

SOUTH BRUNSWICK TOWNSHIP MUNICIPAL CODE
CHAPTER 118 VEGETATION
ARTICLE IV. TREES

Sec. 118-121. Purpose.

The township council, having found that indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the township causes increased drainage control costs, increased soil erosion, decreased fertility of the soil, increased buildup of atmospheric carbon and increased dust tending to decrease property values, all of which render land unfit and unsuitable for its most appropriate use and adversely affects the health, safety and general welfare of the inhabitants of the township, desires in this article to regulate and control indiscriminate and excessive cutting of trees within the township; preserve the maximum possible number of trees in the course of development of a site; protect larger, older specimens of trees; and provide a plan for replacement of trees.

(Code 1988, § 240-1)

Sec. 118-122. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrative officer means the director of planning and development or his designee.

Aesthetic improvement cut means the removal to the minimum extent possible of the smallest and poorest specimens of trees so as to permit land development while retaining the maximum number of larger and healthier specimens of trees.

Average wooded acre means the average wooded acre at a site, which shall be determined as follows:

(1) A selective inventory, by size and species, of all trees having a DPM of six inches or greater shall be conducted using a minimum of one-tenth-acre plots, which shall be staked or visibly marked to allow for township inspection.

(2) The location of the inventory plots shall be determined by the applicant, subject to township approval, by using a grid overlay drawn to the same scale as the site plan submitted with the application.

(3) A representative five percent of the wooded acres proposed to be cleared shall be inventoried.

Where two acres or less are proposed to be cleared, a minimum of one-tenth acre shall be inventoried.

Board means the municipal agency, either the planning board or zoning board of adjustment, which has jurisdiction over the proposed land development application.

Clear cutting means the removal of all standing trees on a lot or portion of a lot.

Diameter at breast height means the diameter of an existing tree measured at a point no greater than 48 inches above the downhill side. This phrase may appear in this article as the abbreviation "DBH."

Diameter at point of measurement means the diameter of a replacement tree measured at a point on the tree six inches from ground level on the downhill side. This phrase may appear in this article as the abbreviation "DPM."

Dripline means a limiting line established by a series of perpendicular drop points marking the maximum radius of the crown of an existing tree but not less than six feet from the trunk, whichever is greater.

Hazardous tree means any coniferous or deciduous tree which has suffered permanent damage to its surface root structure or its trunk during site development such that it poses a threat to life or property.

Homestead lot means an existing lot upon which a single-family residence has been or is to be constructed.

Major subdivision means as defined in and governed by chapter 62 pertaining to land use.

Prime farmland means the land that is best suited to producing food, feed, forage, fiber and oilseed crops. It has the soil quality, growing season and moisture supply needed to produce a sustained high yield of crops while using acceptable farming methods. Prime farmland produces the highest yields and requires minimal amounts of energy and economic resources, and farming it results in the least damage to the environment.

Replacement plan means a specific plan for replacement of removed trees in accordance with the provisions of this article.

Replacement tree means a warranted nursery-grown, certified tree properly balled and marked with a durable label indicating genus, species, variety, watering and fertilization requirements and planted using acceptable standards.

Selective cutting means the removal of larger trees on an individual basis while leaving trees of lesser size.

Silviculture means the management of any wooded tract of land to ensure its continued survival and welfare, whether for commercial or noncommercial purposes, pursuant to a plan approved by the state bureau of forestry.

Site improvement costs means the total cost of roads, utilities, drainage facilities and similar required infrastructure improvements.

Site plan means as defined in and governed by chapter 62 pertaining to land use.

Slash means the forest debris remaining after a tree removal operation.

Specimen tree means any tree with a DBH of 16 inches or greater.

Thinning means the removal of undesirable, competitive, diseased or damaged trees so as to cultivate and improve the development of remaining trees on a lot.

Toppings means the uppermost 20 percent of height of a tree constituting its crown.

Tree means any deciduous or coniferous species which reaches a typical mature height of ten feet or more and a typical DBH of six inches or greater. The size of a multistemmed tree shall be determined by measuring the largest diameter stem at a point six inches above the crotch or point of separation of the multistemmed tree. Multistems occurring four feet above the ground or higher shall be treated as a single-stem tree. Any species not qualifying as a tree under this definition shall be considered a stem and shall not fall within the purview of this article.

Wooded acres permitted for development means those wooded lands within a lot or tract which are not specifically excluded by any federal, state, county or municipal law or ordinance; deed restriction; or covenant running with the land. For purposes of this article, those lands specifically eliminated from consideration as wooded acres permitted for development include but are not limited to wetlands as defined by N.J.S.A. 13:9B-1 et seq.

