

11/20/15: DWH (1st draft) (Doug Heim, author)
02/17/16: SDS (2nd draft) (Tree bylaw subcommittee)
02/18/16: SDS (3rd draft) (Tree bylaw subcommittee)
02/21/16: SDS (4th draft) (Tree bylaw subcommittee)
02/23/16: SDS (5th draft-FINAL for DWH) (Tree bylaw subcommittee)
03/01/16: SDS (6th draft) (Tree bylaw subcommittee)
03/14/16: SDS (7th draft) (Tree bylaw subcommittee)

ARTICLE 16 TREE PROTECTION AND PRESERVATION

SECTION 1. Findings and Purpose

The Town of Arlington finds that preservation of the tree canopy and planting of replacement trees is essential to preserving the character and aesthetic appearance of the Town and maintaining quality of life and the environment in the Town. Trees improve air quality, protect from heat and glare, reduce noise pollution, limit topsoil erosion and storm water runoff, provide natural flood control, enhance property values, contribute to the distinct character of neighborhoods, and offer natural privacy to neighbors.

The purpose of this By-law is to ensure appropriate management of trees within the Town of Arlington during the course of residential and commercial development. Specifically, loss of trees without mitigation due to lot clearing or excessive tree removal incident to demolition of existing buildings, construction of new buildings and/or expansion of existing buildings, poses a threat of significantly reducing Arlington's tree canopy.

SECTION 2. Definitions

A. The following definitions shall apply to this By-law:

"Building Footprint" – Outline of the total area covered by a building's perimeter at ground level.

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

"Caliper" – Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

"DBH (Diameter at Breast Height)" – The diameter of a tree trunk measured in inches at a height of four and a half (4 1/2) feet above the ground; or, for multiple-trunk trees, the aggregate diameters of the multiple trunks at a height of four and a half (4 1/2) feet above the ground.

"Demolition" – Any act of destroying, pulling down, removing or razing a building or commencing the work of total or substantial destruction of a building.

“Protected Tree” - As determined in writing by a Certified Arborist, any existing healthy tree on private land with a DBH of ten (10) inches or greater, located in the setback area, which does not pose an immediate hazard to person or property or is not under imminent threat of disease or insect infestation. Said writing shall be signed and dated and provided to the Tree Warden with the Tree Plan and shall be considered part of the Tree Plan.

“Setback Area” – The portion of the property which constitutes the minimum depth of side, rear and front yards as per the Zoning Bylaw of the Town of Arlington.

“Tree Fund” – An existing Town account established for the purpose of buying, planting, and maintaining trees in the Town which may receive deposit of contributions in lieu of planting new trees by property owners per Section 4 of this By-law and fines collected under Section 5 of this By-law.

“Tree Plan” – A document prepared, signed and dated by a Certified Arborist detailing an owner’s proposed management of Protected Trees, delineating which trees will be retained and which trees are reasonably expected to be removed or at risk of being damaged, as well as how such removal shall be mitigated and how such damage shall be prevented.

“Tree Removal” – The cutting down of a tree, or any other act that causes a tree to die or will cause a tree to die within a three (3) year period, as determined by the Tree Warden.

B. Additional definitions may be provided in rules and regulations to be approved by the Board of Selectmen after consultation with the Tree Warden and the Tree Committee where consistent with the intent and efficient execution of this By-law.

SECTION 3. Applicability

A. The requirements of this By-law and all regulations promulgated in service thereof apply to the following circumstances:

- (1) Proposed demolition of an existing residential or non-residential structure;
- (2) Proposed construction on a developed lot which would result in an increase of 50 percent or more of the total building footprint of the new structure(s) when compared to the total footprint of pre-existing structures; or
- (3) Proposed construction of any scope on a lot with no residential or non-residential structure on it.

B. Sites under the jurisdiction of the Arlington Redevelopment Board (“ARB”) or the ARB as the Planning Board, the Zoning Board of Appeals, or the Conservation Commission pursuant to Arlington’s Wetlands Protection By-law (Title V, Article 8) may waive the requirements of this By-law in full or in part where such waiver serves the interests of the community and the reasons therefore are memorialized by such bodies.

C. The requirements of this By-law shall not apply to trees defined as Public Shade Trees under G.L. c. 87 § 1.

SECTION 4. Procedures and Requirements for the Protection and Preservation of Trees

A. Removal of Protected Trees as defined in this By-law on applicable sites shall be prohibited unless such removal is authorized by a written approval of commencement of work and a permit has been issued pursuant to Section 4.C of this By-law.

B. In all instances of construction or demolition as defined and applicable herein, the owner of the property shall submit to the Tree Warden concurrent with an application for a building or demolition permit: (i) a site plan drawn and stamped by a surveyor on which a Certified Arborist has shown all trees on the property of ten (10)-inch DBH or greater; the site plan may be the same plan submitted for other purposes so long as it clearly delineates all trees of ten (10)-inch DBH or greater; and (ii) a Tree Plan as defined in this By-law. Additionally, if any Protected Trees were removed during the 12 months preceding the application for a building or demolition permit, such trees must be accounted for within the Tree Plan to the best of the owner's and arborist's ability, and such trees shall be mitigated pursuant to paragraph 4.B(2), below.

