

**Topic:** Tree Preservation & Protection; Natural Resource Protection & Conservation; Site Plan Approval; Subdivision Approvals; Landscaping; Timber Harvesting; Wildlife & Fish Habitat

**Resource Type:** Regulations

**State:** New York

**Jurisdiction Type:** Municipal

**Municipality:** Town of Brookhaven

**Year (adopted, written, etc.):** 1989-1992

**Community Type - applicable to:** Suburban; Rural

**Title:** Town of Brookhaven Tree Preservation Ordinance

**Document Last Updated in Database:** May 1, 2017

### ***Abstract***

Chapter 70 of the Town Code for the Town of Brookhaven regulates the destruction and removal of trees within the town. Permission must be obtained from the town before a tree can be removed from property which is zoned for commercial or industrial use or which is larger than two acres. Permission must also be obtained for acts that will cause a tree to die on such property. When determining the size of the property, contiguous parcels of property that are subject to common ownership are deemed merged. There are however, certain exemptions. For example, utilities can prune or alter trees in order to repair existing utility services without obtaining a permit. The New York State Department of Environmental Conservation can prune or remove trees pursuant to the New York Environmental Conservation Law without obtaining a permit. Violators can be fined, imprisoned, and forced to repair or pay for the repair of the damage, and their building permits, etc. can be revoked.

### ***Resource***

Town of Brookhaven NY Tree Preservation  
Code of the Town of Brookhaven NY  
Chapter 70: Tree Preservation  
General Code

[http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=0012%2D070%2Ehtm&cn=1421&n=\[1\]\[1343\]\[1421\]](http://www.codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D070%2Ehtm&cn=1421&n=[1][1343][1421])

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 6-16-1987 by L.L. No. 7-1987. Amendments noted where applicable.]

### **§ 70-1. Intent.**

The vital environmental function which trees serve within the ecological structure of the Town of Brookhaven is well recognized. Trees are recognized to provide various benefits to the environment, including the stabilization and preservation of the soil, the absorption of air pollutants and the provision of oxygen and to further provide natural barriers to noise and habitats for wildlife, while maintaining and offering an intrinsic aesthetic quality. The destruction or removal of trees deprives all sectors of society of these benefits while disrupting the ecological systems of which they are an integral part. Thus, it is the intent of the Town Board of the Town of Brookhaven in enacting this chapter to regulate the destruction and removal of trees to secure these various benefits for the present and future inhabitants of the Town of Brookhaven.

### **§ 70-2. Definitions.**

For the purpose of this chapter, the following terms and phrases shall be given the meanings stated herein:

APPLICANT — The owner of real property, or his duly authorized agent, seeking a permit to remove trees pursuant to the provisions of this chapter.

PERSON — Any firm, partnership, association, corporation, company, public utility or individual.

PLANNING BOARD — The Planning Board of the Town of Brookhaven.

TREE — Any living, perennial, woody plant, its branches, its root system and its trunk, if greater than three inches in diameter measuring three feet from ground level, and six feet in height measured from ground level.

### **§ 70-3. Permit required.**

No person shall destroy or remove from the soil any tree growing upon a parcel of real property of any size which is zoned for commercial or industrial use or which is in excess of two acres in size and is zoned for residential use or commit any act which causes the destruction or cessation of life functions of any tree growing upon such real property without first having obtained a permit issued therefor as prescribed by this chapter. No such permit shall be issued unless a site plan has been approved, a subdivision map has been approved and filed with the County Clerk or a building permit has been issued. In determining the area of a parcel of real property for the purpose of this chapter, whenever any two or more contiguous parcels of property are subject to common ownership, such two or more parcels are deemed merged, and the total area thereof shall be the determinant size for the application of this section.

