

AN ORDINANCE TO PROVIDE FOR THE PRESERVATION OF TREES THROUGHOUT THE BOROUGH OF ESSEX FELLS.

BE IT ORDAINED by the Council of the Borough of Essex Fells, in the County of Essex, as follows:

§1. Title.

This chapter shall be known as the "Tree Removal and Protection Ordinance of the Borough of Essex Fells."

§2. Findings and purpose.

The Borough Council of the Borough of Essex Fells finds: that the preservation, maintenance, protection and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; protects and increases property values; preserves and enhances the Borough's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare.

§3. Definitions.

The following definitions shall apply to this chapter:

Tree - A deciduous or evergreen tree with an anticipated mature height of 20 feet or more (e.g., red, Norway, silver or sugar maple; sweetgum; London plane tree; American sycamore; white, red or pin oak; American elm; yellow or white poplar; copper beech, cedar, spruce, pine, fir or hemlock).

Ornamental Tree - A small tree at least six (6) feet or more at mature height (e.g., birch, dogwood, Japanese maple, cherry, crabapple, magnolia, Bradford pear, willow).

Structure - A combination of materials to form a construction for occupancy, use or ornamentation installed on a parcel of land.

§4. Permit required.

No person shall cut down or remove any Ornamental Tree of a diameter of three (3) inches or measured at a height of four (4) feet above the ground, nor any other Tree of a diameter of six (6) inches or more measured at a height of four and one-half feet above the ground without a Tree Removal Permit.

§5. Application Procedure.

A. Application for a Tree Removal Permit shall be made by submission of the following:

- (1) An application form provided by the Borough containing the following information: the name and address of the applicant; the street address and tax lot and block of the property in question; the number of Trees to be removed.
- (2) The reasons(s) for removing the Trees.
- (3) A Tree Removal Plan consisting of a diagram showing the location of all Trees to be removed, the species of such Trees and their diameter, the location of all Trees of a size described in Section 4 within the drip line of the Trees to be removed, and location of all existing and proposed structures on the property, together with the distance, that the Trees proposed to be removed are located from such structures and from property lines. A reproduction of the tax map or an existing survey modified to provide this information would be acceptable.
- (4) A Tree Mitigation Plan (if mitigation is required pursuant to § 6C hereof) to be reviewed and approved by the Enforcement Officer. The plan shall consist of a diagram (as described above), showing the location of all trees to be planted, the species of such trees and their diameter or size as required.
- (5) A \$25 fee for processing a Tree Removal Permit.

B. The applicant shall place a one-inch wide yellow ribbon to be provided by The Borough around the trunk of each Tree to be removed at a height of four and one-half feet (4 1/2) feet (or three feet for Ornamental Trees) above the ground so that the proposed Tree removal may be inspected in the field.

§6. Standards for Application Review.

- A. Upon receipt of an application for cutting or removal of Trees or Ornamental Trees, the Enforcement Officer shall inspect the site on which the Trees sought to be cut or removed are located and shall evaluate the drainage and other physical conditions existing on the subject property and adjoining properties. The Enforcement Officer shall consider the following factors in deciding whether to issue such permit:
1. Whether the proposed cutting or removal would impair the growth and redevelopment of the remaining trees or Ornamental 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 would 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 wooded aspect of the lot as viewed from the adjacent public road.
 5. Whether the proposed removal would constitute a horticulturally advantageous thinning of an existing overgrown area or the removal of dead or diseased Trees.
 6. The overall effect of removal of such Tree(s) on the physical and aesthetic value of the property and the neighborhood.
 7. Whether the area where such Tree(s) are located will be occupied by a building or structure, a driveway, a roadway, or a sewer line, or whether such area is within fifteen (15) feet of any of the foregoing.
 8. Whether proposed changes in the topography of the area where such Tree(s) are located will have depressed land configuration or fill of land which shall be deemed injurious to the Trees or other trees located nearby so as to require welling, construction of an aeration system, or Tree or Ornamental Tree Removal or replacement.
 9. Whether the proposed removal would remediate a safety hazard to persons or structures.
- B. Permission will be granted for the removal of the following trees, without mitigation:
1. Located within the building footprint of a proposed new principal building;
 2. Located between the curblines of a new roadway approved pursuant to the Subdivision Ordinance;
 3. Located within the roadway right-of-way but outside the curbline of a new roadway approved pursuant to the Subdivision Ordinance;
 4. Dead, diseased or pose a safety hazard;
 5. Located within the area of a proposed and approved driveway, walkway, new utility line, accessory building or any other new structure; or
 6. Specifically permitted to be removed in a site plan approved pursuant to the Municipal Land Use Law; provided that in all cases no more than twenty percent (20%) of the Trees on the particular lot are removed.
- C. Mitigation Plan
With respect to the removal of all other Trees, not described in subsection B, above, the Enforcement Officer shall require a mitigation plan (i.e., the planting of replacement trees at other locations on the subject property or elsewhere within the Borough). The purpose of such 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 twenty

