

ARTICLE IVA
Tree Conservation and Replacement Program
[Added 11-7-2000 by Ord. No. 00-22]

§ 205-40.2. Definitions.

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

ADMINISTRATIVE OFFICER — The administrative officer shall be the Director of Community Development or his designee.

AESTHETIC IMPROVEMENT CUT — The removal of the minimum extent possible of the smallest and poorest specimens of trees so as to permit land development while retaining the maximum number of larger and healthier specimens of trees.

AVERAGED WOODED LOT — An inventory of a portion of each property subject to the provisions of this article shall be made to establish the average number of each species of tree within the area to be disturbed (which includes any area from which trees are to be removed or cut down). This inventory shall constitute the averaged wooded lot and shall be determined as follows: the applicant shall select random one-tenth-acre representative plots throughout the area to be disturbed, which plots shall have comparable tree populations to the area to be disturbed generally. Each representative plot shall be visibly marked by stakes or other appropriate markers. The location of the representative one-tenth-acre plots shall be subject to approval by the administrative officer. The number of representative one-tenth-acre plots shall be equal to 50% of the number of acres within the area to be disturbed (including any area from which trees are to be removed or cut down); provided, however, that the number of representative one-tenth-acre plots shall not be less than 10 unless the area to be disturbed is one acre or less, in which event the entire area to be disturbed (including the area from which trees may be cut down or removed) shall be inventoried. Once the representative plots have been identified and approved, each tree on each representative one-tenth-acre plot shall be inventoried by species and the average of each species calculated from the total of each representative one-tenth-acre plot shall be determined for the total of representative one-tenth-acre plots. That average number of species shall represent the number of species of each tree within the disturbed area and the composite of an averaged tree species shall constitute the averaged wooded lot. (Specimen trees are not part of the averaged wooded lot, as they are inventoried individually throughout the entire tract.)

BOARD — The municipal agency, either Planning Board or Zoning Board of Adjustment.

CLEAR CUTTING — The removal of all standing trees on a lot or portion of a lot.

DIAMETER AT POINT OF MEASUREMENT — The diameter of a tree measured 4 1/2 feet above the ground level on the downhill side for existing trees to be surveyed in the field and shown on a replacement plan. Trees utilized in the replacement of existing trees shall be measured six inches above the ground for trees with a four-inch caliper or less, and measured 12 inches above the ground for trees over a four-inch caliper. Diameter at a point of measurement may appear in this section as the abbreviation "DPM."

DRIPLINE — A 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.

HOMESTEAD LOT — A preexisting lot located within a zone permitting single-family detached dwellings upon which is constructed one single-family detached dwelling or upon which is proposed to be constructed one single-family detached dwelling, and which property as a result of zoning restrictions could not be further subdivided.

REPLACEMENT PLAN — A specific plan for replacement of removed trees in accordance with the provisions of this article.

REPLACEMENT TREE — A nursery-grown certified tree, 2 1/2 inches DPM, 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 American Association of Nurseryman.

SELECTIVE CUTTING — The removal of larger trees on an individual basis while leaving trees of lesser size.

SILVICULTURE — The management of any wooded tract of land to ensure its continued survival and welfare, whether for commercial or noncommercial purposes, pursuant to a plan approved by the New Jersey Bureau of Forestry.

SLASH — The forest debris remaining after a tree removal operation.

SPECIMEN TREE — Any tree with a DPM of 24 inches or greater.

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

TOPPING — The uppermost 20% of height of a tree constituting its crown.

TREE — Any tree species which has a DPM of six inches or greater.

§ 205-40.3. Cutting or removal required.

No person shall cut down or remove or permit, suffer or allow the cutting down or removal of any tree or specimen tree without first having complied with this article.

§ 205-40.4. Exemptions.

The following shall be exempt from this Article IVA:

- A. Commercial nurseries and fruit tree orchards.
- B. Christmas tree plantations.
- C. Removal of trees which are dead, dying or diseased or trees or specimen trees which have suffered severe damage or any tree or specimen tree whose angle or growth make them a hazard to structures or human life.
- D. Pruning or removal of any tree or specimen tree growing on or over a public right-of-way or public property by an appropriate authority or authorized utility company for maintenance of utility wires or pipe lines.
- E. Homestead lots.

- F. Those projects which, prior to the effective date hereof, have received preliminary major subdivision approval, final major subdivision approval or site plan approval; provided, however, that an amendment to a major subdivision approval, site plan approval or preliminary major subdivision approval which is made after the effective date of this article and which modification or amendment impacts upon existing trees shall be subject to the provisions of this article. Applications for extension of preliminary major subdivision approval where further tree removal is required shall be conditioned upon compliance with this section where the application for extension has not been granted prior to the effective date of this article.