#### **§ 70-4. Exemptions.**

A. Surveying and soil investigation activities. **[Amended 3-7-1989 by L.L. No. 8-1989, effective 3-13-1989]**

- (1) Destruction or removal of trees incidental to surveying and soil investigation activities shall not be undertaken for any parcel of property of any size which is owned for commercial or industrial use or which is in excess of two acres in size and is zoned for residential use, unless such destruction or removal is in conformity with a plan approved by the Commissioner of the Department of Planning, Environment and Development pursuant to the provisions contained hereunder.
- (2) Prior to destruction or removal of trees incidental to surveying and soil investigation activities, the property owner, or designee, shall apply to the Commissioner of the Department of Planning, Environment and Development for permission to remove or destroy trees in order to undertake said activities. No trees may be destroyed or removed except in conformity with an approved plan.
- (3) Said application shall be accompanied by a one-inch-equals-two-hundred-foot scale topographical map of the site and a one-inch-equals-two-hundred-foot scale aerial photograph. In the event that the applicant is applying for approval to construct test holes for soil analyses and groundwater monitoring, the applicant shall provide a map from the Suffolk County Department of Health Services indicating its approved test hole and well sites. The applicant shall indicate on the topographical map and on the aerial photograph the boundaries of the site and the extent of clearing needed for the surveying and soil investigation activities.
- (4) The fee for said application shall be set forth in Chapter 29 of the Code of the Town of Brookhaven. **[Amended 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990]**
- (5) The application shall be on such form and contain such information as may be required by the Commissioner of the Department of Planning, Environment and Development, and in approving said application, the Commissioner may limit the amount of tree destruction or removal contemplated by the applicant.

B. Any person doing business as a public utility subject to the jurisdiction of the New York State Public Service Commission and any duly constituted public agency authorized to provide utility services shall be permitted to trim, prune or alter any tree which may otherwise be lawfully altered by such person, to the minimum extent necessary to enable such person to repair existing utility services, without having first obtained a permit issued therefor pursuant to § 70-3 of this chapter.

- C. The provisions of this chapter shall not apply to real property included in any approved subdivision or approved site plan when such approval was granted by the Planning Board prior to the effective date of this chapter. Notwithstanding the foregoing, in the event that building permits have not been issued for said approved subdivision or approved site plan, this chapter shall apply, and no building permit shall issue until all applicable provisions of this chapter have been complied with.
- D. Any person required by the Code of the Town of Brookhaven to submit an application to the Planning Board for approval of a proposed subdivision or site plan after the effective date of this chapter shall submit with such application the information required for a permit pursuant to § 70-6 of this chapter. No subdivision or site plan shall be approved by the Planning Board without due consideration of such information. Approval of a subdivision or site plan pursuant to this section shall relieve the applicant for such approval of the necessity to obtain a permit required by § 70-3 of this chapter, and the approval of such subdivision or site plan shall constitute adequate compliance with this chapter. No tree removal or clearing shall take place in or at such approved subdivision or site plan until building permits have been issued or the proposed project. However, in the event of a subdivision, tree clearing and removal may commence prior to issuance of building permits restricted to those areas of the subdivision which are to be developed as roads and/or drainage facilities.
- E. Any person who has filed an application for approval of a subdivision or site plan prior to the effective date of this chapter and has not received approval of the same prior to the effective date of this chapter shall submit to the Planning Board such information relative to the preservation of trees as the Planning Board may request.
- F. The New York State Department of Environmental Conservation shall be permitted to trim, prune or remove trees pursuant to the New York Environmental Conservation Law without the necessity of obtaining a permit pursuant to this chapter.

**§ 70-5. Administration of provisions.**

This chapter shall be administered by the Planning Board which shall have the authority to promulgate rules and regulations for the effective administration of this chapter consistent with the legislative intent of this chapter. The Planning Board shall have the authority to delegate the administration of this chapter to its departmental personnel.

**§ 70-6. Application; issuance of permit; fee.**

- A. Every applicant for a permit required by this chapter shall submit an application to the Planning Board on such form as may be prescribed by the Planning Board. Such application shall include the following information:

- (1) The name and address of the applicant and owner, if not the same.
- (2) The purpose of the proposed tree removal.
- (3) The site of the proposed tree removal.
- (4) An attached sketch or plan of the area clearly indicating the following:
  - (a) An outline of existing heavily wooded areas on the site.
  - (b) The location of any improvements on the property.