percent (20%) of the existing Trees on a lot in the existing state.

D. Conflict with other Laws.

Notwithstanding anything in this chapter to the contrary, no Tree removal shall be permitted where prohibited by the Zoning Ordinance (e.g., buffer zones and landscaping provisions) or any other municipal, state or federal statute, ordinance or regulation.

E. Action.

The Borough Enforcement Officer, or authorized designee, must respond to all applications within fifteen (15) business days. This time period may be extended at the discretion of the Borough Administrator upon evidence of extenuating circumstances or other just cause.

F. Hardship appeal.

In the event that an applicant believes the standards set forth in Subsection A above constitute a hardship which prohibits a reasonable use of all or substantially all of the property in question, an applicant may apply to the Planning Board of the Borough of Essex Fells for approval of an alternate plan, following the established rules of application for such Board.

§7. Protection of existing Trees.

- A. In connection with any construction, subsequent to Tree clearing but prior to the issuance of a building permit or start of construction, snow fencing or other protective barrier acceptable to the official charged with the administration and enforcement of this chapter shall be placed around Trees that are not to be removed. The protective barriers shall be placed at least five (5) feet from the trunk of any Tree and shall remain in place until all construction activity is terminated. No equipment, chemicals, soil deposits or construction materials shall be placed within any area so protected by barriers. Any landscaping activities subsequent to the removal of the barriers shall be accomplished with light machinery or hand labor.
- B. No person shall:

1. Cut down or remove any Tree except as permitted by this chapter or allow or cause such cutting or removal.
2. Cause or allow any willful damage, injury or disfigurement of any Tree growing within the Borough. For purposes of this subsection, the actions of any person shall be deemed willful if the damage, injury or disfigurement of any Tree is caused as the result of but not limited to the following: cutting, gashing or slitting of any Tree; or on the nearby ground; the construction or placement of any nonporous material on the ground around any Tree so as to cut off air, light or water from the roots; or placement or removal of any soil from within five (5) feet of any Tree or Ornamental Tree as defined in § 3 above.
3. Store or pile building material or debris or place construction equipment within five (5) feet of any Tree or Ornamental Tree as defined in § 3 above.

§8. Administration and enforcement.

This chapter shall be administered and enforced by the "Enforcement Officer" who shall be designated from time to time by resolution of the Borough Council.

§9. Appeals.

Any person aggrieved by the decision of the official discharged with the administration and enforcement of this chapter shall have the right, within ten (10) days of the issuance of any decision by such official to appeal to the Planning Board for approval of an alternate plan, and such Board shall take action as it deems necessary in the matter. In the event of such an appeal, the procedures set forth with reference to applications based on hardship contained in § 6F of this chapter shall apply.

§10. Violations and penalties.

Any person who violates any provision of this chapter shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars (\$1,000), and each Tree removed or damaged in violation of this chapter shall be deemed a separate offense.