

MEMORANDUM

To: Arlington Select Board

From: Susan Stamps, Arlington Tree committee

Date: February 21, 2019

Re: Hearing on 2019 Warrant Article 32, Bylaw Amendment-Bylaws of the Town of Arlington, Title V, Article 16, Tree Protection and Preservation.

I. History of Tree Protection and Preservation Bylaw: In early 2015, at the request of a concerned town resident who saw houses demolished and lots clear cut in his neighborhood for new construction, the Tree Committee began to investigate the possibility of regulating tree removals during construction. At the same time, the town's Master Plan process was under way, and the final 2015 Master Plan reflected the town's love of its leafy environment and concerns over loss of tree canopy. In the Master Plan's list of goals was to consider regulating tree removals during construction so as to reduce loss of tree canopy. As a result of the efforts started by one Arlington resident, Town Meeting overwhelmingly approved the first Tree Protection and Preservation Bylaw ("Tree Bylaw") at the 2016 Town Meeting, and approved an amendment at the 2018 Town Meeting.

In the drafting the 2016 Tree Bylaw, the Tree Committee researched what other Massachusetts cities and town had done and focused on Lexington and Wellesley, the two towns we could find with tree bylaws that addressed the concerns we had. There were other tree bylaws, but they were not applicable to our needs. For example Cambridge's regulation only applied to large scale commercial developments and the Weston bylaw was vague, requiring only that the builder to have a conversation with a town department about possibly saving trees before he/she could start work.

We modelled our bylaw on Wellesley and Lexington. Concord also passed a similar tree bylaw in 2018, also modelled on Wellesley and Lexington.

II. Changes to Tree Bylaw requested in 2019 Warrant Article 32: Here are the main provisions of the Tree Bylaw, in the order of the Warrant Article - with the provisions we are requesting in Article 32 to change underlined:

1. The Tree Bylaw applies in demolitions or major construction projects to "Protected Trees," (Section 3, Applicability) defined as healthy trees located in the property setback with a trunk diameter of 10 inches (Section 2, Definition of Protected Tree).

Change requested – Reduce the diameter to 8 inches to protect more trees. Especially in an urban setting, trees do not live that long and the younger ones are a key part of our treescape. Protected Tree diameter in Wellesley is 10 inches, in Lexington 8 inches, and in Concord six inches.

2. “Tree removal” in the bylaw means cutting down a tree (Section 2, Definition of Tree Removal)

Change requested – Add to the definition of Tree Removal: “intentional or unintentional damage to a tree during construction which results in the death of the tree”. This would mean that if a contractor does not protect a Protected Tree’s Critical Root Zone (see 3.B below) and it dies, that is the same as removal of a Protected Tree without permission, which results in a fine per Section 5.A.1 of the Tree Bylaw.

3. Before any work on the property, contractor must have a “Tree Plan” approved by the town’s tree warden (Section 4.A). That tree plan is a site plan with the Protected Trees shown and an explanation to what will happen to them (leave on the site, or, if remove, then pay a fee or replace- see par. 4 below) (Section 2, Definition of Tree Plan).

Two Changes requested –

A. Show nearby street trees on the tree plan. This requirement is not in the Wellesley, Lexington or Concord bylaws, but those towns are not as dense as Arlington. In our town, public trees can be adversely impacted by work on nearby private lots – for example, heavy equipment going in and out of a lot can run over a street tree’s roots, which will cause the tree to die over time. Although the contractor would be liable for the tree loss under state law chapter 87¹, it would be better if the tree warden in reviewing the tree plan were to see the public trees and could proactively discuss protection of the trees with the contractor. In addition, we have had instances in town where, after a house or garage has been built, the contractor requests removal of a street tree because it is in the way of the driveway, utility lines, etc. Again, it would be an improvement in the process for the tree warden to be made aware of the public tree before the work is done so that there can be a discussion about changing the placement of structures or driveways/walkways to avoid having to remove the public tree.

B. Note on the Tree Plan how the contractor will protect the Critical Root Zones (CRZ) of the Protected Trees remaining on the property from damage or destruction during work on the lot. The Wellesley, Lexington and Concord tree bylaws all address CRZ protection. This is best practice when working around trees.

4. The Tree Bylaw allows contractors to remove Protected Trees, but they must mitigate the loss to the town’s tree canopy – either by a payment to the Tree Fund or by planting a replacement tree no smaller than 2.5 inches dbh.

Change requested – Remove the option to plant a replacement tree to mitigate the loss of removal and have only the payment option.