(Code 1988, § 240-2; Ord. No. 33-94, § 1, 9-8-1994; Ord. No. 38-02, § I, 8-6-2002)

Cross references: Definitions generally, § 1-2.

Sec. 118-123. Cutting or removal restricted.

(a) With the exception of the exemptions set forth in this article, no person shall cut or remove, or cause to be cut or removed, any tree with a DBH of six inches or greater upon any lands within the township unless the cutting or removal is accomplished in accordance with the provisions of this article.

(b) No clearcutting is permitted except in conjunction with subdivision or site plan approval in accordance with the provisions of this article.

(Code 1988, § 240-3; Ord. No. 33-94, §§ 2, 3, 9-8-1994)

Sec. 118-124. Permit required.

(a) With the exception of the exemptions set forth in this article, no tree with a DBH of six inches or greater shall be cut or otherwise removed from any lands in the township without a tree removal permit and a tree replacement plan. Every application to the planning board or zoning board of adjustment for approval of a major subdivision or any site plan requiring tree removal or planting, unless otherwise exempt pursuant to this article, shall include an application for a tree removal permit. Where an application for a tree removal permit is made for purposes not related to major subdivision or site plan approval, the application shall be submitted to the department of planning and community development.

(b) A complete application for a tree removal permit shall consist of the following:

(1) One copy of the completed application form.

(2) Twelve copies of the replacement plan.

(3) The fees as set forth in section 118-132.

(Code 1988, § 240-4; Ord. No. 33-94, §§ 2, 4, 9-8-1994)

Sec. 118-125. Permit application form.

The application form for the permit required under this article shall be available from the administrative officer and shall include the following information:

(1) The name and address of the owner of the premises.

(2) The name, address and telephone number of the applicant for the permit, if other than the owner, accompanied by the owner's written consent.

(3) A description of the premises where removal is to take place, including lot and block numbers and street address, if assigned.

- (4) A list of all trees with a DBH equal to or greater than six inches and less than 16 inches by size and species and all trees with a DBH of 16 inches or greater by size, species and location.
 - (5) Proof that there are no delinquent property taxes or assessments due on the property for which the application is submitted.
- (Code 1988, § 240-5; Ord. No. 33-94, §§ 2, 5, 9-8-1994)

Sec. 118-126. Replacement plan.

- (a) Where the application for the permit required under this article is in conjunction with an application for major subdivision or site plan approval, the replacement plan shall include the following:
 - (1) A site plan, on a scale of one inch equals 50 feet or less, showing the location of existing wooded areas and clearly marked boundaries of the plots used to determine the average wooded acre for the site. For each plot there shall be a list identifying the number and species of trees inventoried. The site plan shall include the lot and block numbers, the street address if assigned, and a certification of compliance with the requirements of this article.
 - (2) The location of streams and watercourses.
 - (3) The locations of slopes of greater than ten percent where any tree removal is proposed.
 - (4) The locations on the tract where tree removal is to take place.
 - (5) The total acreage of the tract.
 - (6) The total number of wooded acres permitted for development within the tract.
 - (7) The total number, by species, of existing trees with a DBH of six inches or greater on the tract. For tracts greater than two acres in size, the applicant may estimate the total number of trees by multiplying the total number of wooded acres permitted for development by the number of trees on an average wooded acre for the site.
 - (8) The total number, by species, of trees with a DBH of six inches or greater which are to be removed. For tracts greater than two acres in size, the applicant may make an estimate of the total quantity of trees to be removed, by species, based upon the average wooded acre for the site. The applicant may exclude from this total all trees to be removed for: (i) each road required by the township master plan; and (ii) the appropriate installation of septic absorption fields. The applicant shall indicate on the site plan the proposed location of such roads and septic absorption fields, together with a calculation of the acreage so excluded.
 - (9) Notwithstanding permitted estimates of the quantity of trees to be removed, all trees within the five-percent representative sample area with a DBH of 16 inches or greater shall be specifically identified by location, species and common name. All efforts shall be made to preserve such trees throughout the entire tract, including, if necessary, relocation of infrastructure, roadways and buildings.
 - (10) A specific plan for replacement of removed trees in accordance with subsection (b) of this section.
 - (11) A township-approved method of disposal of removed trees, topplings and slash. No burning or burying of trees or parts of trees is permitted. All disposal methods must comply with the requirements of section 46-105.
- (b) All specific plans for replacement of removed trees shall be based upon the following formulas:
 - (1) For trees with a DBH equal to or greater than six inches and less than 16 inches, replacement shall be based upon the percentage of the trees removed as set forth in the table in subsection (b)(1)a. of this section.
 - a. Replacement of trees equal to or greater than six and less than 16 inches DBH shall be as follows:

