

<b>Topic:</b>	Tree Preservation & Protection; Timber Harvesting; Landscaping; Environmental Compliance
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Village of Briarcliff Manor
<b>Year (adopted, written, etc.):</b>	1996
<b>Community Type – applicable to:</b>	Suburban; Rural
<b>Title:</b>	Village of Briarcliff Manor Tree Ordinance
<b>Document Last Updated in Database:</b>	April 17, 2017

### ***Abstract***

The Code of Briarcliff Manor Tree Ordinance sets out a well-defined tree-based protection plan consistent with the unique character of the Village which derives great benefit from the maintenance of the tree population. Tree removal is regulated based on the needs and desires of the community in both the public and private sector and local planning boards are developed as approving authorities in order to ensure compliance with the overall plan.

### ***Resource***

Village of Briarcliff Manor NY Trees  
Code of the Village of Briarcliff Manor NY  
Chapter 202: Trees  
General Code

[http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=1701%2D202%2Ehtm&cn=615&n=\[1\]\[132\]\[615\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1701%2D202%2Ehtm&cn=615&n=[1][132][615])

[HISTORY: Adopted by the Board of Trustees of the Village of Briarcliff Manor 4-10-1996 by L.L. No. 5-1966. Amendments noted where applicable.]

### **§ 202-1. Legislative intent.**

The shaded ambience of the Village of Briarcliff Manor underlies the unique character of the Village. Trees provide shade, impede soil erosion, aid water absorption and retention, inhibit excess runoff and flooding, and protect the watershed. Trees cut air-conditioning costs by providing shade and reduce heating costs by serving as windbreaks, resulting in energy efficiency for the heating of buildings. Trees provide a natural habitat for wildlife, and buffer views of development. By maintaining the existing character of the Village, they enhance property values and contribute to the significance of historic buildings, structures and places in the Village. Trees serve as an amenity that satisfies residents' psychological

and aesthetic needs. The Village, desirous of protecting the general welfare, beauty, the health and safety of its community enacts this chapter for the preservation of its trees.

## **§ 202-2. Definitions.**

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

**APPLICANT** — Any person, agency or organization (public or private) requesting approval for actions covered by this chapter.

**APPROVING AUTHORITY** — The Village Planning Board or the Building Inspector, acting as the body having authority to approve or deny applications for tree removal.

**CLEARING** — The cutting within any twelve-month period of 10 or more trees with a DBH of seven inches or greater in any quarter acre (10,000 square feet) area that is located on the subject property.

**COMMERCIAL TIMBER HARVESTING** — An operation in which a landowner or representative of the landowner is compensated in any manner for the removal of trees.

**DIAMETER AT BREAST HEIGHT (DBH)** — Standard measurement of the diameter or caliper of a tree made at 4 1/2 feet above ground level on the uphill side.

**DRIPLINE** — An imaginary, roughly circular line extending from the maximum spread of the limbs of a tree or shrub to the ground.

**LANDSCAPE BUFFER ZONE** — Area of vegetative screening or landscaping established in conjunction with time approval of a subdivision by the Village Planning Board.

**MAJOR SUBDIVISION PLAT** — A subdivision plat which, if approved, would have the effect of creating one or more than one new lot(s) for the development of which site plan approval would be required.

**PUBLIC PLACE** — Any land owned by the Village of Briarcliff Manor, including, but not limited to, parks and fields (developed and undeveloped), grounds of public buildings, libraries, streets, public road right-of-way, public utility right-of-way.

**REGULATED SETBACK ZONE** — An area of vegetative screening measured from the side and back property line of residentially-zoned property extending 10 feet towards the interior of the property. This zone shall not apply to front yards, and shall commence on side yards at the same setback from the right-of-way as applied to fences.

**SIGNIFICANT TREE** — Irrespective of other definitions (e.g., diameter, location), any tree designated by the administering authority as requiring special consideration (e.g., preservation actions, welling, place of buildings, location of utilities and right-of-way, etc.) because of its unique location, aesthetic properties, species, or its historical and/or unique value to the Village.

**TREE** — A woody perennial plant having a single, usually elongated, main stem generally with few or no branches on its lower part and is covered with a head of branches and foliage.

