Chapter 26A

SHADE TREES

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[Amended in entirety 6-13-2023 by Ord. No. 2023:24 . History includes Ord. No. 2004:08 , Ord. No. 2015:21 ; Ord. No. 2018:22 .]

§ 26A-1. PURPOSE. [Amended 6-13-2023 by Ord. No. 2023:24]

a. The purpose of this chapter is to promote the general welfare of the people of the Borough of New Milford by preserving and protecting trees within the Borough of New Milford by regulating the destruction and/or removal of mature, healthy trees which might negatively impact the overall character of New Milford and otherwise impair the health, safety and general welfare of Borough residents. This chapter preserves, improves, and perpetuates the Borough's tree stock by providing regulatory control over the removal of trees which have attained a specific minimum size and to provide for orderly replacement of said trees by property owners and/or their agents. The Governing Body finds that trees provide the following benefits;

   1. Removing carbon dioxide and other pollutants from the air;

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2. Replenish oxygen;
3. Controlling drainage;
4. Reducing stormwater runoff;
5. Replenishing groundwater supplies;
6. Preventing soil erosion;
7. Restoring denuded soil;
8. Providing shade;
9. Conserving energy;
10. Providing visual screen and sound attenuation; and
11. Providing food and shelter for birds and other wildlife.

b. This chapter is intended to is to promote the general welfare of the people of the Borough of New Milford by: (i) providing for the regulation, planting, care, control, improvement, removal, preservation, and general protection of trees in such a way as to protect and preserve the environment; (ii) establishing a commission under which the Borough's authority in this regard shall be exercised; (iii) incorporate a community forestry Community Management Plan; (iv) outline requirements for private developers providing for standards and procedures in connection with this purpose; and prescribing penalties for violations of this chapter.

§ 26A-2. DEFINITIONS. [Amended 6-13-2023 by Ord. No. 2023:24]

As used in this chapter, the following terms shall have the following meanings:

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

ALTERNATE MEMBERS — Duly appointed alternate members of the Commission.

APPLICANT — Any "person", as defined below, who applies for approval to remove trees regulated under this chapter.

BALLED AND BURLAPPED (B & B) — A method of excavation in which the subject tree is removed along with soil surrounding its roots, and such soil and roots are wrapped and laced.

BOROUGH — The Borough of New Milford.

BOROUGH ARBORIST — A specialist in the cultivation and care of trees and shrubs, including tree surgery, the diagnosis, treatment, and prevention of tree diseases, and the control of pests. The arborist will be a NJ state licensed tree expert (LTE) and certified by the International Society of Arboriculture (ISA). In the absence of the Arborist the Director of Public Works or designee will serve in this capacity.

BOROUGH TREE — Any tree or stem, as hereinafter defined, which is situated in or along any public property, park, field, public right-of-way, easement or encumbrance.

BUFFER AREA — An existing landscaped buffer area, or as otherwise defined in the Borough Code which existing or is otherwise required to be provided along all residential and commercial side yard and rear yard lot lines.

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

COMMISSION — The Shade Tree Commission of the Borough of New Milford.

COMMUNITY FORESTRY MANAGEMENT PLAN — The most recent Community and Forestry Management Plan prepared for the benefit of the Borough by the Borough of New Milford D.P.W.

DIAMETER BREAST HEIGHT (OR "DBH") — The diameter of a Tree measured at a point on the tree 4.5 feet from ground level.

GUARD — A device placed on or about a tree with the purpose of preventing injury to such tree.

HERITAGE TREE — Any tree:

a. With a trunk diameter of 36 inches or more measured 4.5 feet above ground level;

b. Of a particular historical significance specifically designated by official action of the Borough; or

c. Over 50 years of age.

HOMEOWNER — A person(s) who owns a residence.

MAJOR TREE — A nursery-grown certified, balled and burlapped deciduous tree with a mature height of at least 50 feet and a DBH of 3 1/2 inches at the time of planting. All major trees shall be chosen from the following approved listing or other trees designated and approved by the Borough Arborist.

a. Acceptable Major Trees (Common/Scientific Name).

    1. Red Maple (Acer rubrum).

    2. Sugar Maple (Acer saccharum).

    3. Sweet Gum (Liquidambar styraciflua).

    4. London Plane (Platanus x acerifolia).

    5. American Sycamore (Platanus occidentalis).

    6. White Oak (Quercus alba).

    7. Pin Oak (Quercus palustris).

    8. Red Oak (Quercus rubra).

    9. American Elm (Ulmus americana).

    10. Copper beech (Fagus sylvatica purpurea).

MANAGEMENT PLAN — The written information required in this chapter to be submitted by any person and/or entity seeking to develop, redevelop or obtain a subdivision or site plan approval of property which involves the removal of a tree or trees.

