

SECTION 16E. TREE PROTECTION & PRESERVATION

A. Title

Section 16E may be cited as the “Town of Wellesley Tree Bylaw” and/or “Tree Bylaw”.

B. Intent and Purpose

The intent of Section 16E is to encourage the preservation and protection of sizeable ~~trees~~Trees on portions of private property during significant demolition and/or development activity.

Trees are recognized for their abilities to improve air quality, protect from glare and heat, reduce noise, aid in the stabilization of soil, provide natural flood and drainage control, create habitats for wildlife, enhance aesthetics and property values, contribute to the distinct character of certain neighborhoods, ~~and~~ provide natural privacy to neighbors~~-,~~ and reduce ambient carbon in the atmosphere. Therefore, the Town deems that the preservation and protection of certain ~~trees~~Trees on private property, the requirement to replant ~~trees~~Trees to replace those removed, and the collection of financial contributions to support the Town’s ~~tree~~Tree planting and maintenance efforts are public purposes that protect the public health, welfare, environment and aesthetics.

C. Definitions

For the purposes of Section 16E, the following definitions shall apply.

Caliper - Diameter of a ~~tree~~Tree trunk (in inches). For ~~trees~~Trees up to and including four (4) inches in diameter, the caliper is measured six (6) inches above the existing grade at the base of the ~~tree~~Tree. For ~~trees~~Trees larger than four (4) inches in diameter, the caliper is measured twelve (12) inches above the existing grade at the base of the ~~tree~~Tree.

Certified Arborist – A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

Critical Root Zone (CRZ) - The minimum area beneath the canopy of a ~~tree~~Tree which must be left undisturbed in order to preserve a sufficient root mass to give a ~~tree~~Tree a reasonable chance of survival. The CRZ is represented by a concentric circle centering on the ~~tree's~~Tree's trunk and extending outward towards the ~~tree's~~Tree's drip-line. The minimum area of the CRZ shall be dependent on the required minimum radius of the CRZ; the required minimum radius of the CRZ shall be determined by multiplying a ~~tree's~~Tree's DBH (in inches) by eighteen (18) inches, with the resulting product constituting the minimum radius of the CRZ. *Example: A ~~tree~~Tree with a DBH of twenty (20) inches shall have a CRZ with a minimum radius of 360 inches or 30 feet (20" x 18" = 360" or 30').*

Diameter at Breast Height (DBH) - The standard measure of ~~tree~~Tree size for those ~~trees~~Trees existing on a site that are at least four (4) inches in diameter at a height of four and one-half (4.5) feet above the existing grade at the base of the ~~tree~~Tree. If a ~~tree~~Tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Drip-Line - The area surrounding the ~~tree~~Tree from the trunk to the outermost branches. This area is distinguished from, and not to be confused with Critical Root Zone.

Overstory Tree - A ~~tree~~Tree that will generally reach a mature height of greater than forty (40) feet.

Protected Tree - Any existing ~~tree~~Tree located in the Tree Yard or ~~tree~~Tree that was removed ~~from the Tree Yard~~ within twelve (12) months prior to application for an applicable demolition or building permit, ~~with which has~~ a DBH of ~~ten (10~~six (6) inches or greater, located in a Tree Yard of a property zoned Single Residence District or General Residence District, or located anywhere on property zoned other than Single Residence District or General Residence District. Any ~~tree with Tree that has~~ a DBH of ~~ten (10~~six (6) inches or greater with portions of the stem of the ~~tree~~Tree actively growing into a Tree Yard between a height of six (6) inches and four and one-half (4.5) feet above grade shall be considered a Protected Tree.

Tree - Any self-supporting, woody perennial plant usually having a single trunk with a diameter of three (3) inches or more which normally attains a mature height of six (6) feet or greater.

Tree Bank - ~~An account Fund – The revolving fund established for the deposit of contributions in lieu of tree replanting as required by pursuant to Section 16E. Funds deposited in this account shall be used solely for the purpose of buying, planting and maintaining trees in 55.1.d of the Town Bylaws.~~

Tree Protection & Mitigation Plan - A plan submitted to the Building Department for review prior to the commencement of demolition and/or construction on a property on which a Protected Tree is located. This plan may be either part of a landscape plan and/or a separate plan.

