would have a CRR = 6" x 18" = 108" or 9'.

DIAMETER AT BREAST HEIGHT (DBH) – The diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4 ½ foot height, the DBH shall be measured at the highest point before any division.

DRIPLINE – The limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree but not less than six feet from the trunk, whichever is greater.

HAZARD TREE – A tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not hazard trees.

- 1. Has an infectious disease or insect infestation;**
- 2. Is dead or dying;**
- 3. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective;**
- 4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or**
- 5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).**

PERMITS – A license issued by the Construction Code Official or Zoning Officer to remove or destroy trees.

PERSON – Any individual, resident, corporation, utility, company, partnership, firm, or association.

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

RESIDENT – An individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

STREET TREE – A tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

TREE – A woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground. ~~Any living tree having a trunk of a diameter of eight inches or greater measured at a height of three feet above natural grade~~

TREE CALIPER – The diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

TREE REMOVAL – To kill or to cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

C. Cutting or removal restricted. With the exception of the exemptions set forth in § 165-98E, no person shall cut or remove or cause to be cut or removed any tree with a diameter of eight inches or greater upon any lands within the Borough unless the cutting or removal can be accomplished in compliance with the provisions of this chapter. Additionally, the following shall not be permitted:

- (1) No person shall place any guy wire, brace or other device on any tree in such a manner as to injure it;**
- (2) No person shall hitch or fasten an animal to any tree or shrub upon a public highway or to any guard or support provided for the same or permit an animal to bite or otherwise injure any tree or shrub;**
- (3) No person shall permit any brine, gas or injurious chemical or liquid to come in contact with the stump or roots of any tree or shrub upon a public highway, other than routine salting for hazardous road conditions as affects the health and safety of the general public; and**
- (4) No person shall prevent, delay or interfere with any lawful work undertaken by the Construction Official or his authorized agent.**

D. Permit required for removal of trees/shrubs on Borough-owned land. No person shall do or cause to be done any of the following acts affecting trees, shrubbery or ornamental material planted or growing naturally within the roadways or public places under the jurisdiction of the Borough, except with a written permit obtained from the Zoning Officer:

- (1) Cut, trim, break, disturb the roots of, or spray with defoliant any living tree or shrub; or injure, misuse or remove any structure or devices placed to support or protect any tree or shrubs.**
- (2) Place or remove, or climb with spikes, any living tree or shrub.**
- (3) Fasten any rope, wire, electric attachments, sign or other device to a tree or shrub, or to any guard about such tree or shrub.**
- (4) Close or obstruct any open space provided about the base of a tree or shrub to prohibit the access of air, water or fertilizer to the roots of such tree or shrub.**

- (5) Pile any building material or make any mortar or cement within six feet of a tree or shrub.
- (6) Change the grade of the soil within the limits of the lateral spread of the branches of any such tree

E. Exemptions. The following shall be exempt from the requirements of this chapter:

- (1) Residents who remove less than four (4) trees per acre that fall into category 1, 2, or 3 of the Tree Replacement Requirements Table within a five-year period. The number of trees removed is a rolling count across a five-year period. For example, if three (3) trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if one (1) tree from category 1 is removed in July 2023 and another in July of 2025 the first tree will come off the count in July 2028 and the second in July 2030.
- (2) Tree farms in active operation, nurseries, fruit orchards, and garden centers;
- (3) Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the Borough;
- (4) Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
- (5) Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan;
- (6) Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game, and Wildlife; and
- (7) Hazard trees may be removed with no fee or replacement requirement.
- ~~(1) Commercial nurseries.~~
- ~~(2) Residential lots that are 1.5 times the required lot size and are removing no more than five trees with a twelve inch caliper or less in any two year period.~~
- ~~(3) Any tree which is part of a cemetery.~~
- ~~(4) Trees directed to be removed by Borough, county, state or federal authority pursuant to law.~~

~~(5) Removal of trees which are dead, dying or diseased, or trees which have suffered damage.~~

~~(6) Pruning or removal of trees within the right-of-way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight lines.~~

~~(7) Those projects which have received major subdivision or site plan approval prior to the effective date of this chapter. Amended major subdivisions and site plans are subject to the provisions of this chapter.~~

F. Removal of trees; permit required. With the exception of the exemptions set forth in § 165-98E and subject to the provisions of § 165-98I, no tree shall be cut or otherwise removed from any lands in the Borough without a tree removal permit. All applications to the Planning Board for approval of a major subdivision, minor subdivision or any site plan requiring tree removal, unless otherwise exempted pursuant to this chapter, shall include an application for a tree removal permit. When an application for a tree removal permit is made for purposes not related to major subdivision, minor subdivision or site plan approval, the application shall be submitted to the Zoning Officer. No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed, except for trees directed to be removed pursuant to § 165-98E(4), (5) and (6) above.

G. Dangerous trees and shrubs.

(1) Removal required; notice. In case any tree or shrub or any part thereof along the public highway shall become dangerous to public safety, the owner of the property in front of which such tree or shrub is located shall forthwith remove the same, or the required part thereof, upon receipt of written directive to that effect from the Department of Construction Official.