§ 205-40.5. Permit required.

- A. Prior to the cutting down or removal of any tree which is subject to this article, a permit shall be obtained from the administrative officer entitled a "tree removal permit." The application for a tree removal permit shall include a completed application on a form prescribed by the administrative officer, including, as a minimum:
- (1) Name, address and phone number of property owner.
 - (2) Name, address and phone number of applicant, if different from owner.
 - (3) Consent, in writing, of owner if applicant is different than owner.
 - (4) Description of the location of the premises by street address and tax lot and block number.
 - (5) An inventory of trees, based upon an averaged wooded lot, showing all calculations and supporting factual data.
 - (6) An inventory of all specimen trees by size and species.
 - (7) A grid overlay to the same scale as a site plan or subdivision map, if any, or if none, another formal map or survey showing the location of one-tenth-acre representative plots for determination of the averaged wooded lot.
 - (8) A site plan to the same scale as the grid overlay described in the preceding subsection, showing the entire tract of land, delineating the areas of disturbance, the location of all specimen trees in the area of disturbance, an identification of each specimen tree by size and species and identification of specimen trees to be cut down or removed by location, size and species.
 - (9) A calculation of the trees and specimen trees to be removed.
 - (10) A calculation of the total replacement trees required in accordance with this article.
 - (11) Where a monetary contribution is proposed in lieu of replacement trees, a calculation of the monetary contribution, together with an explanation demonstrating good cause for concluding that the requisite number of replacement trees cannot reasonably be placed on site.
 - (12) A spec replacement tree plan as defined herein below.

- (13) A request for waiver of the requirements of this article, together with a detailed explanation of the reason for waiver request and the inability to reasonably comply.
- (14) The required fees and escrows in accordance with this article.

§ 205-40.6. Replacement tree plan.

- A. Where the application is in conjunction with a minor subdivision application to create a homestead lot or lots, removal of trees up to 50% of the number of trees on the proposed homestead lot(s) may be removed without replacement trees required by this section. Removal of specimen trees shall only be permitted where the location of a tree forces the placement of a structure outside the permitted building setbacks; where a tree whose location, angle or growth makes them a hazard to a structure or human life; where the location or growth of a tree inhibits the enjoyment of an outdoor pool, patio, or deck or such proposed uses for which a building permit has issued; or removal of specimen trees which are otherwise exempt. The removal of trees in excess of 50% or the removal of specimen trees which are not exempt requires a replacement plan based upon the standards set forth in Table B-1 and Table B-2. For minor subdivision applicants, a statement of the number and species of trees constituting the replacement plan, together with a certification indicating that same will be planted, shall be sufficient; provided, however, that no certificate of occupancy shall issue for use of any structure built upon said lots created by said minor subdivision until such time as evidence verifying the planting of the replacement trees has been completed. Neither a performance nor a maintenance bond shall be required in the case of a minor subdivision.
- B. Where the application for a tree removal permit is in conjunction with an application for major subdivision or site plan approval or any minor subdivision other than a subdivision to create homestead lots as set forth in Chapter 205 of the Township Code, or relates to any other property not otherwise exempt, the replacement plan shall include the following:
 - (1) A site plan showing the size, location and species of all trees constituting replacement trees to be planted within the disturbed area or elsewhere on site.
 - (2) The site plan shall identify the lot and block numbers, the street address, if known or assigned, and a certification of compliance with the requirements of this section.
 - (3) Location of streams and watercourses.
 - (4) Location of slopes of greater than 10% where any tree removal is proposed.
 - (5) The location(s) on the tract where tree removal is to take place.
 - (6) The total acreage of the tract.
 - (7) The total number of wooded acres to be disturbed within the tract.
 - (8) A specific plan for replacement of removed trees pursuant to Subsection C below.
 - (9) A written summary of measures taken to preserve existing trees.
 - (10) Evidence that the method of disposal of removed trees, toppings and slash is consistent with law. All efforts shall be made to preserve specimen trees, including, if necessary,

relocation of infrastructure, roadways and building. Removal of any specimen tree shall require specific approval, and any specimen trees approved for removal shall be listed individually on the tree removal permit.

- C. All plans for replacement of removed trees shall be based upon the following formulas:
 - (1) For trees as defined herein, replacement shall be based on the percentage of the trees removed as set forth in Table B(1) below;
 - (2) Specimen trees as defined herein shall be replaced in accordance with Table B(2).