MANAGEMENT PLAN INFORMATION — Information required to be submitted with tree removal permit applications involving redevelopment, subdivision or site plans.

MEMBERS — Duly appointed members of the Commission.

NUISANCE TREE — Any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; is causing obvious damage to structures (such as building foundations, sidewalks, etc); or threatens public health, safety, and welfare.

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PERSON — Any individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, interstate or Federal agency or entity other than the Borough.

PLANNING BOARD — The Planning Board of the Borough.

REGULATED TREE — A deciduous or coniferous tree which has attained at least 20 feet in height or a DBH of at least four inches prior to any alteration of the tree (including but not limited to pruning, limb removal or other similar activity).

REMOVAL — Any activity which results in cutting down completely or substantially eliminating a regulated tree from the Borough's tree stock. "Removal" shall include, without limitation, the following:

a. Soil compaction or damage inflicted to the root system of any tree;

b. Change of the natural grade above or below the root system or around the trunk of any tree;

c. Excessive pruning or thinning of any tree leading to a failure to thrive;

d. Damage inflicted to any tree permitting fungus, pests or other infestation; or

e. The application of any harmful or toxic substance, mechanism or substance otherwise intended to cause the death or destruction of a tree.

REMOVAL PERIOD — A period of time consisting of 365 consecutive days after a permit is issued for a project which is regulated by this chapter.

REPLACEMENT PLAN — A plan developed in accordance with and conforming to the provisions of this chapter which has been approved by the Borough Engineer in consultation with the Borough Arborist.

REPLACEMENT TREE — A nursery-grown certified, balled and burlapped tree bearing a durable label upon which the following data is set forth: genus, species, variety, watering, and fertilization requirements. All replacement trees shall be chosen from the following approved tree listing or other trees designated and approved by the Borough Arborist. Replacement trees shall be selected within the same tree group as the removed tree(s) [i.e., a deciduous tree removed shall be replaced by deciduous tree(s)].

a. ACCEPTABLE EVERGREEN, DECIDUOUS, AND ORNAMENTAL TREES (Common/Scientific Name).

    1. Birch (Betula).

    2. Dogwood (Cornus).

    3. Red Maple (Acer rebrum).

    4. Japanese Maple (Acer palmatum).

    5. Sugar Maple (Acer saccharum).

    6. Cherry (Prunus avium).

    7. Sweet Gum (Liquidambar stryraciflua).

    8. Crabapple (Malus).

    9. London Plane (Platanus x acerifolia).

    10. Magnolia (Magnoli).

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11. American Sycamore (Platanus occidentalis).
12. Ornamental Pear (Pyrus calleryan).
13. White Oak (Quercus alba).
14. Cedar (Cedrus).
15. Pin Oak (Quercus palustris).
16. Cypress (Cupressus).
17. Red Oak (Quercus rubra).
18. Arbrovitae (Thuja).
19. American Elm (Ulmus Americana).
20. Cryptomeria (Cryptomeria).
21. American Beech (Fagus grandifolia).
22. Copper Beech (Fagus sylvatica v. purpurea).
23. Dawn Redwood (Metasequoia glyptostroboides).
24. Fir (Abies).
25. Larch (Larix).
26. Spruce (Picea).
27. Pine (Pinus).

RIGHT-OF-WAY — A distance from the center of any roadway to the abutting property line.

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

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

SPECIMEN TREE — Any tree which by singular nature, species, condition, size, location which imparts particular value to a property or landscape.

STEM — Any living woody, deciduous or coniferous species having a diameter of less than four inches at DBH. Any species not qualifying as a "stem" under this definition shall be considered a "tree" and shall be treated accordingly.

STREET — Any road, avenue, street, or highway in the Borough dedicated to public use. "Street Tree" means a tree planted in the sidewalk or a planting strip in the public right-of-way.

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

TREE — Any living woody, deciduous or coniferous species typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground, having a diameter of four inches or greater at "Diameter at breast height" or "DBH". Any species not qualifying as a "tree" should be treated as a "stem".

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TREE PRUNING PERMIT — A permit issued by the Borough Arborist and in his/her absence the Director of the Public Works for the pruning of a tree or trees within the Borough in a form and with content adopted by the Shade Tree Commission.

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, and improper grading and/or soil compaction 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 tree treatments intended to manage invasive species.

TREE REMOVAL APPLICATION — The form or forms and other information required to be submitted to secure a tree removal permit.

TREE REMOVAL PERMIT — A permit issued by the Borough Arborist and in his/her absence the Director of the Public Works for the removal of a tree or trees within the Borough in form and with content adopted by the Shade Tree Commission.

TREE TOPPING — The severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown, to such a degree so as to remove the normal canopy and disfigure the tree except where other pruning practices are impracticable or impossible with respect to trees severely damaged or causing obstructions to wires or cables subject to the cable and utility company exemption.