**TREE PRESERVATION BOARD** — The reviewing body for permit applications.

**TREE PROTECTION PLAN** — A plan which identifies trees to be removed and/or planted, and sets forth measures to protect trees before, during and after construction.

**TREE REMOVAL** — Any action that will remove a tree and/or cause a tree to die within a one-year period.

### **§ 202-3. Regulated activities.**

#### **A. Privately-held developed property.**

##### **(1) Activities permitted by right:**

- (a) Removal of any tree not regulated by this chapter.**
- (b) Removal of any tree under an actual or ongoing emergency condition when such tree removal is necessary for the protection and preservation of life or property.**
- (c) Removal of two or fewer trees in the regulated setback zone within one calendar year, provided that they are not significant trees.**
- (d) Removal of a tree that endangers adjoining property, is diseased or threatens health of other trees.**

##### **(2) Activities requiring a permit:**

- (a) "Clearing," as defined in § 202-2 of this chapter.**

- (b) Commercial timber harvesting.
- (c) Removal of a tree with a DBH of seven inches or greater within a property's landscape buffer zone or regulated setback zone, that are in addition to those permitted by right.
- (d) Removal of a significant tree or regrading activity or utility excavation with the dripline of a significant tree.
- (e) Removal of any tree with a DBH of four inches or greater on slopes of 15% to 25%, or regrading or utility excavation within the dripline of any tree with a DBH of four inches or greater on slopes of 15% to 25%.
- (f) Removal of any tree within a DBH of seven inches or greater in any buffer area, landscaped screening area or conservation area designated in an approved site plan, special permit, or conditional use permit.

B. Privately-held undeveloped property.

- (1) Tree removal on privately held undeveloped property shall be subject to all provisions as specified in § 202-3A(1) and (2) of this chapter.
- (2) Any property owner applying for subdivision approval or site plan approval, whose plans would require the removal of any trees on said property, shall submit a tree protection plan to the Village Planning Board. Any property owner applying for special permit approval, whose plans would require the removal of any trees on said property, shall submit a tree protection plan to the Village Board of Trustees. The Tree Preservation Board shall act in an advisory capacity to the Village Planning Board and Village Board of Trustees on any tree protection plan submitted in connection with subdivisions, site plan or special permit applications.
- (3) The tree protection plan shall include:
  - (a) An inventory of existing trees, showing type, location, size and condition. The inventory shall include all protected and significant trees, groupings of trees deemed significant by the Tree Preservation Board, all trees with a minimum trunk diameter of seven inches and any grouping of five or more trees.
  - (b) An integrated site plan showing the trees to be saved and those to be removed, utilities to be installed, grading, the approximate location of all structures, driveways and curb cuts and proposed trees, plantings and other

landscaping.

(c) A detailed plan to protect and preserve trees before, during and for a period of two years after construction. This shall include a written statement setting forth those steps to be taken to protect trees, roots and crowns from damage during all stages of work on the site.

(d) A reforestation plan that shall conform to the following minimum standards:

[1] Shade and/or decorative trees shall be planted at a minimum ratio of at least one tree per 1,000 square feet of lot area or major fraction thereof. Trees to be planted shall have a minimum DBH of three inches.

[2] In selecting locations to plant trees, priority should be given to that section of the lot that is within a buffer zone or adjacent to the public place.

[3] In determining the number of replacement trees to be planted, the Planning Board shall consider the size of the trees which are to be removed. Each significant or protected tree that is to be removed shall be replaced by several trees. On slopes of 25% or greater, two trees shall be planted for each tree which is to be removed.

(4) The Planning Board shall require, prior to the commencement of any clearing authorized under a permit pursuant to this chapter, that the applicant shall post a performance bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit, as shall be determined by the Planning Board.

(5) The applicant shall be required to pay the cost, if it is necessary, for the Village to retain an arborist to review compliance with the requirements of the tree protection plan.

C. Publicly-held property.

(1) Trees on Village property are an irreplaceable asset. The impact of their removal shall be considered against the benefits of cleared space for recreational activities and other uses. Therefore, the legislative purpose, intent and regulated activities specified in this chapter shall apply to all tree removal on public property.

(2) The Tree Preservation Board shall be notified of any tree removal on public

property that would require a permit on privately-held property [see § 202-3A(1) and (2)] with the exception of public rights-of-way.