**Table B(1)
Replacement of Trees**

Percentage of Trees Removed	Percentage of Trees Removed to be Replaced With Replacement Trees
80% to 100%	70%
60% to 79%	50%
40% to 59%	30%
20% to 39%	20%
Less than 20%	10%

**Table B(2)
Replacement of Specimen Trees**

Existing Specimen Trees to be Removed	Number of Replacement Trees
24 inches to 30 inches	5
31 inches to 36 inches	7
37 inches to 40 inches	9
41 inches or greater	10

- D. In determining the DPM of specimen trees for purpose of the above calculation, half-inch will be rounded up to the nearest whole inch and less than half an inch will be rounded down to the nearest whole inch.
- E. Any tree left standing which was designated for removal, or any tree planted in compliance with other requirements of this article, shall be credited against the total replacement count on a one-for-one basis; provided, however, that trees required to be planted by the Board within street rights-of-way as part of an approval for an application for development shall receive no credit.
- F. Wherever replacement trees are being planted pursuant to this section and Tables B(1) and B(2), the species or type of replacement tree shall, to the greatest degree practical, be the

same as the species or type removed from the tract.

- G. In the event that the replacement of the required number of trees cannot reasonably be achieved on site, the applicant may request or may be required to contribute an amount equal to the cost of the replacement tree, including installation and guaranty (twice the current wholesale value of each unplanted tree) to a fund established by the Township for the purpose of tree maintenance, tree preservation, tree planting, landscaping, and including the donation of trees to be planted within North Brunswick Township.

§ 205-40.7. Application submittal; referral.

All applications for tree removal permits must be made to the administrative officer. After determining that the application is complete, the administrative officer shall provide written notice to the applicant that the application for tree removal permit is complete and shall refer one copy of the completed application for tree removal permit to the Township Environmental Committee and the Township Engineer, together with a written request that they review the application and provide their comments and recommendations within 35 days of the date of the letter of transmittal. After 35 days from a referral to the Township Environmental Committee and the Township Engineer, the administrative officer shall approve or deny the application for tree removal permit. If denied, a statement of reasons supporting the denial shall accompany the denial. Due consideration shall be given by the administrative officer to the timely receipt of comments and recommendations of the Township Environmental Committee and the Township Engineer. Where approval is given, no permit shall issue until the applicant provides a performance guaranty as required in § 205-40.13. No performance guaranty may be released until full compliance with the approval permit has been made, all required replacement trees have been installed and an appropriate maintenance bond has been posted in accordance with this section. Where the application is approved, a tree removal permit shall issue as hereinabove described.

§ 205-40.8. Waiver.

- A. Where an applicant seeks a waiver from the strict enforcement of this article, an application completed except for those portions for which waiver is sought shall be submitted and referred for comment and recommendation to the Environmental Committee and the Township Engineer as described in § 205-40.7. After 35 days have elapsed from date of said referral, the application, together with all supporting data, the comments and recommendations of the Environmental Committee and of the Township Engineer shall be forwarded to the Board if in conjunction with an application for development for consideration of the application for waiver. If not in conjunction with an application for development, determination of the application of waiver shall be made by the administrative officer. Such determination of the administrative officer may be appealed to the Zoning Board of Adjustment.
- B. When determining whether or not to grant a waiver of full technical compliance with the requirements of this article and the requirements for replacement trees, the administrative officer or the Board, as the case may be, shall weigh the negative impacts of the proposed waiver versus the benefits of compliance and shall consider the following:
- (1) Is it reasonably economically feasible for the applicant to comply with this article based

upon the character and extent of the application for development? An applicant seeking a waiver on this ground shall submit a certification setting forth the anticipated cost of all construction and soft costs, including public improvements, structures, detention basins, layout, design, engineering, legal, as well as the anticipated sale price of the property to be sold or market value of the property upon completion. In no event shall a reduction in the number of replacement trees be greater than 1/2 of the original number required pursuant to this article.

- (2) The minimal degree of land disturbance in comparison with the overall size of the tract. For example, land disturbance of less than 10% of the overall size of the tract with no future plans for development of the tract remaining undisturbed would be an extraordinarily low percentage of land disturbance and could justify reducing the number of replacement trees; provided, however, that if the remaining undeveloped portion of the property were to be developed within five years, all waived replacement trees would be reinstated as a condition of future development.
 - (3) The proposed use of the property includes at least 20% low- and moderate-income housing units.
 - (4) A lot in a single-family detached dwelling zone of five acres or less upon which there is an existing single-family detached dwelling or upon which a single-family detached dwelling will be constructed which has the possibility of further subdivision based on the Zoning Ordinance but upon which the applicant seeks no further development or a subdivision. In such cases, a waiver respecting replacement trees similar to homestead lots may be approved by the Planning Board; provided, however, that if the property is subdivided within five years, then the applicant must comply with the tree replacement criteria for the category of application, i.e., subdivision, minor subdivision or major subdivision or site plan application for both the existing lot, including any waved replacement trees, and the proposed lot or lots.
- C. After its determination on the application for waiver, the Board shall forthwith provide a copy of its resolution to the administrative officer who shall incorporate the Board's determination into the determination on the application for tree removal permit.