UTILITY AND CABLE COMPANY — Public utility or cable television companies entering the Borough for the purpose of erecting, installing, moving, removing, altering or maintaining any structures or fixtures necessary for the supply of electric light, heat or power, communication, or cable television services.

§ 26A-3. ESTABLISHMENT OF SHADE TREE COMMISSION; MEMBERSHIP; TERMS; POWERS.

§ 26A-3.1. Establishment of Commission. [Amended 6-13-2023 by Ord. No. 2023:24]

A Shade Tree Commission is hereby created which shall exercise the Borough's authority in effecting the purpose of this chapter and assist the Planning Board in an advisory capacity.

§ 26A-3.2. Membership; Terms. [Amended 6-13-2023 by Ord. No. 2023:24]

The Commission shall consist of not less than five members and no more than two alternate members, who shall be appointed initially by the Mayor, shall be residents of the Borough, and shall serve without compensation. The terms of the members shall be as follows: If the Commission consists of five members, their terms shall be for the respective periods of one, two, three, four and five years, beginning on January 1 next succeeding such appointment. If the Commission consists of six members, the first members shall be appointed in accordance with the foregoing, except that two members shall be appointed for terms of five years. If the membership of the Commission is increased, new members shall be appointed in such a manner that their terms shall expire in accordance with the foregoing. The terms of each appointee shall be designated in his appointment. All subsequent appointments, except to fill vacancies, shall be for the full five-year term, to commence on January 1. The Borough may fill any vacancies by reason of the death, resignation, or removal of any member.

Alternate members shall be designated at the time of appointment as "Alternate No, 1" and "Alternate No. 2" and shall serve during the absence or disqualification of any regular member or members. The term of each alternate member shall be for five years commencing on January 1 of the year of the appointment, provided that if two alternate members are appointed, the initial terms of Alternate No. 1 and Alternate No. 2 shall be four years and five years respectively. The terms of the first alternate members shall commence

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on the day of their appointment and shall expire on the 4th or 5th December 31 next ensuing after the date of their respective appointments. Alternate members may participate in discussions but may not vote except in the absence of or disqualification of a member. A vote of the members shall not be delayed in order that a member may vote instead of an alternate member.

The members and the alternate members shall be appointed within 60 days of the effective date hereof. The Commission shall organize within 30 days after the appointment of its total membership for the remainder of the then calendar year, and thereafter annually, by the election of one of its members as Chairman, and the appointment of a secretary, who may not be a member. Salaries of other employees of the Commission, if any, shall be fixed as nearly as practicable in accordance with the Borough's salary schedule for corresponding positions.

§ 26A-3.3. Powers and Duties. [Amended 6-13-2023 by Ord. No. 2023:24]

The Commission shall have the power to: (i) exercise full and exclusive control over the regulation, planting, and care of shade and ornamental trees now or hereafter located or planted in the Borough on public property; (ii) Establish controls over the removal of shade and ornamental trees on private property and establish a system for replacement of same; (iii) regulate and control the use of the ground surrounding such trees, as may be necessary for their proper growth, care, and protection on any public property; (iv) move or require the removal of any tree, or part thereof, dangerous to the public safety; (v) comply with the Community Forestry Management Plan and enforce or cause to be enforced the policies set forth in the Community Forestry Management Plan; (vi) recommend to the Mayor and Council, any and all ordinances necessary or proper for carrying out the provisions of this chapter; (vii) administer treatment to, or remove, any tree situated upon public or private property which is reasonably believed to harbor a disease or insects readily communicable to neighboring healthy trees in the care of the Borough and (viii) assist the Zoning Board of Adjustment, Planning Board and/or Building Department in an advisory capacity with respect to applications for site plan approval, major or minor subdivision approval, soil movement permits, variance approvals, and issuances of building permits to the extent that such applications involve the preservation and inventory of trees within the Borough; and (ix) attend regular meetings, maintain minutes of said meetings, and report, at least annually to the Mayor and Council.

§ 26A-4. EXEMPTIONS. [Amended 6-13-2023 by Ord. No. 2023:24]

The following shall be exempt from the requirements of this chapter: (a) commercial nurseries and fruit orchards; (b) Christmas tree plantations; (c) properties devoted to the practice of silviculture; (d) County highways, parks and parkways located in the Borough, without the approval of the Bergen County Shade Tree Commission (if any), or, the Bergen County Department of Parks and Recreation; (e) utility and cable companies undertaking emergency tree work to restore electrical service or spot work to prevent interruption of electrical, telephone, telegraph, cable TV, or other wire services. In such an event the utility will notify the Commission of said work within three days of its beginning.

a. Utility and Cable Company Requirements. Any public utility or its agents may upon receiving written permission from the Commission at least 72 hours prior to the start of work, prune, or remove trees for line clearance of utility wires in nonemergency situations pursuant to a line clearance program. Each utility and cable company shall maintain any and all such utility or cable lines in such manner as will safeguard the trees in that area and the surrounding area against any damage therefrom, including the placement of guards where reasonably appropriate for protection of any tree. Such companies shall review said lines periodically and make any adjustments as necessary to prevent any such damage.