- (3) Any clear-cutting shall require a review of the Village Planning Board to determine environmental impact. Public hearings shall be held prior to any clearing on public property to determine the impact on neighboring and abutting properties. Notification of such public hearings shall be made in advance by letter to those property owners within 300 feet of the subject property.

#### **§ 202-4. Approving authorities.**

- A. Except as otherwise specified, the Building Inspector, subject to review by the Tree Preservation Board, shall have the authority to issue permits for tree cutting and removal, to evaluate and determine the accuracy of the measurements of regulated setback zones; to determine when infractions of this chapter and related regulations and ordinances have occurred; to impose such penalties and mitigating requirements as authorized and to utilize the criminal summons process if necessary, all as prescribed by this and other relevant municipal law.
  - (1) The Village Planning Board shall be the approving authority for any application that is also the subject of a pending site plan or subdivision application in accordance with the zoning requirements of the Village of Briarcliff Manor. In such cases, the final approval of the Village Planning Board of the site plan or subdivision application shall be deemed to be the tree removal permit or tree protection plan.
  - (2) The Village Board of Trustees shall be the approving authority for any application that is also the subject of a pending special permit application in accordance with the zoning requirements of the Village of Briarcliff Manor. In such cases, the final approval of the Village Board of Trustees of the special permit application shall be deemed to be the tree removal permit or tree protection plan.
- B. Within five days of receipt of an application, the Building Inspector shall notify the Tree Preservation Board of his or her decision on the permit.
- C. Upon request of the applicant, within five days of the Building Inspector's decision, the Tree Preservation Board shall review permit decisions made by the Building Inspector and shall affirm, modify or reverse the Building Inspector's decision within 10 days of such referral.
- D. Appeal process.

- (1) A determination by the approving authority to grant or deny a tree removal permit may be reviewed by the commencement of an action by the applicant or any other aggrieved person pursuant to the provisions of Article 78 of the Civil Practice Law and Rules within 30 days of the filing of such determination with the Village Clerk.
- (2) In the event the Building Inspector or the Tree Preservation Board is the approving authority, in the case of an application denied or modified by the approving authority, the applicant may seek review by appealing to the Village Board of Trustees, in which case the Village Board of Trustees shall become the approving authority for such applications. Such review shall be requested not later than 20 days after the filing of the subject decision with the approving authority. The Village Board of Trustees shall give notice to the applicant of the meeting at which the appeal will be considered, which notice shall be delivered personally or by certified mail and addressed to the applicant's address as shown on the application. Such applicant shall be entitled to attend the meeting before the Village Board of Trustees and shall have the opportunity to be heard. In the event that the Village Board of Trustees or the Planning Board is the approving authority, appeals shall be made solely pursuant to § 202-4D(1) above.

#### **§ 202-5. Determination by approving authority.**

In making its determination to grant, grant with conditions, or deny a tree removal permit, or to accept or deny a tree protection plan under this chapter, the factors to be considered by the approving authority shall include but shall not necessarily be limited to the following:

- A. Notwithstanding any other factors, the removal of a regulated tree may be favored:
  - (1) If the tree(s) is located near existing or proposed improvements, especially if:
    - (a) The tree(s) is within three feet of an existing or proposed sidewalk or driveway.
    - (b) The tree(s) is within 10 feet of an existing or proposed cesspool, dry well, leaching pit, septic tank or field, or other subsurface improvement.
    - (c) The tree(s) is within 10 feet of any other existing or proposed structure.
    - (d) The proposed subsurface improvement, structure, sidewalk, driveway or roadway cannot be relocated.
  - (2) If the tree removal(s) will have a positive effect upon matters including but not

necessarily limited to:

- (a) Drainage patterns in the vicinity.
- (b) Growth of existing or proposed adjacent vegetation.
- (c) Property values and aesthetics of nearby properties and that of the property owner.
- (d) Solar access of nearby properties and that of the property owner.
- (e) Wildlife habitat.

(3) If the property owner will replant replacement trees of a similar species or add other vegetation to offset the negative effects of the tree removal.