Tree Removal - Any act that causes a ~~tree~~Tree to die or will cause a ~~tree~~Tree to die within a three (3) year period as determined by the Department of Public Works - Park & Tree Division based on arboricultural practices recommended by the International Society of Arboriculture (I.S.A.).

Tree Save Area - The area surrounding a ~~tree~~Tree which includes at a minimum the Critical Root Zone ("CRZ") and Drip-Line of all Protected Trees, unless otherwise authorized herein. The Tree Save Area must be enclosed within a fence and remain undisturbed so as to prevent damage to the ~~tree~~Tree.

Tree Yard - The area of a parcel zoned Single Residence District or General Residence District located adjacent to all front, side, and rear lines of a lot; ~~Tree Yards shall have a minimum depth as specified in the table entitled "Location of Protected Trees on Property Zoned Single Residence District or General Residence District", contained in Section 16E.F.1. Trees having a DBH of ten (10) inches or greater and located within a Tree Yard shall be considered to be Protected Trees. up to the distances set forth in the following table:~~

<u>Location of Protected Trees on Property Zoned Single Residence District or General Residence District</u>			
<u>Zoning District</u>	<u>Minimum Tree Yard (feet)</u>		
	<u>Front</u>	<u>Side</u>	<u>Rear</u>
<u>SRD 10</u>	<u>20</u>	<u>10</u>	<u>10</u>
<u>SRD 15</u>	<u>20</u>	<u>20</u>	<u>20</u>
<u>SRD 20</u>	<u>20</u>	<u>20</u>	<u>20</u>
<u>SRD 30</u>	<u>40</u>	<u>30</u>	<u>30</u>
<u>SRD 40</u>	<u>40</u>	<u>40</u>	<u>40</u>
<u>General Residence District</u>	<u>20</u>	<u>10</u>	<u>10</u>

D. Applicability

1. Applicability: The requirements of Section 16E shall apply under any of the following circumstances:
 - a. Proposed demolition of an existing structure with a footprint of 250 square feet or greater;
 - b. Construction of retaining walls subject to the requirements of Section 22D;
 - c. Construction of any building or structure on a vacant lot; or
 - d. Construction of one or more structures or additions to structures on a lot, where the total area of the footprint of the new structures will result in an increase of 50% or more of the total footprint of the pre-existing structure(s).
2. Non-applicability: The requirements of Section 16E shall not apply to:
 - a. The subdivision of land under the Subdivision Control Law and the Rules and Regulations Governing the Subdivision of Land ~~in~~ Wellesley Massachusetts,

wherein the Planning Board regulates the planting, retention and/or replacement of ~~trees~~Trees, by means of the Board's authority over the subdivision of land;

- b. Construction subject to Large House Review, wherein the Planning Board regulates the planting, retention and/or replacement of ~~trees~~Trees located on private residential land;
- c. Those areas of property under the jurisdiction of the Wetlands Protection Act (Chapter 131 and 310 CMR), wherein the Wetlands Protection Committee regulates the retention and/or replacement of ~~trees~~Trees located on private land. Protected ~~trees~~Trees located outside areas under the jurisdiction of the Wetlands Protection Committee shall be subject to Section 16E;
- d. Town-owned public ~~trees~~Trees, including ~~trees~~Trees that are considered to be Public Shade Trees pursuant to M.G.L. Chapter 87, which are protected by the Natural Resources Commission acting as the Town's Tree Warden.; and
- e. Emergency projects necessary for public safety, health and welfare as determined by the Inspector of Buildings;.
- f. ~~Trees that are hazardous as determined and confirmed in writing by a Certified Arborist; and~~
- g. ~~Trees subject to an immediate and/or probable risk of disease or insect infestation, as determined and confirmed in writing by a Certified Arborist.~~

3. Existing Encroachments: For the purposes of interpreting, administering, and enforcing Section 16E and Section 17, an existing structure shall not be considered to be a nonconforming structure solely because the structure, or a portion of the structure, is located within the CRZ and/or Drip-Line of an existing Protected Tree. The reconstruction of demolished structures or portions of structures within the previously encroached area of the CRZ and/or Drip-Line shall be prohibited, except when consistent with the requirements of Section 16E.