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§ 26A-5. COMMUNITY FORESTRY MANAGEMENT PLAN. [Amended 6-13-2023 by Ord. No. 2023:24]

Unless otherwise excepted by the Borough as inconsistent with the overall master plan or not in the best interests of the Borough, the Community Forestry Management Plan is hereby adopted and the policies and procedures contained therein are incorporated herein by reference, including, by way of example and not limitation, the provisions involving goals, administration, training, public education, awareness and outreach, tree inventory, hazard management, planting, maintenance, waste recycling, and disaster plans. To the extent there shall be any inconsistencies between this chapter and the Community Forestry Management Plan, this chapter shall govern. The Borough may require that the Community Forestry Management Plan be amended, modified, or supplemented to comply with or effectuate the purpose of this chapter or any amendments thereto.

§ 26A-6. TREE REMOVAL; TREE REMOVAL PERMITS; MANAGEMENT PLAN REQUIREMENTS.

§ 26A-6.1. Regulations. [Amended 6-13-2023 by Ord. No. 2023:24]

a. No person and/or entity who is not deemed to be otherwise exempt, in accordance with this chapter, shall directly or indirectly, without a tree removal permit: (i) cut, break, injure, remove, disturb or interfere in any material manner with any tree; (ii) spray any tree or near any tree, any chemical which may cause injury or death to said tree or place salt, brine, oil, or any other substance which is or may be injurious to plant growth; (iii) fasten any rope, wire, sign, or other device to any tree or to any guard about such tree; (iv) remove or injure any guard; (v) close or obstruct any open space about the base of any tree to permit the access of air, water, and fertilizer to the roots of such tree; (vi) build any fire or station any tar kettle, road roller, fuel oil dispensing truck, or other engine in any street or in any other place in such a manner that the heat, vapors, fuel or fumes therefrom may injure any tree; (vii) place or maintain in any street or park, any stone, cement or other sidewalk or other substance which may impede the free access of air and water to the roots of any tree, and, where any tree is surrounded by pavement of stone, cement, or asphalt or any other substance tending to impede the free access of air and water to the roots of any tree, (viii) conduct any excavation within four feet of any tree; (ix) engage in any tree topping as defined in this chapter. (x) No person shall insert or affix any nails, screws, or other foreign objects onto any Borough tree.

b. In addition to the foregoing, New Jersey State laws and regulations are hereby expressly incorporated by reference as they pertain to tree expert and tree operator licensing and the requirements and standards set forth in said state statutes and regulations, including but not limited to the Tree Experts and Tree Care Operator's Licensing Act and such implementing state regulations.

§ 26A-6.2. Tree Removal Permits. [Amended 6-13-2023 by Ord. No. 2023:24]

a. No regulated tree may be removed without approval by the Borough Arborist and in his/her absence the Director of the Public Works. Such approval shall be decided within seven business days of receipt of a completed application. In the absence of the Borough Arborist and the absence of the Director of the Public Works, an application may be approved by the Director of Public Works or his/her designee.

b. Each property owner will be permitted to remove one regulated tree from their property each calendar year. Upon showing good cause, the Borough Arborist and in his/her absence the Director of the Public Works, or the Director's designee may permit the removal of up to two additional trees. For each regulated tree removed greater than one each year, the property owner shall replace each

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additional tree on a one for one basis with a replacement tree. The property owner will have the option of planting new trees on their property or donating to the Shade Tree Commission tree replacement fund in an amount not to exceed $350 for each tree removed. Once the replacement tree is planted the Borough Arborist will inspect to ensure compliance with industry standards for replanting of trees.

c. In the case of a land use application, permission to remove a tree from a buffer area or from the right-of-way requires review and approval by the Zoning Officer who shall make a report to the Borough Arborist and in his/her absence the Director of the Public Works regarding the following items:

1. The existing landscaping conditions in the buffer area or right-of-way;

2. The size of the tree or trees to be removed, and the impact of such removal on the buffer area or right-of-way and adjoining properties in terms of screening, privacy and any location of slopes greater than 10% where any tree removal is proposed;

3. The reasons cited by the applicant for tree removal;

4. Proposed new trees, if any, and landscaping within the buffer area or right-of-way;

5. Such other conditions or circumstances peculiar to the site or to the application;

6. The location of streams and wetlands;

7. The street, lot and block number of the land on which the trees are located;

8. The name, address, and telephone number of the property owner or duly authorized agent;

9. The name and LTE or LTCO (Licensed Tree Care Operator) license number and of the contractor designated to perform the tree removal work;

   (a) If a crane is to be used, the license of the operator, certification of the crane, maintenance records of inspections and certificate of insurance for the crane company shall be submitted with the permit application.

