



Ordinance of the Township of Bernards

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Chapter 16. Shade Tree Protection

[The power to regulate the planting and protection of shade trees is contained in N.J.S.A. 40:88-4. The Shade Tree Commission is established in section 2-17; the Environmental Commission is established in section 2-18.]

SECTION 16-1. Purpose

Trees and wooded areas constitute natural resources contributing to the value of property throughout the Township and promoting the general welfare of the citizens thereof.

The preservation of trees and wooded areas will be advanced by the establishment of rules and regulations regarding their protection or removal.

This ordinance establishes requirements for tree removal and replacement in the Township of Bernards to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into soil, and protect the environment, public health, safety, and welfare.

SECTION 16-1.1. Definitions

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

- a. "Applicant" means any "person", as defined below, who applies for approval to remove trees regulated under this ordinance.
- b. "Critical Root Radius (CRR)" – means 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 $CRR = 6'' \times 1.5' = 9'$.
- c. "Diameter at Breast Height (DBH)" means 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 four and a half foot height, the DBH shall be measured at the highest point before any division.

- d. “Hazard Tree” means 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, etc.);
or
 5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or licensed tree expert.
- e. “Person” means any individual, resident, corporation, utility, company, partnership, firm, or association.
- f. “Planting strip” means the part of a street right-of-way between the public right-of-way adjacent to the portion of the street reserved for vehicular traffic the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk.
- g. “Resident” means an individual who owns or resides on the residential property or contractor hired by the individual who owns or resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.
- h. “Street Tree” means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) 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.
- i. “Tree” means 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.
- j. “Tree Caliper” means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.
- k. “Tree removal” means to remove a dead or hazardous tree, to remove a living tree or 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.

SECTION 16-2. Tree Protection Committee

- a. There is hereby established the Bernards Township Tree Protection Committee, advisory in nature, which shall consist of three members. The Environmental Commission shall appoint one of its members and the Shade Tree Commission shall appoint two of its members to the Tree Protection Committee. The appointments shall be for the calendar year and shall expire on December 31 of the year of appointment.
- b. A vacancy caused by death or resignation shall be filled for the unexpired term.
- c. Powers and duties. . The Tree Protection Committee may advise the Engineering Department on shade tree permits and related matters. A majority of the Committee may advise upon any application in the absence of one of its members.
[Ord. #256, § 3; Ord. #1518, 12-11-2001, amended; Ord. #2226, 2-26-2013, amended]

SECTION 16-3. Tree Removal Permit

§ 16-3.1. General Requirements

[Ord. #256, § 1]

- a. Permit Required
 1. No person shall cut down or remove any street tree with a DBH of 2.5 inches or more or any non-street tree with DBH of 6 inches or more upon any lands within the township unless the person shall have first obtained a permit therefor in accordance with the rules and regulations hereinafter set forth.
- b. Tree Replacement Requirements
 1. Any person who removes one or more street tree(s) with a DBH of 2.5 inches or more, unless exempt as set forth in this chapter, shall be subject to the requirements of the Tree Replacement Requirements Table below.
 2. Any person who removes one or more tree(s) with a DBH of 6" or more, unless exempt as set forth in this chapter, shall be subject to the requirements of the Tree Replacement Requirements Table.
 3. Replacement tree species shall be in accordance with Attachment 1.

Replacement tree(s) shall:

- a. Meet the Tree Replacement Criteria in the table below.
- b. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date approved by the township.
- c. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall then be replaced as needed within twelve (12) months of failure. Any tree planted as a replacement that is subsequently removed is subject to replacement again in accordance with this section.
- d. Shall not be planted in temporary containers or pots and must be planted in accordance with accepted nursery practice. Burlap and wire shall be removed before planting.

Tree Replacement Requirements Tables:

Category	DBH (inches) of Tree Removed	Number of Replacement Trees
1	6 to 12.99	1
2	13 to 22.99	2
3	23 to 32.99	3
4	33 or greater	4

Replacement Tree Type	Minimum Replacement Caliper
Street Tree	3 inch
Deciduous	1.5 inch
Evergreen	6 foot

- c. Replacement Alternatives:
 - 1. If the township approves a fee per replacement tree in lieu of planting replacement trees, then the applicant shall pay a fee of \$300 per tree removed. This fee shall be placed into the Township Tree Fund (As set forth in Section 21-45.5) dedicated to tree planting.

§ 16-3.1.1 Exemptions

All persons shall comply with the tree replacement standard outlined above, except

in the cases detailed below. All requests for exemptions shall be provided to the Township in writing.

- a. 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 3 trees from category 1 are removed in July 2023, the 'count' resets to zero in July 2028. However, if 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.]
- b. Tree farms in active operation, nurseries, fruit orchards, and garden centers, excluding any portion of the property not farmed or used as part of the exempt use.
- c. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality.
- d. 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.
- e. 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;
- f. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife.
- g. Hazard trees may be removed with no fee or replacement requirement.

§ 16-3.2. Application for Permit.

