

Borough of Upper Saddle River, NJ

Chapter 137. TREES

[HISTORY: Adopted by the Borough Council of the Borough of Upper Saddle River as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Brush, grass and weeds — See Ch. **36**.

Uniform construction codes — See Ch. **41**.

Soil removal — See Ch. **118**.

Zoning — See Ch. **150**.

Article I. Permits; New Construction

[Adopted as Ch. XII of the Revised General Ordinances, 1971]

§ 137-1. Definitions.

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

PLANT CONSTRUCTION

As applied to public utility companies, poles, wires, cables, subsurface conduits, pipes, manholes and appurtenant facilities of such companies installed in a street.

PUBLIC UTILITY COMPANY

A public utility as defined in N.J.S.A. 48:2-13.

SHADE TREE COMMISSION

The Shade Tree Commission of the Borough of Upper Saddle River.

STREET

Any public street designated by the Council to be within the jurisdiction of the Shade Tree Commission, municipal parks and parkways and county roads or state highways.

TREE

All trees and shrubs.

§ 137-2. Permits required.

- A. Nonutility operations. No person shall do any of the following to any tree on any street without first obtaining a permit from the Shade Tree Commission:
- (1) Cut, prune, climb with spikes, break, damage, remove or kill.
 - (2) Cut, disturb or interfere in any way with any root.
 - (3) Spray with any chemical.
 - (4) Fasten a rope, wire, sign or other device. Nothing herein shall prevent any governmental agency in connection with administering governmental affairs from affixing a public notice on a tree in a manner approved by the Shade Tree Commission.
 - (5) Remove or damage any guard or device placed to protect a tree or shrub.
 - (6) Conduct razing, removal or renovation of a structure if deemed by the Commission to be damaging to neighboring street trees.
 - (7) Place or distribute chemicals, including but not limited to salt, deleterious to tree health.
 - (8) Maintain a stationary fire or device which vaporizes noxious fumes deleterious to tree health.
 - (9) Remove soil for trenching or otherwise.
 - (10) Construct new sidewalks or driveways within five feet of a tree.
 - (11) Plant trees or shrubs.
- B. Utility operations; exceptions. The Shade Tree Commission may grant to public utility companies a blanket permit for tree pruning for line clearance and for the installation and the maintenance of subsurface and aboveground plant construction if there is interference with or endangerment to trees. During periods of emergency, public utility companies may install temporary attachments to trees and make emergency subsurface repairs without a specific prior permit. Each company shall exercise reasonable diligence in the maintenance of its plant construction so as to avoid damage to trees.
- C. Issuance of permits. Requests for permits required by the provisions of this article for the performance of work shall be directed to and issued by the Shade Tree Commission.

§ 137-3. New construction.

- A. Planting required; waiver. A person erecting or constructing new buildings in the Borough shall plant shade trees in the sidewalk area of the street right-of-way

abutting the property on which the new construction is located, planting one tree for every 50 feet of frontage of the property unless the Shade Tree Commission grants a waiver of such planting in writing. The Shade Tree Commission shall grant a waiver only if there are trees growing along the right-of-way or on the abutting property near the street property line which are in compliance with the specifications of the Shade Tree Commission.

- B. Approval of trees by Commission. New trees to be provided pursuant to this section shall be of a kind approved by the Shade Tree Commission and shall be planted in accordance with its specifications in § **137-5** for planting trees in sidewalk areas.
- C. Deposit as security for planting. The trees shall be planted in accordance with this article, and a check for \$350 per tree shall be deposited with the Shade Tree Commission for the required number of trees to be planted. The required number and kind of trees shall be planted within six months after the issuance of a certificate of occupancy. If such trees shall not have been planted within the aforesaid time period, the Shade Tree Commission, without further notice to the applicant, may cause the required trees to be planted, and the reasonable cost of such trees and the planting thereof shall be charged against the funds on deposit. In the case of new trees being planted, the same must survive for a period of 12 months from the date of planting. In the case of existing trees along the street, right-of-way or on the abutting property near the street property line meeting the specifications of the Shade Tree Commission, the Commission may waive the requirement of planting new trees, provided that the existing trees survive for a period of 12 months from the date of the issuance of a certificate of occupancy. Any tree, whether new or existing, which shall not survive for the twelve-month period, shall be replaced by the applicant within 30 days following written notice for such replacement from the Commission or within such extended period as may be specified. If new trees or existing trees shall survive for the twelve-month period or for such shorter period as the Commission shall deem satisfactory, the deposit hereunder shall be refunded to the applicant.