   (b) The removal of any tree which requires the use of crane shall be subject to an additional crane permit application promulgated by the Director of the Public Works. The party requesting the use of crane shall follow all applicable codes and laws of the State of New Jersey and is obligated to provide notice to the abutting property owners at least 72 hours in advance of the use of the crane (except for an emergency), with proof of notification to neighbors being provided to the Director of the Public Works. Any party applying for a crane permit in order to assist in the removal of any tree shall fulfill the general licensing requirements of the contractor's ordinance, including, but not limited to providing proof of licensing and proof of insurance in limits approved by the Borough Risk Manager, and such other compliance as required by State and Federal law regulating the operation and use of cranes.

10. Any denial of a permit by the Borough Arborist and in his/her absence the Director of the Public Works may be appealed to the Shade Tree Commission.

11. In the case of a land use application, any denial of a permit by the Zoning Officer may be appealed to the Zoning Board of Adjustment.

12. Trees located on Borough property can only be removed or caused to be removed by the Borough (through the Shade Tree Commission).

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13. Private trees shall not be removed without a permit from the Borough. Pruning of Private Trees that require the use of an LTE or LTCO shall require a pruning permit from the Borough.

§ 26A-6.3. Development, Redevelopment and Land Use Application. [Amended 6-13-2023 by Ord. No. 2023:24]

Any person or entity developing property as a subdivision, site plan, planned unit development, multi-residential development, or a new single-family residence lot (hereinafter "Developer") shall be required to submit a management plan indicating proposed locations of roads, lots, improvements, and existing trees together with the management plan information described in this chapter and any information required by Land Use Code subsection 30-11.3d. The management plan shall also provide a tree removal and replacement plan accurately depicting which trees are to be removed and which trees will remain, or which shall be replaced.

An escrow account shall be established by the developer in the amount of $3,000 per Borough tree to be protected. This escrow shall be maintained for a two-year period and may be used by the Borough to repair or replace any Borough tree that is damaged during construction. Prior to commencement of work, a zone of protection must be created, such as installation of bright safety fence around each Borough tree to be protected.

§ 26A-6.4. Management Plan. [Amended 6-13-2023 by Ord. No. 2023:24]

No tree subject to subsection 26A-6.3 shall be cut or otherwise removed from any lands in the Borough unless prior application has been made and a management plan has been approved by the Planning Board (or if a use variance is called for, the Zoning Board of Adjustment) and a permit based thereon has been issued by the Borough Arborist, and in his/her absence the Director of the Public Works. The management plan shall also provide a tree removal and replacement plan accurately depicting which trees are to be removed and which trees will remain, or which shall be replaced.

The application for such permit shall indicate: (i) the name and address of the owner of the premises; (ii) the name and address of the applicant for the permit if other than the owner, together with the owner's consent to said application and a description by lot and block numbers of the premises for which the permit is sought. The form of said application shall be determined by the Planning Board and shall be obtainable from the Building Department. A complete application for a tree removal permit shall consist of: (1) a fully completed application form; and (2) a management plan as described in this chapter, if required.

§ 26A-6.5. Submissions to Planning Board and Borough Engineer. [Amended 6-13-2023 by Ord. No. 2023:24]

Ten copies of the management plan should be submitted to the Planning Board (or if a use variance is called for, the Zoning Board of Adjustment) in accordance with the requirements of this section. The developer should submit three copies of the management plan to the Borough Engineer at the time of submission to the Planning Board to enable the Borough Engineer to make his or her recommendations to the Shade Tree Commission and assist the Shade Tree Commission in formulating its recommendations to the Planning Board (or if a Use Variance is called for the Zoning Board of Adjustment).

§ 26A-6.6. Planning Board Review and Response. [Amended 6-13-2023 by Ord. No. 2023:24]

The Planning Board (or if a use variance is called for, the Zoning Board of Adjustment) shall act on the application within 45 days of its receipt thereof, or within such additional time as the applicant consents. The Planning Board (or if a Use Variance is called for the Zoning Board of Adjustment) shall refer the

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application to the Shade Tree Commission for its report and recommendations. The Planning Board (or if a Use Variance is called for the Zoning Board of Adjustment) may rely on the report and recommendations of the Commission in reaching its decision to approve or disapprove the management plan or approve the management plan subject to such conditions as have been recommended by the Commission. Failure of the Planning Board to act within 45 days of the date of the application or any extension thereof shall be deemed to be an approval of the management plan and thereafter, the Borough Arborist, and in his/her absence the Director of the Public Works, shall issue a tree removal permit.