[Ord. #256, § 4; Ord. #1518, 12-11-2001, amended]

Any person desiring to cut down or remove any street tree with a DBH of 2.5 inches or more or a non-street tree with a DBH of 6 inches or more shall first apply to the Township Engineer for a permit authorizing the same. A separate application shall be filed for each lot or parcel. The applicant shall identify the land upon which the tree or trees are located, the name and address of the owner, tenant and duly authorized agent of the owner or tenant, if any, and shall set forth with sufficient specificity for purposes of identification the location and DBH of the tree or trees sought to be cut down or removed and the reasons for the

request. Sketch or plan shall be provided indicating how tree replacement requirements shall be met.

§ 16-3.3. Review and Approval or Disapproval of Application: Expiration of Permit.
[Ord. #256, §§ 5-7]

- a. The Township Engineer shall promptly refer the application to the Tree Protection Committee for its review and advisory comments pursuant to the standards set forth in this chapter. In the event that the Tree Protection Committee fails to advise on such application by no later than 10 days after a complete application is filed, the Township Engineer shall forthwith issue the permit. Any permit shall expire, if not acted upon, in one year from the date of its issuance.

[Ord. #1518, 12-11-2001, amended]

- b. In rendering advice on applications submitted for its consideration, the Tree Protection Committee shall at all times give weight to the basic intent of this chapter, which is to retain healthy trees in the Township wherever reasonably feasible. Subject to the foregoing, the Tree Protection Committee shall base its advice in accordance with the following considerations:

1. Whether the tree or trees are located upon a proposed building site, driveway, recreation area, roadway, drainage right of way, sewerage line, or whether the trees are within 20 feet of any of the foregoing.
2. Whether the tree or trees appear upon inspection to be diseased or so situated as to be substantially lacking in vigor.
3. Whether the tree or trees are so located that necessary grade changes will render protection unreasonably difficult or expensive.
4. Whether the tree or trees constitute significant screening between existing or proposed buildings on contiguous lots.
5. Whether, in the case of a lot to be developed, the proposed purchaser has requested in writing that a particular tree or trees be removed.
6. Whether removal of the tree or trees will constitute a horticulturally advantageous thinning of an existing overgrown area.
7. Whether removal of the tree or trees will significantly and adversely affect drainage conditions, soil fertility or soil stability.
8. Whether other practical exigencies may exist which would unduly cause hardship or difficulty to the applicant if the tree or trees were retained as weighed against the value of such retention.

- a. The Engineering Department shall endorse its decision upon the application and, in case of partial or complete disapproval, shall set forth the basis for such decision, which shall thereupon be transmitted to the applicant.

§ 16-3.4. Appeal Procedure.

[Ord. #256, § 8; Ord. #1518, 12-11-2001, amended]

Any person aggrieved by a decision of the Engineering Department may appeal therefrom by letter to the Township Committee. The Township Committee shall hear the appeal within 20 days of receipt of such letter. Appellant shall give at least 10 days' notice of the hearing to the owners of all lands within 200 feet of the affected lot or parcel and the Township Engineer. Any interested parties may appear in person or by attorney and following receipt of relevant testimony, the Township Committee shall, within 10 days of such hearing, either affirm, reverse or modify the decision appealed from upon such terms and conditions as to it shall seem just.

§ 16-3.5. Issuance of Construction or Zoning Permit.

[Ord. #256, § 9]

Whenever a construction or zoning permit is requested for a structure or use which will require the removal of trees as herein protected, the Construction Official or Zoning Official, as applicable, shall decline to issue any such permit until a tree removal permit is applied for and issued.

SECTION 16-4. Prohibited Acts

No person shall place any harmful material, machinery or soil deposits within the Critical Root Radius of any living street tree with a DBH of 2.5 inches or more or a non-street tree with a DBH of 6 inches or more; nor shall harmful excavation around such tree be permitted. To the extent that regrading may require, trees shall be walled in to prevent damage or destruction but the regrading and walls shall not encroach into the Critical Root Radius.

[Ord. #256, 2]

SECTION 16-5. Violations: Penalty

The Township Engineer or their designee shall institute complaints in the Municipal Court for any violations of this chapter. Any person found guilty of such a violation shall be subject to a fine of up to \$500. Any person who violates any provision of this chapter shall first be afforded an opportunity to fully comply with this chapter within 30 days of the initial violation.

[Ord. #256, § 10; New; Ord. #1518, 12-11-2001, amended]

SECTION 16-6. 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.