[Amended 3-12-1981; 3-14-1985; 8-14-1986 by Ord. No. 18-86; 5-13-1998 by Ord. No. 9-98]

- D. Utilities; overhead power lines. Trees may be planted further than 10 feet behind the curbline in cases where there are overhead power lines along the right-of-way. In cases where there are overhead power lines running parallel to the road over the sidewalk right-of-way, the contractor shall be required to plant the trees at least eight feet back from the power lines. The choice of deciduous trees used for this purpose shall be limited to trees of a compact species which typically grows no more than 20 feet in height at maturity.

[Added 10-7-2010 by Ord. No. 12-10]

§ 137-4. Violations and penalties.

[Added 3-12-1981; amended 9-1988 by Ord. No. 16-88] For violation of any provision of this article, the maximum penalty shall be in accordance with § 1-15 of this Code.

§ 137-5. Promulgation of specifications and regulations.

Specifications and regulations covering varieties of trees, size, placement, time of planting, manner of planting and all other matters relating to trees shall be as promulgated from time to time by the Shade Tree Commission.

Article II. Tree Preservation

[Adopted 2-13-2002 by Ord. No. 1-02]

§ 137-6. Purpose.

This article is intended to prevent the destruction and removal of trees for residential and nonresidential purposes and shall govern any application for site plan approval, major or minor subdivision approval, soil movement permits, variance approval or for the issuance of a building permit for the construction of a single-family residential dwelling. In addition, this article shall be applicable to any applicant seeking to remove a tree situated within a buffer area. This article also has as a purpose the preservation of trees generally, including right-of-way and heritage trees which contribute to the well-being of neighborhoods and residents and the preservation of the environment. This article shall not be deemed to be applicable to trees required to be removed in connection with the construction and installation of septic systems and wells.

§ 137-7. Definitions.

As used in this article, the following terms, phrases and words shall have the following meaning:

APPLICANT

Any person, firm, corporation or entity seeking issuance of a permit under any of the procedures outlined in § 137-6 that seek to remove any tree located in a buffer area.

APPROVING AGENCY

The Planning Board, Zoning Board of Adjustment, Shade Tree Commission or Construction Official, as applicable.

BUFFER AREA

The portion of a lot along its side yard and rear yard perimeter which contains only landscaping elements and does not typically contain any principal or accessory structure or impervious coverage.

ENDANGERED SPECIES

Any species of tree threatened with extinction, including, but not limited to, species of trees so noted in official state agency and/or national registers.

HERITAGE TREE

Any of the following:

- A. Any tree with a trunk diameter of 36 inches or more measured four feet above ground level.
- B. Any tree of particular historical significance specifically designated by official action.
- C. Any tree over 50 years of age.

SPECIMEN

Tree(s) which by singular nature, condition, size, location and/or appearance impart particular value to a property or landscape.

TREE

Any living woody perennial plant having a circumference of 31 inches or 10 inches in diameter or greater measured at 12 inches above ground level.

§ 137-8. Landscaped and buffer areas.

A landscaped buffer area shall be provided along all side yard and rear yard lot lines. The following buffer area requirements shall apply:

- A. The R-1 Zone. There shall be a required buffer area of 10 feet at each side yard and 15 feet at the rear yard.
- B. The R-2 Zone. There shall be a required buffer area of five feet at each side yard and five feet at the rear yard.
- C. The AH Zones. There shall be a required buffer area of 25 feet at each side yard and 25 feet at the rear yard.
- D. The IP Zone. There shall be a required buffer area of 100 feet at each side yard and 100 feet at the rear yard.
- E. The H-1 and H-1R Zones. There shall be a required buffer area of 10 feet at each side yard and 10 feet at the rear yard.

§ 137-9. Maintenance.

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

- B. Any tree (including its root structures) which becomes damaged or diseased or if removal is sought for any other reason, the owner or occupant shall, upon written notice from the Building Code Official or the Shade Tree Commission, repair or cause the same to be repaired once the owner or occupant complies with the requirement contained in § 137-6.

§ 137-10. Removal of trees in buffer area or right-of-way; requirements.

- A. No tree may be removed in any buffer area or right-of-way without approval. Such approval will not be unreasonably delayed.
- B. Permission to remove a tree from a buffer area or right-of-way will require the review by the Building Code Official or the Shade Tree Commission, of the following criteria:
- (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 and privacy.
 - (3) The reasons cited by the applicant or property owner for the 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 its duly authorized agent.
 - (9) The name and license of the contractor designated to perform the tree removal work, if applicable.
- C. A written application form shall be completed by the applicant or property owner.
- D. A decision on an application to remove a tree in any buffer area or right-of-way shall be made within 20 days of the application being deemed complete.