The developer, as a condition of approval from the Planning Board (or if a Use Variance is called for the Zoning Board of Adjustment), shall be required to comply with the conditions imposed by the Board. The manner of designating the trees to be saved shall be left to the discretion of the Board. The identification of trees to be saved shall be accomplished by enclosing the base of the tree with a guard, suitable fencing, and/or in a manner approved by the Borough Engineer. If at any time after receiving approval, the developer changes the road pattern, lot layout or site improvements, then he or she shall submit a revised management plan to the Board for approval.

Prior to the issuance of a building permit, the developer shall designate on each building lot the trees to be retained based upon the management plan approved by the Board, which designation shall be based upon the proposed location of the house or building, driveway, and other accessory uses and structures, it being understood that in that area and within a seven foot perimeter of any structure, the developer need not designate any tree for preservation.

§ 26A-6.6A. Tree Replacement Plan. [Amended 6-13-2023 by Ord. No. 2023:24]

a. A tree replacement plan shall consist of the following:

   1. A site plan, on a scale of one-inch equals 20 feet or less, showing the location of existing trees and clearly marked property boundaries. There shall be a list identifying the number and species of trees inventoried. The site plan shall include the lot and block numbers, the street address, if assigned, and a certification of compliance with the requirements of this article.

   2. Locations of streams and other watercourses.

   3. Locations of slopes of greater than 10% where any tree removal is proposed.

   4. The location(s) on the tract where tree removal is to take place.

   5. The total acreage of the tract.

   6. The total number, by species, of existing trees with a DBH of eight inches or greater on the tract, as well as any landmark tree(s).

   7. The total number, by species, of trees with a DBH of eight inches or greater which are to be removed.

   8. Proposed soil erosion and sediment control measures.

b. All specific plans for replacement of removed trees shall be based on the following requirements:

   1. The replacement trees shall be planted on the property where the trees were removed or in a location designated by the Borough Arborist to promote survival.

   2. The species of trees that are to be replaced shall be selected from the Borough approved tree listing or approved by the Borough Engineer in consultation with the Borough Arborist and

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comply with the definition of "replacement tree" set forth in Section 26A-2 hereof.

3. The applicant shall provide a two-year survival guarantee for all replacement trees, after the completion of any project or planting. During the guarantee period, any dead or dying replacement tree(s) shall be replaced by the applicant within six months.

4. Replacement trees, including the size and number of trees, shall be planted in accordance with the following table. All removal trees with a DBH greater than 12 inches shall be replaced by a major tree and comply with the definition of "major tree" set forth in Section 26A-2 hereof.

Size of Tree Removed Inches DBH)	Number of Replacement Trees with a DBH of at Least:
4 but less than 12	1
12 but less than 18	2
18 but less than 24	3
24 but less than 36	4
36 or greater	To be determined in consultation with the Borough Engineer after consideration of the project, but in any event, not less than six

§ 26A-6.6B. Contribution to Tree Fund in Lieu of Planting. [Amended 6-13-2023 by Ord. No. 2023:24]

In certain limited circumstances wherein, conditions make it otherwise impossible or impracticable to comply with the requirements of this chapter, the Borough Engineer in consultation with the Borough Arborist may recommend the authorization of a contribution to the Borough's Shade Tree Commission Tree Fund in lieu of planting replacement trees on site where he determines that the purposes of this article would be furthered thereby. Such contribution shall bear a reasonable relationship to the cost of planting trees which would otherwise, be required under subsection 26A-6.6A of this article, but in no case shall it be less than $350 for each required replacement.

Prior to the issuance of a certificate of occupancy, the Borough Arborist and in his/her absence the Director of the Public Works, shall determine that all trees designated for preservation are, in fact, in existence. In the event that the developer has removed any trees designated for preservation without prior approval, the developer shall replace said removed trees with trees of equal kind and size to the satisfaction of the Borough Arborist and in his/her absence the Director of the Public Works and will be subject to the fines and penalties set forth in this chapter.

All action taken by the Planning Board pertaining to a management plan shall be in the form of a resolution to which the tree removal permit issued by the Borough Arborist and in his/her absence the Director of the Public Works shall refer. Any such tree removal permit shall be valid for the time proposed by the applicant to complete the project; provided, however, that no permit shall be valid for a period of more than two years from the date of approval. The Planning Board, upon a showing of good cause by the applicant, may recommend the extension of any such permit for an additional one-year period, provided that the applicant submits an updated management plan to show tree removal activities to the date of such extension request. Further, the Planning Board may require as a condition of any such extension that the applicant employ current techniques and procedures incorporated into this ordinance since the date of the original approval.