§ 205-40.9. Regulations pertaining to delineation of clearing limits/limits of disturbance.

- A. The clearing limits/limits of disturbance shown on the replacement plan shall be fully established prior to cutting of permitted wooded acreage and shall be defined by snow fencing firmly secured along the dripline, but not less than six feet from the trunk, of the remaining trees. In a like manner, specimen trees and isolated groupings of trees which are to remain on the site shall be clearly protected by snow fencing or equally visible and protective device installed along the dripline of the trees but not less than six feet from the tree trunk(s).
- B. The grade of the land located along the dripline shall not be raised or lowered more than six inches unless compensated by welling or retaining wall methods; and in no event shall the welling or retaining wall methods be less than six feet from the trunk of the tree.
- C. No soil stockpiling, storage of building materials or equipment operation shall be permitted

within the dripline or within six feet of any remaining trees, whichever is greater.

- D. Any clearing within the dripline, or within six feet of the trunk of a remaining tree, must be done by hand or with hand-operated equipment.
- E. Where clearing and/or construction on the site results in accidental removal or severe damage which will eventually result in death and removal of any tree delineated in a replacement plan as remaining on site, such removed or damaged tree shall be replaced pursuant to the applicable replacement tree schedule in § 205-40.6C hereof using substantially comparable species and type trees.

§ 205-40.10. Permit approval; time for decision; no default approvals.

- A. A tree removal permit shall be acted upon within a reasonable time of the determination by the administrative officer that a completed application has been submitted.
- B. An application for development may be conditioned upon the subsequent approval of a tree removal permit.
- C. An approval by statutory default by virtue of a Board failing to act upon application development within a prescribed statutory time period shall not automatically grant approval of a tree removal permit and shall not be deemed to be an approval of a request for a waiver of the application of any portion of this article to an applicant for development.

§ 205-40.11. Change in replacement plan.

Any substantial change in a replacement plan shall necessitate the submission of a revised plan to the administrative officer for review and approval pursuant to this article.

§ 205-40.12. Permit revocation.

The administrative officer may revoke a permit where there has been a false or misleading application or for noncompliance with an approved replacement plan.

§ 205-40.13. Fees; performance guaranties; maintenance guaranties.

- A. A nonrefundable application fee of \$75 shall be submitted, together with a review and inspection fee of \$200, for the first acre and \$100 for each additional acre or portion thereof on which tree removal activities are proposed.
- B. An escrow fee, in an amount not less than 1% of the estimated replacement cost or \$500, whichever is greater, may be required to cover expenses of review of the application and site inspection subsequent to completion of the tree removal activities. Any unused balance will be returned to the applicant after final approval.
- C. A performance guaranty shall be submitted upon approval of an application in favor of the municipality in an amount not to exceed 120% of the cost for the replacement plan on the property in an amount estimated by the Township Engineer. This should exclude off-tract trees, for which a contribution was made.

- D. Notwithstanding any limitations set forth in Chapter 205, Land Use, following completion of the planting of trees in accordance with the approved replacement plan and as a condition of the release of the performance guaranty, the permit holder shall post a maintenance guaranty with the Township Clerk for maintenance of the replacement trees. The maintenance guaranty, which may be a surety bond, shall not exceed 15% of the costs of the replacement plan and shall be posted for a period not to exceed two years after acceptance of the completed replacement plan. Under the maintenance guaranty, an 85% survival rate for a two-year guaranty period shall be considered satisfactory.

§ 205-40.14. Notice of commencement of tree removal.

- A. The holder of a tree removal permit shall notify the administrative officer in writing at least seven business days in advance to when tree removal activity will commence. No activity shall take place on Saturdays, Sundays or legal holidays without express written approval from the administrative officer.
- B. The notice shall also include advice as to the manner of disposal of the removed trees. Where appropriate, the administrative officer shall advise the Township Recycling Coordinator of the name of the permit holder, the location of the removal site, the date removal is to commence and the manner of disposal to be employed.