[Added 5-6-2010 by Ord. No. 6-10]

§ 137-11. Tree removal plan for entire site; when required.

A tree removal plan showing all existing trees and trees proposed for removal for an entire parcel or tract, and not limited to buffer areas, shall be required for the following applications:

- A. An application for site plan approval.
- B. A major subdivision application.
- C. A minor subdivision application.
- D. Any application seeking variance relief pursuant to N.J.S.A. 40:55D-70.
- E. An application for a soil removal permit pursuant to Chapter **118** of the Borough Code.
- F. An application for a building permit for the construction of a single-family dwelling.
- G. A site plan of the area where the septic system is to be located shall be submitted to the Shade Tree Commission for review at the time application for permits are filed with the Health Department. The site plan shall show the method of tree and root zone protection to be used on the premises and shall depict trees proposed to be disturbed or cut during the construction, and shall identify the size, species and placement of such trees.

[Added 10-7-2010 by Ord. No. 12-10]

§ 137-12. Issuance of tree removal permit; criteria.

- A. The Shade Tree Commission shall advise the appropriate authority as to the issue of a tree removal permit for any application set forth in § **137-10** of this article.
- B. In its evaluation of an application for a tree removal permit, the Shade Tree Commission shall be guided by the following criteria:
 - (1) The existing landscaping conditions on the parcel or tract.
 - (2) The size of the tree or trees to be removed and the impact of such removal on the parcel or tract and adjoining properties in terms of screening and privacy.
 - (3) The reasons for the tree removal.
 - (4) Proposed new trees and landscaping on the parcel or tract.
 - (5) New Jersey State Code for septs.
 - (6) Such other conditions or circumstances peculiar to the parcel, tract or to the application.

- C. Upon approval and 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 Construction Official.

§ 137-13. Right-of-way trees.

No tree, living or deceased, shall be removed from any area within a Borough right-of-way without approval by the Shade Tree Commission or Building Department. As used herein, the right-of-way shall extend a distance of 25 feet from the center of the road. Typically, 10 feet bordering every road is the right-of-way.

§ 137-14. Heritage trees.

- A. No person shall remove, cut or destroy a heritage tree from any property without the approval of the Shade Tree Commission.
- B. A permit for the removal of a heritage tree may be granted by the Shade Tree Commission. In granting such approval, the Commission may require replacement of the heritage tree with other trees, vegetation and landscaping and may impose such conditions consistent with the goals and objectives of this article.
- C. Any person violating the provisions of this section, in addition to being subject to the penalties set forth in § 137-16 of this article, shall be subject to a civil penalty in the amount of the appraised value of the tree or \$1,000, whichever is greater. Such penalty may be recovered by the Borough in Superior Court or Municipal Court pursuant to N.J.S.A. 2A:58-11.

§ 137-15. License required for removal of trees.

- A. Any tree which is subject to the provisions of this article may only be removed by the property owner or a person licensed by the Borough of Upper Saddle River.
- B. The commercial applicant for such a license shall make application on forms provided by the Borough Clerk.
- C. A license will be issued for a period of one calendar year from January 1 to December 31.
- D. An annual fee of \$35 shall be charged for issuance of a license.

§ 137-16. Fees.

[Amended 5-13-2009 by Ord. No. 5-09]

- A. Other than for a single resident working on his own property, an applicant for a tree removal permit shall pay a permit fee of \$100 for one tax lot, plus an additional fee of

\$25 for each additional tax lot or proposed new tax lot which is the subject of the application.

B. Review by the Shade Tree Commission of any site plan shall require payment by the applicant of a fee of \$150.

§ 137-17. Violations and penalties.

A. Any person violating any provision of this article shall be subject to such fine and penalties as are set forth in § **1-15** of the Borough Code. Each day such violation occurs shall be deemed to be a separate incident or violation.

B. In addition to the fines and penalties set forth in Subsection **A** of this section, a person who destroys or removes a tree in violation of this article shall be required to replace each such tree with a species identical to that removed or deemed by the United States Conservation Service as compatible with the applicable soil type. A deciduous tree shall be replaced with one having a minimum height, excluding root bulk, of 10 feet at the time of planting. A coniferous tree shall be replaced with one having a minimum height, excluding root bulk, of eight feet at the time of planting.