Chapter 16 Attachment 1

SHADE TREE PROTECTION

16 Attachment 1

SCHEDULE I SHADE TREE LIST

TALL TREES - NO OVERHEAD WIRES

The following are allowed:

Acer rubrum *	- Red Maple
Acer negundo	- Box Elder
Acer nigrum	- Black Maple
Acer saccharinum	- Silver Maple
Acer saccharum	- Sugar Maple
Betula alleghaniensis *	-Yellow Birch
Betula lenta	- Black Birch
Betula nigra *	- River Birch
Betula papyrifera	- Paper Birch
Betula populifolia	- Gray Birch
Carya glabra	- Pignut Hickory
Carya illinoensis	- Pecan
Carya ovata	- Shagbark Hickory
Carya tomentosa	- Mockernut Hickory
Celtis occidentalis	- Common Hackberry
Diospyros virginiana	- Common Persimmon
Fagus grandifolia	- American Beech
Gleditsia triacanthos	- Honeylocust
Gymnocladus dioicus	- Kentucky Coffeetree
Juglans cinerea	- Butternut
Juglans nigra	- Black Walnut
Liquidambar styraciflua	- Sweetgum
Liriodendron tulipifera	- Tuliptree
Magnolia acuminata	- Cucumber Magnolia/Cucumbertree
Morus rubra	- Red Mulberry
Nyssa sylvatica *	- Blackgum
Platanus occidentalis	- American Sycamore
Populus deltoides	- Eastern Cottonwood
Populus tremuloides	- Quaking Aspen
Prunus serotina	- Black Cherry
Quercus alba	- White Oak
Quercus bicolor *	- Swamp White Oak
Quercus coccinea	- Scarlet Oak
Quercus lyrata	- Overcup Oak

Quercus macrocarpa	- Bur Oak
Quercus michauxii	- Swamp Chestnut Oak
Quercus montana	- Chestnut Oak
Quercus palustris *	- Pin Oak
Quercus phellos	-Willow Oak
Quercus rubra	- Northern Red Oak
Quercus stellata	- Post Oak
Quercus velutina	- Black Oak
Robinia pseudoacacia	- Black Locust
Salix nigra	-Black Willow
Sassafras albidum	- Sassafras
Taxodium distichum *	- Bald Cypress/Swamp Cypress
Tilia americana	- American Basswood/American Linden
Ulmus americana	- American Elm
Ulmus rubra	- Slippery Elm/Red Elm

*Thrive in damp to saturated sites

SHORT TREES - UNDER OVERHEAD WIRES

The following are allowed:

Acer pensylvanicum	- Striped Maple
Acer spicatum	- Mountain Maple
Amelanchier arborea	- Downy Serviceberry/Shadbush
Amelanchier laevis	- Smooth Serviceberry
Carpinus caroliniana	- American Hornbeam
Cercis canadensis	- Eastern Redbud
Cladrastis kentukea	- Kentucky Yellowwood/American Yellowwood
Cornus alternifolia	- Alternate-leaf Dogwood
Cornus florida	- Flowering Dogwood
Crataegus phaenopyrum	- Washington Hawthorn
Hamamelis virginiana	- Common Witch Hazel
Ilex opaca	- American Holly
Magnolia virginiana *	- Sweetbay Magnolia
Ostrya virginiana	- Eastern Hophornbeam/Ironwood
Prunus virginiana	- Common Chokecherry

1. The genus and species names must match.
2. A variety or cultivar of a named species is acceptable.
3. Other varieties may be approved at the discretion of the Tree Protection Committee, the Planning Board or the Zoning Board of Adjustment.
4. Minimum size as per approved plans.
5. Planting locations shall be as per approved plans or as approved by the Township Engineer.

INVASIVE SPECIES LIST

*The following are prohibited:

1. Norway Maple (*Acer platanoides*)
2. Tree of Heaven (*Ailanthus altissima*)
3. Mimosa or Silk tree (*Albizia julibrissin*)
4. Porcelain Berry (*Ampelopsis glandulosa* var. *brevipedunculata*)
5. Japanese Angelica tree (*Aralia elata*)
6. Japanese Barberry (*Berberis thunbergii*)
7. Japanese Clematis (*Clematis terniflora*)
8. Autumn Olive (*Elaeagnus umbellata*)
9. Weeping Lovegrass (*Eragrostis curvula*)
10. Winged Burning bush (*Euonymus alatus*)
11. English Ivy (*Hedera helix*)
12. Japanese Hop (*Humulus japonicas*)
13. Sericea Lespedeza (*Lespedeza cuneate*)
14. European Privet (*Ligustrum vulgare*)
15. Amur Honeysuckle (*Lonicera maackii*)
16. Morrow's Honeysuckle (*Lonicera morrowii*)
17. Purple Loosestrife (*Lythrum salicaria*)
18. Japanese Crabapple (*Malus toringo*)
19. Chinese Silvergrass (*Miscanthus sinensis*)
20. Eurasian Water-milfoil (*Myriophyllum spicatum*)
21. Oriental Photinia (*Photinia villosa*)
22. Callery or Bradford pear (*Pyrus calleryana*)
23. Common Buckthorn (*Rhamnus cathartica*)
24. Jetbead (*Rhodotypos scandens*)
25. Multiflora Rose (*Rosa multiflora*)
26. European Water Chestnut (*Trapa natans*)
27. Siebold's Arrowwood (*Viburnum sieboldii*)
28. Japanese Wisteria (*Wisteria floribunda*)
29. Chinese Wisteria (*Wisteria sinensis*)
30. Bamboo (*Bambusa vulgaris*)

***Including any species not listed here that is a regulated invasive species identified by the New Jersey Department of Agriculture or the New Jersey Department of Environmental Protection.**