(2) Standard established. The owner or tenant of any lands lying within the Borough shall keep all brush, hedges and other plant life, growing within both 10 feet of any roadway and within 25 feet of the intersection of two roadways, cut to a height of not more than 2 1/2 feet. This shall not require the cutting down of any trees where there is vision through the trees at a height of between 2 1/2 feet from the ground and eight feet from the ground.

(3) Removal by Borough. If the owner fails to remove the tree or shrub or portion thereof within two weeks after receipt of written notice to do so, the work shall be performed by the Borough under the supervision of the Office of Zoning Official or a designated agent of the Borough, who shall certify the cost thereof to the Council.

(4) Costs charged against lands; lien established. Upon receipt of the certified costs, the Borough shall examine same and, if found correct, shall cause the costs to be charged against the lands or, if the Council deems the costs to be excessive, shall cause the reasonable cost thereof to be charged against the lands. The amount so charged shall forthwith become a lien upon the lands and shall be added to and become and form part of the taxes next to be assessed and levied upon the lands, the same to bear interest at the same rate as other taxes and collected and enforced by the same officer and in the same manner as taxes.

H. Tree replacement requirements.

(1) Any person who removes one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section E, shall be subject to the requirements of the Tree Replacement Requirements Table below.

(2) Any person who removes one or more tree(s) (as defined as "tree removal") with a DBH of 6" or more per acre, unless exempt under Section E, shall be subject to the requirements of the Tree Replacement Requirements Table below.

Tree Replacement Requirements Table			
Category	Tree Removed (DBH)	Tree Replacement Area (See Appendix A)	Required Action
1	DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"	Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed	Replant 1 tree with a minimum tree caliper of 1.5"
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	Replant 2 trees with a minimum tree caliper of 1.5" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	Replant 3 trees with a minimum tree caliper of 1.5" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	Replant 4 trees with a minimum tree caliper of 1.5" for

			each tree removed
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(3) Replacement alternatives. If the municipality determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:

- (a) Plant replacement trees in a separate area(s) approved by the municipality.**
- (b) Pay a fee of \$200 per tree removed. This fee shall be placed into a fund dedicated to tree planting and continued maintenance of trees.**

I. Enforcement. If any person shall continue to violate any of the provisions of this chapter after being duly notified of such violation or shall neglect or refuse to comply with any lawful order of the Office of the Zoning Official, the failure to comply with a second or each of subsequent notifications or orders shall be construed as an additional violation of this chapter, and each such additional offense shall subject the offending party upon conviction to the same penalty as provided for the first offense.

J. Permit required; application procedures.

(1) Tree removal requirements for site plans and subdivisions. Every application to the Planning Board for approval of a subdivision or any site plan that requires the removal of trees shall include an application for a tree removal permit. The application shall conform to the following:

- (a) Application form. The application form shall be available from the Zoning Office and shall contain the name of applicant; name of owner of property with consent of that owner, if different from the applicant; location, size and species of trees on a sketch of property; and reasons for the removal or destruction. Proof of payment of taxes for the subject site shall also be included.**
- (b) Plan information. An applicant/owner shall file a tree removal plan along with an application form for permit for removal or destruction of trees associated with a subdivision or site plan. The plan should indicate the location and species of trees on site, and which trees on the property are to be removed, together with the condition of such trees shown on the plan by the architect, engineer or land surveyor, under the seal of such professional.**

(2) Tree removal requirements for residential lots (excluding lots associated with subdivisions). Any residential lot that is less than 1.75 times the required lot size and removing five or more trees with a twelve-inch diameter or greater in a two-year period shall submit an application for a tree removal permit to the Zoning Officer. The application shall contain the name of applicant; name of owner of property with consent of the owner if different from applicant; location and

species of trees on a sketch of property; and reasons for the removal or destruction.

- (3) Tree removal requirements for nonresidential properties not associated with site plans or subdivisions. The applicant/owner shall submit an application for a tree removal permit to the Zoning Officer. The application shall contain the name of applicant; name of owner of property with consent of the owner, if different from applicant; location and species of trees on a sketch of property; and reasons for the removal or destruction.

K. Review standards. A tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- (1) Where the area proposed for the tree removal is to be occupied by a building or other structure; a street or roadway; a driveway; a parking area, patio, swimming pool, recreation area; utility line, easement or right-of-way; or a clearance area for the placement or storage of soil, fill or construction material or debris during the tree removal and/or construction operations.
- (2) In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in Subsection J(1) above:
 - (a) That the continued presence of such trees is likely to cause danger to persons or property upon the property for which removal is sought or upon adjoining property; or
 - (b) That the area where such trees are located has a cut, depression or fill of land, or the topography of the land is of such character as to be injurious or dangerous to such trees or to trees located nearby.
- (3) Upon an express finding by the appropriate decisional authority 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; dust; drainage or sewerage problems; and dangerous or hazardous conditions.
- (4) The appropriate decisional authority shall have the power to affix reasonable conditions to the granting of the permit for the removal of trees.
- (5) Whenever an application for tree removal is granted under the terms and conditions of this chapter, the following protective measures shall be observed:
 - (a) No material or temporary soil deposits shall be placed within the dripline of any existing tree to be preserved; and

- (b) Except while engaged in tree removal, no equipment shall be operated within six feet of any tree protected by this chapter nor shall such equipment be operated at any time in such a manner as to break, tear or bruise or otherwise injure any living tree.