Percentage of Trees Removed From Wooded Acres Permitted for Development	Percentage of Removed Trees to be Replaced (using trees with a minimum DBH of 1 3/4 inches)
80 to 100	80
60 to 79	60
40 to 59	40
20 to 39	20
Less than 20	10

- b. Any trees with a DBH equal to or greater than six inches and less than 16 inches left standing in areas designated for removal or trees planted in compliance with other requirements of this Code shall be credited against the total replacement count on a one-for-one basis. For trees with a DBH of 16 inches or greater, replacement shall be in accordance with the table in subsection (b)(2)a. of this section. The species

or type of replacement trees shall be selected from the shade tree commission list in section 62-154(g)(7) or shall be the same as the species removed from the tract under consideration.

(2) For trees with a DBH equal to or greater than 16 inches, the removed tree shall be replaced according to the table in subsection (b)(2)a. of this section.

a. Replacement of trees equal to or greater than 16 inches DBH shall be as follows:

Existing Tree to be Removed (inches)	Number of Replacement Trees (minimum DBH of 1 3/4 inches)
Less than 18	3
Less than 21	4
Less than 24	5
Less than 27	6
Less than 29	7
Less than 31	8
Less than 33	9
Less than 35	10
Less than 37	11
Less than 39	12
Less than 40	13
Less than 41	14
41 and greater	15

b. Any trees with a DBH of 16 inches or greater left standing in areas designated for removal or trees planted in compliance with other requirements of this Code shall be credited against the total replacement count in the same number as the number of replacement trees which are required by tree size as set forth in the table in subsection (b)(2)a. of this section. The species or type of replacement trees shall be selected from the shade tree commission list in section 62-154(g)(7) or shall be the same as the species removed from the tract under consideration.

(3) In lieu of planting all of the replacement trees on site, the board may permit the applicant to contribute an amount equal to the current cost of each replacement tree not planted, to a fund established by the township for environmental programs such as tree preservation, tree plantings or other comparable environmental planting projects as recommended by the environmental commission. The developer may apply this option to up to 40 percent of the required number of replacement trees; all requests to make contributions in lieu of planting replacement trees in excess of 40 percent of the required number of replacement trees must be approved by the board.

(4) Where an applicant claims that the cost of the required number of replacement trees, as determined by the formula in subsection (b)(1) of this section, would impose a hardship, the board may, in its discretion, reduce the required number of replacement trees by ten percent of the total obligation as determined by subsection (b)(1) of this section. In support of such a claim, the applicant shall submit written cost estimates from three sources for board review. Each estimate shall include the species, size, number and price of the replacement trees. As to each request for relief pursuant to this subsection, the board shall consider the following:

- a. Unique natural features such as topography, drainage, aquifer recharge soils, wetlands and floodplains, stands of rare or substantially mature trees, and the like.
- b. The location of necessary improvements.
- c. The extent of lands to be dedicated to the township.
- d. The legal status of the applicant, such as profit-making, nonprofit, charitable, or quasimunicipal volunteer organizations such as fire companies and rescue squads.
- e. Whether the relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of this article.

(c) Where development is to take place in stages, phases, sections or other similarly delayed manner, the applicant shall:

(1) Submit all information required in subsection (a) of this section for the tract to be developed at the time of initial application for major subdivision or site plan approval, together with the application fee based upon the section of the tract to be developed. Permits shall be issued on a section-by-section basis.

(2) Before removal of any trees in a specific stage, phase or section, submit the inventory and replacement plan for that section to the administrative officer with a request that a removal permit be issued. If three years or more have passed since the date the initial application for the entire tract was submitted, the permit request shall be accompanied by an updated inventory and replacement plan for the specific stage, phase or section to be developed. If, upon review of the inventory and replacement plan and taking into consideration the amount of time which has passed since the initial application was submitted, the administrative officer determines that no substantial changes have occurred, a permit may be issued for the specific stage, phase or section to be developed. If the administrative officer determines that substantial changes have occurred due to changes in the inventory caused by the passage of time and/or development modifications made by the applicant, he may decline to issue a removal permit and require the applicant to submit the substantial changes for review and approval pursuant to section 118-129.