E. Town of Wellesley Tree Bank Fund

~~There is hereby established a Town of Wellesley Tree Bank (“Tree Bank”) which shall be held by the Town Treasurer in an account administered by the Department of Public Works – Park & Tree Division in accordance with applicable provisions of the General Laws.~~ Any contributions collected per Section 16E.F.2.b.ii. shall be deposited in ~~said Tree Bank, and shall be used solely for the purpose of buying, planting and maintaining trees in the Town~~the Tree Bank Fund.

F. Protected Trees

1. Scope: Existing trees or trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit with a DBH of 10" or greater and located within the minimum Tree Yard of a property zoned Single Residence District or General Residence District as identified in the following table, shall be considered to be Protected Trees.

Existing trees or trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit with a DBH of 10" or greater and located anywhere on property zoned other than Single Residence District or General Residence District, shall be considered to be Protected Trees.

1. Scope.

Demolition and/or construction activity (as identified under Section 16E.D.1.) on a property on which a Protected Tree is located is prohibited unless authorized by the Inspector of Buildingsrequired Tree protection and/or mitigation measures will be taken as set forth in this subsection.

Location of Protected Trees on Property Zoned Single Residence District or General Residence District			
Zoning District	Minimum Tree Yard (feet)		
	Front	Side	Rear
SRD-10	20	10	10
SRD-15	20	20	20
SRD-20	20	20	20
SRD-30	40	30	30
SRD-40	40	40	40
General Residence District	20	10	10

2. Tree Protection & Mitigation:

a. Protection: Each Protected Tree to be retained on property planned for demolition and/or construction activity shall be protected by the establishment of a Tree Save Area. The Tree Save Area shall be delineated within the submitted Tree Protection & Mitigation Plan, shall be installed prior to the issuance of applicable permits, and shall remain in place until work is completed on the property. Any fencing to be included in the Tree Save Area shall consist of chain link wire fencing. The applicant shall submit written documentation, prepared, stamped, dated and signed by a Certified Arborist, to the Building Department confirming that the required Tree Save Area identified in the Tree Protection & Mitigation Plan has been installed.

An applicant may choose to encroach within the CRZ and/or Drip-Line of a Protected Tree; however, such proposed action shall require the applicant to submit a maintenance plan for the ~~tree~~Tree, to be prepared, stamped, dated and signed by a Certified Arborist as part of the Tree Protection & Mitigation Plan. Under these instances, the Tree Save Area may be reduced to protect only those areas of the CRZ and/or Drip-Line not proposed for encroachment.

- b. Mitigation: The removal of a Protected Tree from a property in connection with one or more of the circumstances set forth in Section 16E.D.1. shall require mitigation by satisfying one of the following provisions (i. *Replanting of Trees* or ii. *Contribution to the Town of Wellesley Tree Bank*). Mitigation measures shall be identified in the submitted Tree Protection and Mitigation Plan. The removal or proposed removal of a Protected Tree(s) that has been mitigated for, in conjunction with a previous applicable permit, shall not require additional mitigation under subsequent permits, unless such mitigation has not been completed or otherwise assured.
 - i. *Replanting of Trees*: For each inch of DBH of ~~the tree~~Protected Tree(s) which are removed no less than one ~~half (1.0.5)~~ inch of caliper of new ~~tree~~Tree(s) shall be replanted in accordance with the following:
 1. Each new ~~tree~~Tree must have a minimum caliper of ~~two (2~~three (3) inches;
 2. Such replanting, either on the applicant's land or on land abutting the applicant's land with the express written approval of the owner of such abutting land, shall occur prior to Final Inspection, or be otherwise assured at such time to the satisfaction of the Town in a manner consistent with the Rules and Regulations;
 3. If the Protected Tree to be removed is an Overstory Tree species, the replacement tree(s) to mitigate the removal shall be an Overstory Tree species; and
 4. Invasive ~~tree~~Tree species, as determined by the Department of Public Works - Park & Tree Division, shall not be replanted to mitigate the removal of a Protected Tree.
 - ii. *Contribution to the Town of Wellesley Tree Bank Fund*: The Board of Selectmen shall establish a Tree Bank Fund contribution schedule, such schedule to be based on the DBH of Protected Tree(s) to be removed, impact on Town infrastructure, and other environmental impacts associated with the removal of the Tree. The schedule may also take into account the aggregate DBH of Protected Trees to be removed. The applicant shall make such contribution to the Tree Bank Fund for the removal of a Protected Tree, not already mitigated for, per Section 16E.F.2.b.i.; such contributions shall be

~~received by the Building Department prior deposited~~ to the ~~issuance of all applicable permits~~Tree Bank Fund.