¹ Removal of trees on public property (owned by the town), variously called street trees, public trees, town trees, or public shade trees, is governed by the Public Shade Tree law, MGL c. 87

The tree warden has found that planting by the contractor does not mitigate loss because most of the trees planted by contractors per the bylaw in 2017 and 2018, the first two full years following passage of the 2016 Tree Bylaw, have either failed to thrive or were never planted (see the table below). The town does not have the resources to police compliance with the bylaw at the site. Further, new trees need a minimum of two years of watering after planting and no one is obligated to do this under the bylaw, nor would it be practical to impose the obligation, either on the contractor who is going to sell the property to a third party, or on the existing or future homeowner who may not water the new trees. Finally, the planting option will be chosen more often, with more bad results, since the bylaw was amended in 2018 to change the fee from \$500 per tree to a fee set by the Select Board which reflects the actual cost of replanting a replacement tree or trees to equal the inches of dbh lost. The Select Board has set the fee at \$375 per inch of dbh, so that removing a 10" tree which used to cost \$500 now costs \$3,750. It is possible that the effect of having only the payment option will be that builders will find a way more often to leave mature Protected Trees on the site.

According to the Tree Warden's records, during the two-year period January 1, 2017 through December 31, 2018, there were 17 building projects in town with tree plans. Of those 17, the Tree Warden checked on the six sites which were past the 180 day period after issuance of the Certificate of Occupancy (Section 4.C) and therefore should have had trees planted if they had chosen to plant and not pay. His findings:

Site	Status
1	Contractor paid (no planting required)
2	Trees planted and looked good
3	Trees were supposed to be planted, but weren't
4	Trees were supposed to be planted, but weren't
5	Tree(s) planted, but dead
6	Tree(s) planted but failing

5. The Tree Bylaw gives the Select Board the authority to establish administrative rules and regulations (Section 6), but limits those to rules and regulations "for the review and approval of Tree Plans, as well as enforcement determinations."

Change requested – Broaden the authority of the Select Board to establish rules and regulations of any kind in order to carry out the intent of the bylaw. All the bylaws we reviewed that regulated tree removal at all have some municipal body (such as Planning Board) which oversee the bylaw and issue regulations when needed to assist implementation of the bylaw. For example, it may be helpful for the Select Board to issue regulations describing the specific steps to be taken to prevent damage to the Critical Root Zones of Protected Trees, which Wellesley, Lexington and Concord have in either their bylaw or in

regulations. We anticipate that any such regulations would normally be drafted by the Tree Committee working with the Tree Warden and DPW Superintendent and presented to the Board for review and approval.

6. Arlington can be proud that it is an urban forest leader – Tree Committee members in networking with citizens in other towns have realized that, surprisingly, most Greater Boston communities are woefully behind in protecting their trees. Arlington, together with Wellesley, Lexington and Concord, is a leader in tree protection and preservation and an inspiration to residents of other municipalities, including Cambridge, Somerville and Medford, in their efforts to preserve and enhance their tree canopy. Their efforts, of course, benefit all of us.

The Tree Committee thanks the Select Board and Town Meeting for its continued support of Arlington's trees.

APPENDIX

RELEVANT SECTIONS OF THE 2015 ARLINGTON MASTER PLAN

The Arlington Master Plan recognizes the importance of trees to the quality of life in Arlington and thus the need to protect them - whether on public or private property.

Arlington Master Plan, page iii, Town Goals, Article 4 "The Environment" : "...

Recognizing the fragility of our natural resources, we must ensure that Arlington's residential areas, commercial centers, and infrastructure are developed in harmony with environmental concerns....." [emphasis added].

Arlington Master Plan, page 29, Section 3, Land Use - sidebar Master Plan goals for land use: "Encourage development that enhances the quality of Arlington's natural resources and built environment."

Arlington Master Plan, page 131, Section 8, Natural Resources and Open Space - sidebar Master Plan goals for natural resources & open space: "Ensure that Arlington's neighborhoods, commercial areas, and infrastructure are developed in harmony with natural resource concerns." [emphasis added] and "Value, protect, and enhance the physical beauty and natural resources of Arlington."

Arlington Master Plan, page 188, Implementation Program: Summary, #42: “Study methods of regulating the removal of mature trees on private property; research and consider methods used in other communities.

Arlington Master Plan, page 188, Implementation Program: Summary, #43: “Consider establishing Neighborhood Conservation Districts with design review standards for architecture, mature trees and landscaping, open space, walkways, and other features.”

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