(d) Procedures when a conveyance of the premises occurs are as follows:

(1) Where preliminary or final major subdivision or site plan approval has been granted and all or a portion of the approved tract is subsequently conveyed prior to or during actual development of the conveyed premises, the purchaser shall, within 30 days of closing of title:

a. Submit written evidence to the administrative officer originally approving the application that the purchaser will in all respects adhere to the approved replacement plan as it applies to the conveyed premises; or

b. Submit a revised replacement plan meeting all of the requirements of subsection (a) of this section.

(2) If the conveyed premises is to be developed in stages, phases or sections and the purchaser is adhering to the original replacement plan, the time periods of subsection (c) of this section shall be calculated from the original date of approval of the replacement plan and not from the date that title passed. If the conveyed premises is to be developed in stages, phases or sections and a revised replacement plan is submitted and approved, the time periods of subsection (c) of this section shall be calculated from the date of approval of the revised plan.

(e) Where the application is not in conjunction with major subdivision or site plan approval, the replacement plan shall include the following:

(1) A statement as to the purpose, including thinning and aesthetic improvement cuts, of the proposed tree removal.

(2) A description of the tract upon which tree removal is to take place, including lot and block numbers, street address if assigned, and total acreage of the tract.

(3) The location of streams and watercourses.

(4) The location of slopes of greater than ten percent where any tree removal is proposed.

(5) An inventory of the trees to be removed, to include by count the species, DBH and location of each tree proposed for removal.

(6) A replacement plan in accordance with the table in subsection (e)(6)a. of this section.

a. Tree replacement shall be as follows:

Number of Trees Removed (DBH of 6 inches or greater and less than 16 inches)	Number of Replacement Trees (minimum DPM of 1-3/4 inches) (percent)
0 to 4	0
5 to 10	30
More than 10	50

b. Any trees measuring 16 inches or greater DBH shall be replaced on a one-for-one basis using a tree with a minimum DPM of 2 1/2 inches.

c. The species or type of replacement trees shall be selected from the shade tree commission list in section 62-154(g)(7) or shall be the same as the species removed from the tract under consideration. Trees of any size left standing in areas designated for removal or trees planted in compliance with other requirements of this Code shall be credited against the total replacement count on a one-for-one basis.

(7) A township-approved method of disposal of removed trees, toppings and slash. No burning or burying of trees or parts of trees is permitted. All disposal methods must comply with the requirements of section 46-105.

(Code 1988, § 240-6; Ord. No. 33-94, §§ 2, 6, 9-8-1994; Ord. No. 38-02, § I, 8-6-2002)

Sec. 118-127. Delineation of clearing limits.

- (a) The clearing limits shown on the replacement plan shall be fully established prior to the cutting of permitted wooded acreage and shall be defined by first flagging or painting the limit of disturbance, followed after clearing by the installation of snow fence firmly secured along the dripline but not less than six feet from the trunks of the remaining trees. In a like manner, specimen trees and isolated groupings of trees which are to remain on the site shall be clearly protected by snow fencing or an equally visible and protective device installed along the dripline of the trees but not less than six feet from the tree trunks.
- (b) The grade of the land located along the dripline shall not be raised or lowered more than six inches, unless compensated by welling or retaining wall methods, and in no event shall the welling or retaining wall methods be less than six feet from the trunk of the tree.
- (c) No soil stockpiling, storage of building materials or equipment operation shall be permitted within the dripline or within six feet of any remaining trees, whichever is greater.
- (d) Any clearing within the dripline or within six feet of the trunk of a remaining tree must be done by hand or with hand-operated equipment.
- (e) Where clearing and/or construction on the site results in accidental removal or severe damage which will eventually result in death and removal of any tree delineated in the replacement plan as remaining on the site, such removed or damaged tree shall be replaced on a one-for-one basis, using trees with a minimum DPM of 1 3/4 inches, for accidentally removed or damaged trees which have a DBH from six to less than 16 inches and in accordance with subsection (b)(2) of this section for accidentally removed or damaged trees with a DBH of 16 inches or greater. The species or type of replacement trees shall be selected from the shade tree commission list in section 62-154(g)(7) or shall be the same as the species removed from the tract under consideration.
- (f) No hazardous trees shall be permitted to remain beyond completion of the project and release of the performance bond. An inspection of replacement trees and potentially hazardous trees shall be performed by a person trained to recognize the symptoms of tree failure prior to release of the performance bond. The fees for such inspections shall be calculated and deposited in the same manner as are inspection fees required pursuant to chapter 62.
(Code 1988, § 240-7; Ord. No. 33-94, §§ 2, 7, 9-8-1994)

Sec. 118-128. Permit approval.