B. With consideration of the above factors, the proposed tree removal may be granted with conditions or denied if:

- (1) The tree(s) is a significant tree, as defined in this chapter.
- (2) The tree removal(s) will have a significant negative effect upon, among other things:
  - (a) Erosion potential and drainage patterns in the vicinity.
  - (b) Growth of existing adjacent vegetation.
  - (c) Property values and aesthetics of nearby properties.
  - (d) Solar access of nearby properties and that of the property owner.
  - (e) Wildlife habitat.
- (3) The tree(s) to be removed is a species listed on the New York State list of endangered trees or trees of special concern.

C. Notification of decision on tree removal permit. The applicant will be notified of tree removal permit decisions within 15 days of the application being received by the



Village.

- D. Decision on tree protection plans. The Village Planning Board shall be the approving authority for tree protection plans associated with a site plan or subdivision. In its decision process, the Planning Board shall apply the same criteria and procedures as set forth herein for the tree removal permits as described (see Subsections A and B).

**§ 202-6. Permit application process.**

Applications for permits shall be made in writing to the Village office upon the forms provided. If, in the judgment of the approving authority, it is unnecessary to retain an arborist to review an application, the application shall not be granted or denied until the applicant has paid the Village Treasurer the cost incurred by the Village for such services. The application shall include:

- A. The name and address of the applicant.
- B. The address and tax map designation of the property on which the subject tree(s) is located.
- C. The purpose of the tree removal.
- D. The method by which it is proposed that the trees be removed.
- E. The name of the individual or entity that will effectuate the removal.
- F. A plan depicting and/or describing the trees to be removed.

**§ 202-7. Tree Preservation Board.**

- A. Composition. The Tree Preservation Board shall consist of three persons: the Village Manager, a member of the Conservation Advisory Council and a member of the Planning Board.

- B. Powers and duties.

- (1) The Tree Preservation Board shall review tree removal applications and shall affirm, modify or reverse permit decisions made by the Building Inspector within 10 days of the request by the applicant, and in accordance with § 202-4C. The Tree Preservation Board shall act in an advisory capacity to the Planning Board for any application made in connection with the Village Board of Trustees for any

application made in connection with a special permit application. The Tree Preservation Board shall give notice to the applicant of the meeting at which the permit will be considered, which notice shall be delivered personally or by certified mail and addressed to the applicant's address as shown on the application. Such applicant shall be entitled to attend the meeting before the Tree Preservation Board and shall have the opportunity to be heard.

- (2) The Tree Preservation Board shall assist the properly constituted officials of the Village as well as the citizens of the Village, in the dissemination of news and information regarding the protection, maintenance, removal and planting of trees on public or private property, and to make such recommendations from time to time to the Village Board as to desirable legislation concerning the tree program and activities for the Village.

#### **§ 202-8. Penalties for offenses; enforcement.**

- A. The Building Inspector has the authority to issue appearance tickets at the time and place of the incident.
- B. Any property owner, his or her agents or employees, who violate any provision of this chapter shall be guilty of a violation, punishable by a fine of not more than \$350. For a second and each subsequent offense within a one-year period, the violator shall be guilty of a violation punishable by a fine of not more than \$700. Any clear-cutting offense will be subject to an additional fine of not more than \$5,000. Each violation of the provisions of this chapter shall be a separate and distinct offense. In addition, any offender may be ordered by the Court to replant trees that were improperly removed, insofar as that is possible. The Court shall specify a reasonable time for completion of such restoration, which shall be effected under the supervision of the Tree Preservation Board.
- C. In addition to monetary fines, no site plan approval, building permit or certificate of occupancy shall be granted until measures are taken, to the satisfaction of the approving authority and consistent with the tree protection plan, to replace trees removed.
- D. Due process procedure.
  - (1) The approving authority may suspend or revoke a permit in the form of a stop-work order if it finds that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the approved application.

- (2) The applicant shall receive written notice of said stop-work order as soon as reasonably practicable but no later than three days after issuance of the same, which notice shall be delivered personally or by certified mail and addressed to the applicant's address as shown on the permit. Such applicant shall be entitled to a hearing as requested by the applicant, in writing within five days or receipt of notice of the stop-work order, such hearings shall be scheduled by the approving authority within 10 days of receipt of request of a hearing. After the close of the hearing, the approving authority may confirm, modify or cancel the stop-work order.
- (3) The approving authority shall set forth in writing its findings and reasons for revoking or suspending a permit pursuant to this section and shall keep a copy of that permit application filed.