B. In acting upon the application, the Planning Board shall take into account the following considerations:

- (1) The location and size of the tree or trees to be removed.
- (2) The condition of the trees with respect to disease and potential for creating hazardous conditions.
- (3) The proximity of the trees to existing or proposed structures and utility appurtenances.
- (4) The necessity of the removal for the proposed project.
- (5) The environmental effect of the removal.
- (6) Any of the considerations enumerated in the legislative intent of this chapter.

C. The Planning Board shall evaluate the considerations of Subsection B upon the advice and recommendations of the Town of Brookhaven Division of Environmental Protection.

D. The Planning Board shall advise the applicant, in writing, of its decision on the application and, upon the favorable determination of such application, issue a permit therefor.

E. The fee for a tree clearing permit shall be set forth in Chapter 29 of the Code of the Town of Brookhaven. **[Amended 3-6-1990 by L.L. No. 10-1990, effective 3-12-1990]**

### **§ 70-7. Effect on parking space requirements.**

In the event that an applicant for site plan approval who submits with the application the information required pursuant to §§ 70-4D and 70-6A is required by the Planning Board to preserve trees and such preservation results in a decrease of the number of available parking spaces otherwise required by the applicable provisions of the Code of the Town of Brookhaven, the Planning Board shall have the authority to waive such parking space requirements commensurate with the number of spaces lost, in acting upon the application for site plan approval.

### **§ 70-8. Penalties for offenses.**

- A. Criminal penalties. Any person who destroys or removes any tree without having first obtained a permit issued therefor pursuant to this chapter or who destroys or removes any tree in a manner inconsistent with such permit or the requirements of an approved subdivision or site plan shall be guilty of a violation punishable by a fine of not less than \$250 nor more than \$1,000 or by imprisonment for a period not to exceed 15 days, or by both such fine and imprisonment. **[Amended 9-1-1992 by L.L. No. 10-1992, effective 9-8-1992]**
- B. Civil penalties. In addition to any criminal penalties which may be imposed pursuant to Subsection A, any person who violates any provision of this chapter may be ordered to restore the premises damaged by the unlawful destruction or removal of trees to such suitable conditions as the Planning Board may require. In the event that such person refuses or fails to restore the real property to a condition ordered by the Planning Board, the Planning Board or the Town Board may proceed in a court of competent jurisdiction for an order directing such person to restore such real property in conformity with the requirements of the Planning Board. In the event that the Town of Brookhaven is compelled to restore such real property all costs incurred incidental to such restoration shall be assessed against the real property in question.
- C. Revocation of approvals. In addition to any civil or criminal penalties which may be imposed pursuant to Subsection A or B, the Commissioner of the Department of Planning, Environment and Development is hereby authorized and empowered to revoke any building permit when it appears that unlawful destruction or removal of trees has taken place. The Planning Board is hereby authorized to revoke any site plan or subdivision approval where it appears that the unlawful destruction or removal of trees has taken place. In the event that a building permit, site plan or subdivision approval is to be revoked, a hearing must be held on not less than 48 hours' written notice to the person whose name appears on the building permit application, site plan application or subdivision application. Written notice shall also be given to the last known owner of the subject premises as appears on the current Brookhaven Town assessment roll. The hearing provided for therein shall, in the case of a building permit revocation, be held before the Commissioner of the Department of Planning, Environment and Development or his designee. The hearing called for in said notice, in

the case of a site plan or subdivision approval revocation, shall be before the Planning Board. In the event that said building permit, site plan or subdivision approval is revoked, the Town Attorney is hereby authorized and empowered to institute a proceeding in a court of competent jurisdiction to restrain any further development on the subject site and to seek sufficient funds for restoration of the site as provided in Subsection B.

**§ 70-9. (Reserved)**

**§ 70-10. (Reserved)**