L. Approval of permit.

- (1) Where the permit application is submitted as part of an application for minor subdivision, major subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to minor subdivisions, major subdivisions or site plans.
- (2) Where the permit application is not made in connection with a subdivision or site plan application or single-family residence, the Zoning Officer shall act on the application within 90 days of its receipt or within such additional time as in consented to by the applicant. Failure to act within 90 days, or any extension thereof, shall be deemed to be an approval of the application, and thereafter the Zoning Officer shall issue a tree removal permit.
- (3) Where the application is made in connection with a single-family lot (not part of a subdivision), the Zoning Officer shall act on the application within 30 days of its receipt or within such additional time as it consented to by the applicant. Failure to act within 30 days, or any extension thereof, shall be deemed to be an approval of the application, and thereafter the Zoning Officer shall issue a tree removal permit.
- (4) Approval by default with regard to minor subdivisions, major subdivisions and site plan applications shall not be deemed to be a waiver of a tree removal permit.
- (5) No approval shall be granted by the Board or Zoning Officer if it is found that the proposed tree removal is contrary to the best interests of the public health, safety or general welfare.

M. Referral to other agencies. The appropriate decisional authority shall refer all applications to the Shade Tree and/or Environmental Commission for examination and opinion. Their reports shall be submitted to the appropriate decisional authority within 20 days of receipt of same. The appropriate decisional authority shall not be bound by the recommendations of these committees, and failure to submit a report to the appropriate decisional authority within 20 days shall not be construed as a restriction at any time following the expiration of the twenty-day period.

N. Surety bond required where building permit is sought. In all cases of application for permit where a building permit is applied for there shall accompany the application for building permit a cash or surety bond in a minimum sum of \$500 for each acre with the amount to be determined by the Zoning Officer, which bond shall assure compliance with the preservation of those trees not to be removed, which bond shall

be returned with the certificate of occupancy less any costs expended by the Borough to replace trees improperly removed or destroyed in violation of the permit.

O. Appeal. In the event of denial of any permit submitted to the Zoning Officer, the applicant seeking appeal from the decision shall proceed before the Planning Board as provided by statute.

P. Application fee. The fee for a tree removal permit not associated with a minor subdivision, major subdivision or site plan shall be \$25 with each application.

Q. Penalty. Any person violating any of the provisions of this section shall be punishable as provided in Chapter 1, General Provisions, Article I, General Penalty.

R. Severability. Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

APPENDIX A

Approved list of replacement tree species and planting standards for the Borough of Wharton

Tree Species	Planting Procedure
Group A (Large Trees)	All trees shall have a minimum caliper of 2.5 to three inches measured six inches from grade in accordance with standards established by the American Association of Nurserymen.
Green mountain sugar maple - <i>Acer saccharum</i> 'green mountain'	
Red maple – <i>Acer rubrum</i> 'red sunset'	
Patmore ash – <i>Fraxinus lanceolata</i> 'pratmore'	
Skyline honey locust – <i>Gleditsia tricanthos, inermis</i> 'skyline'	
Greenspire linden – <i>Ilia cordata</i> 'greenspire'	
Northern red oak – <i>Uercus rubra</i>	Trees shall be nursery-grown, free of disease, substantially uniform in size and shape and have straight trunks. The minimum branch height at planting shall be six feet, except where planting is on a sight triangle, in which case no branches shall be below eight feet.
Green vase zelkova – <i>Elkova serrate</i> 'green vase'	
Group B (Medium-sized Trees)	
Pyramidal European hornbeam – <i>Carpinus betulus</i> 'frastigiata'	Trees shall be properly planted and firmly supported with two or three guy wires attached to stakes. Pieces of rubber hose shall be used under the wires where they are attached to the trees. Wires and stakes shall be removed by the applicant after one year.
Kwanzan cherry – <i>Prunus serrulate</i> 'kwanzan'	
Redspire pear – <i>Pyrus calleryana</i> 'redspire'	
Capital pear – <i>Pyrus calleryana</i> 'capital'	
Regent scholar tree – <i>Sophora japonica</i> 'regent'	
Group C (Small Trees)	
Newport Plum – <i>Prunus cerasifera</i> 'newport'	
Cumulus shadblow – <i>Amelandier</i> 'cumulus'	
Amanogawa columnar cherry – <i>Prunus serrulate</i> 'amanogawa'	

Date: First Reading: October 7, 2024
 Second Reading: October 21, 2024

ATTEST:

BOROUGH OF WHARTON

**Gabrielle Evangelista,
Municipal Clerk**

**WILLIAM J. CHEGWIDDEN,
MAYOR**