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Where the Planning Board has approved a subdivision or site plan that contains, as a condition of such approval, a tree management plan, the developer shall be responsible for the preservation of designated trees and the planting of trees as shown on the approved plan. The developer shall plant at least one shade tree for every 50 feet of frontage on any proposed or existing right-of-way. All types and locations of shade trees to be planted shall be shown on the management plan approved by the Planning Board and shall be planted in accordance with the specifications for planting shade trees as provided by that Board.

Where by reason of weather, season or other circumstances it is impossible for the developer to plant a tree in accordance with this chapter, the developer shall deposit in escrow with the Borough Clerk, an amount to be determined and specified by the Borough Engineer to cover the cost of purchasing and planting a tree, and the developer shall also post a two-year planters bond with the Borough to replace any tree that does not survive. No street shall be accepted for dedication by the Borough Council until the Borough Engineer notifies the council that the developer has complied with this chapter.

§ 26A-6.7. Management Plan Information. [Amended 6-13-2023 by Ord. No. 2023:24]

a. The management plan submitted in conjunction with a tree removal permit application shall contain the following management plan information:

    1. A description of the premises upon which tree removal is to take place by street address, and Borough Tax Map lot and block number;

    2. The acreage of the lot upon which tree removal is to take place;

    3. The location upon the lot where tree removal is to take place;

    4. A survey of the species and quantity of trees which are to be removed, setting forth the location and type of each tree having a DBH four inches or more;

    5. Specific proposals for replanting or reforestation, if applicable;

    6. A description of the type of tree removal project, that is:

        (a) Thinning;

        (b) Selective cutting;

        (c) Clear cutting; and/or aesthetic improvement cut;

    7. Location of streets and watercourses; and

    8. Location of slopes greater than 10% where any tree removal is proposed.

§ 26A-6.8. Criteria for Approval of Management Plan and Tree Removal. [Amended 6-13-2023 by Ord. No. 2023:24]

The following shall be the criteria to be applied in determining which trees may be removed under a management plan.

a. Any area to be occupied by a building, driveway, drainage field, septic tank, recreation area (tennis courts, swimming pools or similar facilities) may have all trees removed within seven feet around the perimeter of such facilities.

b. If the area has a cut or fill deemed injurious or dangerous to trees, the trees affected by such cut or fill

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may be removed.

c. The Shade Tree Commission and the Borough Arborist and in his/her absence the Director of the Public Works, shall view the land where the tree or trees to be removed, as well as drainage or other physical conditions existing on the subject or adjoining property and shall send a report with recommendations and comments to the Board.

d. There shall be no clear cutting permitted on slopes of 10% or greater in grade, however, selective cutting or thinning is permitted.

e. There shall be no clear cutting permitted within major subdivisions where the existing lots will be on one acre or less, unless otherwise permitted.

f. The permit shall be granted if there is a finding that the removal and destruction will not impair growth and development of remaining trees on the property of the applicant or adjacent properties and would not cause erosion of soil, impair existing drainage, lessen property values in the neighborhood, or impair the aesthetic values of the area.

g. The spirit of the provisions of this section shall be to grant permits, with the understanding that it is the goal of the Borough to maintain aesthetic values, preserve privacy, and maintain drainage control.

§ 26A-6.9. Removal of Toppings and Slash. [Amended 6-13-2023 by Ord. No. 2023:24]

All toppings and slash that are generated by the felling of individual trees shall be removed from the site for disposal.

§ 26A-6.10. Tree Removal Application Fee. [Amended 6-13-2023 by Ord. No. 2023:24]

The tree removal application fee shall be $25. For applications with more than one tree the fee shall be increased by $5, per each additional tree.

§ 26A-6.10A. Tree Pruning/Trimming Application Fee. [Amended 6-13-2023 by Ord. No. 2023:24]

The application fee for tree pruning/trimming which requires the use of a LTE or LTCO, shall be $25. For applications with more than one tree the fee shall not be increased for additional trees.

§ 26A-6.11. Display of Permit. [Amended 6-13-2023 by Ord. No. 2023:24]

Upon approval of issuance, the tree removal permit shall be displayed so that it is visible from the nearest public street until such time as authorized work has been completed and approved by the Borough Arborist and in his/her absence the Director of the Public Works.