(1) Before submission of the Tree Plan, the owner shall clearly mark the Protected Trees on the property itself, showing which trees shall be removed and which trees shall be retained pursuant to the Tree Plan.

(2) Mitigation of Tree Removal as defined in this By-law shall be as follows: Each inch of the DBH of the Protected Tree(s) removed pursuant to the Tree Plan shall be replaced on the property by an inch of DBH of a new tree or trees of a species native to the area no later than ninety (90) days after issuance of the Certificate of Occupancy by the Town. New trees shall have a minimum caliper of two and a half (2.5) inches. Alternatively, the property owner, within 30 days after issuance by the Tree Warden of the written approval for commencement of work, shall contribute to the Tree Fund amounts to plant trees totaling the DBH of the Protected Trees removed from the property. Said amounts shall be designated by rules and regulations which will be based on current cost of labor, trees and materials to plant trees. Said rules and regulations shall be promulgated by the Board of Selectmen after consultation with the Tree Warden and the Tree Committee. The Town shall use these funds to plant trees totaling the DBH of the Protected Trees removed from the property. If damage to a Protected Tree causes the tree to die within three years after completion of the work on the property, the owner shall be responsible to mitigate the loss as set forth in this paragraph.

(3) Prevention of tree damage shall be as follows: Prior to commencement of work, all reasonable measures consistent with best practices shall be taken to prevent damage to Protected Trees remaining on the property.

(4) The submission of a site plan and Tree Plan to the Tree Warden shall be accompanied by a fee to be designated by rules and regulations to be promulgated by the Board of Selectmen after consultation with the Tree Warden and the Tree Committee. Said fee shall be based on anticipated costs associated with review of the site plan and Tree Plan and related tasks prior to issuance by the Tree Warden of the written approval for commencement of work, as well as follow-up work to ensure compliance with the Tree Plan.

C. The Tree Warden shall review all submitted site plans and Tree Plans and, further, conduct a site visit prior to demolition, construction, site preparation, removal of Protected Trees, or any other work on the property. If the Tree Plan is consistent with the mitigation and damage prevention requirements set forth in this By-law and associated rules and regulations, the Tree Warden shall certify so in writing within 10 business days, approving the commencement of work for the purposes of this By-law, and shall issue a permit allowing the commencement of work. Said permit shall be prominently displayed on the property. If the Tree Plan as submitted does not satisfy the requirements of this By-law and associated rules and regulations, the Tree Warden shall so notify the applicant with recommendations to achieve compliance.

(1) The Tree Warden shall be permitted access to the site at any time and at the time construction is substantially complete to verify and ensure compliance with the approved Tree Plan.

D. An owner aggrieved of the Tree Warden's determination on a Tree Plan, or with respect to the need for such a plan, may appeal such determinations to the Board of Selectmen at a public hearing. A written decision on such appeals shall be rendered within 14 business days of the close of such hearing(s).

Section 5. Enforcement and Fines

A. Following a determination of violation by the Tree Warden, an owner shall be subject to the fines for the activities listed below, to be paid into the Tree Fund, said fines to be set forth in rules and regulations promulgated by the Board of Selectmen after consultation with the Tree Warden and the Tree Committee. Said activities are:

(1) Failure to submit a site plan and Tree Plan prior to commencement of applicable demolition, construction, lot clearing or any other work on the site.

(2) Failure to obtain written approval for commencement of work per Section 4.C prior to commencement of applicable demolition, construction, lot clearing or any other work on the site.

(3) Removal of a Protected Tree which is not identified for removal in the Tree Plan. There shall be a fine for each Protected Tree removed.

(4) Damage to a Protected Tree which is identified for damage prevention in the Tree Plan. There shall be a fine for each Protected Tree damaged.

(5) Damage to a Protected Tree which is not identified for damage prevention in the Tree Plan. There shall be a fine for each Protected Tree damaged.

(6) Failure to mitigate tree removal within the time set forth in Section 4.B of this By-law. There shall be a fine for each day until mitigation is achieved.

B. Wherever there exists reasonable cause to believe that an owner or their agent willfully violates this By-Law or an approved Tree Plan, the Town may institute a civil action for injunctive relief in a court of competent jurisdiction ordering appropriate parties to correct a condition in violation, or ceasing an unlawful use of the property.

C. An owner aggrieved of the Tree Warden's determination of violation(s) may appeal such determination(s) to the Board of Selectmen at a public hearing.

Section 6. Administration

The Board of Selectmen, after consultation with the Tree Warden and the Tree Committee, shall establish such further administrative rules, regulations, and procedures for the review and approval of Tree Plans, as well as enforcement determinations. Failure to promulgate rules and regulations will not have the effect of suspending or invalidating this By-law.

Section 7. Severability Clause

If any provision of this By-law is declared unconstitutional or illegal by final judgment, order or decree of the Supreme Judicial Court of the Commonwealth, the validity of the remaining provisions of this By-law shall not be affected thereby.

Section 8. Relationship to Other Laws

Nothing in this By-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing Town of Arlington By-laws or laws of the Commonwealth of Massachusetts.