3. Plan Review and Permit Issuance:

- a. Tree Protection & Mitigation Plan Submittal: Prior to the issuance of a permit in connection with one or more of the circumstances set forth in Section 16E.D.1. on property on which a Protected Tree is located or was located within twelve (12) months prior to application, the owner of the property shall submit a Tree Protection & Mitigation Plan to the Building Department along with the applicable application.

If a permit requiring the submittal of a Tree Protection & Mitigation Plan was issued for a property within twelve (12) months prior to application for one or more of the circumstances set forth in Section 16E.D.1., the submittal of a Tree Protection & Mitigation Plan shall not be required for subsequent permits unless any information required under Section 16E.F.3.b. is changed or altered.

- b. Tree Protection & Mitigation Plan Requirements: The submitted Tree Protection & Mitigation Plan shall be a to-scale survey or site plan, along with any accompanying documentation, containing information prepared, stamped, dated and signed by an individual(s) appropriately licensed and authorized by the State of Massachusetts to attest to and certify such information, unless a specific certification is referenced herein. The plan shall include, but not be limited to, the following information:
 - i. Boundaries of the subject property, including all property lines, easements, and right-of-ways of public and private ways;
 - ii. The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
 - iii. The location of all planned buildings, driveways, retaining walls and other improvements;
 - iv. The location, height, DBH, and species of all existing Protected Trees and all Protected Trees that were removed within twelve (12) months prior to application for an applicable demolition or building permit, with an indication of those Protected Trees to be removed and those to be retained, if applicable;
 - v. The CRZ, drip-line and location of the Tree Save Area shall be shown for all Protected Trees to be retained;
 - vi. The location, caliper, species, and planting schedule of ~~trees~~Trees to be replanted to mitigate the removal of a Protected Tree(s), if applicable;

- vii. A maintenance plan prepared, stamped, dated and signed by a Certified Arborist for all Protected Trees which are proposed to have encroachment within the CRZ and/or drip-line, if applicable;
- viii. The amount to be contributed to the Tree Bank Fund to mitigate the removal of a Protected Tree(s), if applicable; and
- ix. Such other information as is required by the Inspector of Buildings pursuant to applicable regulations.

e. ~~Tree Bank Contribution: In lieu of replanting, if applicable, the owner of the property shall submit any required contribution to the Tree Bank as mitigation for the removal of a protected tree.~~

d.c. Building Department Action: If the Tree Protection & Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established rules, regulations or manuals, and any applicable Tree Bank Fund contribution has been submitted, the Building Department may issue any applicable permit. If the proposal does not meet or satisfy these requirements, the Building Department shall deny all applicable permit applications and so notify the applicant.

4. Maintenance of Protected and Replanted Trees:

- a. Protected Trees: Each Protected Tree retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable. Should such ~~treeTree~~ die within this twenty-four (24) month period, the owner of the property shall be required to provide mitigation consistent with the requirements for the removal of a Protected Tree as contained herein within nine (9) months from the death of the original ~~treeTree~~.
- b. Replanted Trees: All new ~~trees~~Trees replanted to mitigate the removal of Protected Tree(s) shall be maintained in good health for a period of no less than twenty-four (24) months from the date of planting. Should such ~~treeTree~~ die within this twenty-four (24) month period, the owner of the property shall be responsible for replacing the ~~treeTree~~ with a ~~treeTree~~ equal to or greater than the size of the original replacement ~~treeTree~~ at the time of planting; such ~~treeTree~~ shall be planted within nine (9) months of the death of the original replacement ~~treeTree~~.

G. Rules and Regulations

The Planning Board may promulgate or amend Rules and Regulations which pertain to the administration of Section 16E, and shall file a copy of said rules in the office of the

Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, the procedure for determining final compliance with these regulations, and the criteria and procedure regarding the Planning Board's acceptance of sureties (i.e., bonds, letters of credit, etc.) intended to satisfy the requirements of Section 16E.F.2.b.i., so long as the Rules and Regulations conform to Section 16E of the Zoning Bylaw. The adoption or amendment of Rules and Regulations shall be after a public hearing to receive comments on the proposed or amended Rules and Regulations. The public hearing shall be advertised once in a newspaper of general local circulation, at least 14 days prior to the date of the public hearing.