§ 26A-7. GENERAL PROTECTION AND MAINTENANCE. [Amended 6-13-2023 by Ord. No. 2023:24]

a. All persons who shall conduct, or cause to be conducted, any erection, repair, alteration, construction, or other similar act near any tree, shall use best efforts to protect and preserve the trees in and about the area of such conduct.

b. The Borough shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the Borough as may be necessary to ensure public safety, preserve or enhance the beauty or symmetry of public grounds, or effectuate the intent and purpose of this chapter. The Borough may remove or

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cause to be removed any tree or part thereof which is in an unsafe condition, or which may be injurious to sewers, electric lines, gas lines, water lines, or other public improvements, or which is or may be infected with any fungus, insect, or pest.

c. The owner of the property in which a tree is located shall maintain such tree at all times.

d. Any tree (including its root structures) which becomes damaged or diseased or if removal is sought by the owner or occupant shall upon written notice from the Borough Arborist and in his/her absence the Director of the Public Works, repair or cause the same to be repaired once the owner or occupant complies with the requirements contained in this section.

e. Every owner of property containing a tree, other than a Borough tree or private tree within the right-of-way that overhangs any street or right-of-way within the Borough shall prune or cause to be pruned, the branches to eliminate any obstruction to light from any street lamp or obstruction of any view of any street intersection, and shall cause there to be a clear space of at least 10 feet above the surface of the sidewalk near any such tree. Property owners shall remove or cause to be removed, from their property all dead, diseased, or dangerous trees, broken or decayed limbs, or any similar situation caused by such tree or trees which may cause public harm.

f. The Borough may notify in writing any property owners of any trees which may, for any reason, threaten public safety, and require the removal of any such trees by such owner, at the owner's expense and in accordance with the requirements of this chapter with such removal to occur within 30 days of the date of any such notice. The Borough may remove such trees in the event of the owner's failure to cause such removal, and the costs thereof shall be included in the next property tax bill rendered to the owner. The Borough or the Commission shall give reasonable notice of its intention to remove, or cause the removal of any tree or trees, or part thereof, unless public safety requires immediate removal, in which case no notice shall be necessary.

§ 26A-8. PERMIT REVOCATION. [Amended 6-13-2023 by Ord. No. 2023:24]

The Borough Council, through the Borough Arborist and in his/her absence the Director of the Public Works may revoke a permit where there has been a false or misleading application or there is noncompliance with the approved management plan.

§ 26A-9. (RESERVED)

§ 26A-10. NO PLANTING WITHOUT CONSENT. [Amended 6-13-2023 by Ord. No. 2023:24]

No person shall plant any tree in any street, park, or other public property within the Borough without the express written consent of the Shade Tree Commission.

§ 26A-11. INTERFERENCE WITH BOROUGH OR COMMISSION. [Amended 6-13-2023 by Ord. No. 2023:24]

It shall be unlawful for any person to prevent, delay, interfere with or impair the Borough, or any of its agents, while engaging in any act to affect the purpose of this chapter.

§ 26A-12. VIOLATIONS AND PENALTIES. [Amended 6-13-2023 by Ord. No. 2023:24]

a. The fine for the violation of any provision of this chapter shall be in an amount not to exceed $2,000 or imprisonment for a term not exceeding 90 days for each violation. The removal or other injury of each tree shall be considered a separate violation.

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b. In addition to the fines authorized herein, the commission may impose a penalty, which may be recovered in Superior Court or Municipal Court pursuant to N.J.S.A. 2A:58-11. The Court may require a person who removes or otherwise destroys a tree in violation of this chapter, to pay a replacement assessment fee to the Borough which replacement assessment fee shall be the value of such tree, as determined by the appraisal of a trained forester or certified tree expert retained by the Commission for that purpose. In lieu of an appraisal, the Commission may adopt a formula and schedule based upon the number of square inches contained in a cross section of the trunk of the tree multiplied by a predetermined value per square inch, not to exceed $27 per square inch. The square in cross section shall be calculated from the diameter breast height and, if there is a multiple stem tree, then each trunk shall be measured, and an average shall be determined for the tree. The Commission shall modify the value of the tree based on its species variety, location, and its condition at the time of removal or destruction. Violators will be responsible for the cost (not to exceed $500) for the Commission's retention of a certified tree expert or trained forester (unless provided by a qualified member of the Commission). All monies collected either as fines or penalties for any violation hereof, or as a charge against real estate, shall be forthwith paid over to the custodian of the funds of the Borough.

c. Motor Vehicle Commission accidents will be charged $250 for any tree damage. If tree is deemed unstable, then charges revert back to the regular violation schedule.

§ 26A-13. NO LIABILITY. [Amended 6-13-2023 by Ord. No. 2023:24]

Nothing in this chapter shall be construed to make the Borough or the Commission nor any member responsible for the death or injury of any person, or for any injury to any property or tree. Liability for any such death or injury shall be governed by the relevant provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1).

§ 26A-14. MISCELLANEOUS. [Amended 6-13-2023 by Ord. No. 2023:24]

a. Exemptions. All persons shall comply with the tree replacement standard outlined above, except in the following cases. Proper justification shall be provided, in writing, to the municipality by all persons claiming an exemption:

1. Clearing, cutting, and/or removal of trees which is necessary to service, maintain, or ensure the continued safe use of a lawfully existing structure, right-of-way, field, park, and/or garden.

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;

4. 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;

5. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;

6. Nuisance trees may be removed with no fee or replacement requirement.

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