- (a) Time for approval. Time for approval of the permit required under this article shall be in accordance with the following:
 - (1) Where the permit application is submitted as part of an application for major subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivisions or site plans.
 - (2) Where the permit application is not made in connection with a major subdivision or site plan application, the administrative officer shall act on the application within 90 days of its receipt or within such additional time as is consented to by the applicant. Failure of the administrative officer to act within 90 days, or any extension thereof, shall be deemed to be an approval of the application, and thereafter the administrative officer shall issue a tree removal permit based thereon.
 - (3) Approval by default, as provided herein or in chapter 62 pertaining to land use, with regard to major subdivision and site plan applications, shall not be deemed to be a waiver of the applicant's required compliance with the tree replacement formulas, nor shall it be deemed to be approval of a request for reduction in the number of replacement trees. All requests for reduction in the number of replacement trees must be specifically approved by the board.
- (b) The board may refer the application to the environmental commission for its report and recommendations. The board may rely on the report and recommendations of the environmental commission in reaching its decision to approve the replacement plan, disapprove the replacement plan or subject the replacement plan to such conditions as have been recommended by the environmental commission in accordance with the provisions of this article.
- (c) No permit shall be valid for a period of more than three years from the date of issuance. The administrative officer, upon a showing of good cause by the applicant, may extend a permit for an additional period of one month, provided that the applicant submits an updated replacement plan to show tree removal activities to date. Further, the administrative officer may require as a condition of any such extension that the applicant employ current techniques and procedures incorporated into this article since the date of original approval.

(d) No approval shall be granted by the board if the board finds that the proposed removal or destruction is contrary to the best interests of the public health, safety or general welfare.
(Code 1988, § 240-9; Ord. No. 33-94, § 9, 9-8-1994)

Sec. 118-129. Change in replacement plan.

Any substantial change in a replacement plan submitted pursuant to this article shall necessitate the submission of a revised plan to the administrative officer for review and approval.
(Code 1988, § 240-10; Ord. No. 33-94, § 10, 9-8-1994)

Sec. 118-130. Permit revocation.

The administrative officer may revoke a permit required under this article where there has been a false or misleading application or for noncompliance with an approved replacement plan within the next optimal planting season according to species.
(Code 1988, § 240-11; Ord. No. 33-94, § 11, 9-8-1994)

Sec. 118-131. Exemptions.

The following shall be exempt from the requirements of this article:

- (1) Commercial nurseries and fruit orchards.
- (2) Christmas tree plantations.
- (3) Properties used for the practice of silviculture where a plan approved by the state bureau of forestry is on file with the administrative officer.
- (4) The proposed cutting of trees on tracts of land one acre or less in area upon which a single-family homestead has been erected, except lots within proposed major subdivisions.
- (5) Upon homestead lots greater in area than one acre. The owner may remove trees from up to one acre for the construction of a residence. In addition, the landowner shall be permitted to remove up to 25 percent of the trees on any additional acreage by transplanting, selective cutting or thinning. If any cutting, removal or thinning in excess of 25 percent is planned, the lot shall be subject to a replacement plan in accordance with section 118-126(e)(6).
- (6) Removal of trees which are dead, dying or diseased; trees which have suffered severe damage; or any trees whose angle or growth makes them a hazard to structures or human life.
- (7) Any tree growing on or over a public right-of-way, land or property.
- (8) Pruning or removal of trees within the right-of-way by utility companies for maintenance of utility wires or pipelines.
- (9) Certain farmlands, as follows:
 - a. Those lands which:
 1. Consist of prime farmland;
 2. Are greater than five acres in size;
 3. Are actively devoted primarily to farming activities; and
 4. Yield a minimum annual income of \$500.00 from the farming activities.
 - b. However, where the owner desires to remove any trees for the purpose of expanding farmlands, an inventory of trees to be removed shall be prepared and filed with the administrative officer prior to any tree removal. If the expanded farmlands are not actively devoted primarily to farming activities for a period of five years following tree removal, the replacement plan provisions of this article shall apply.
- (10) Those projects which have been submitted for major subdivision or site plan approval prior to the effective date of the ordinance from which this article is derived, unless the project is resubmitted with major revisions impacting trees as defined in this article.

(Code 1988, § 240-13)

Sec. 118-132. Fees; performance guaranties; maintenance guaranties.

- (a) A nonrefundable application fee of \$75.00 shall be submitted for the permit required under this article, together with a review and inspection fee of \$200.00 for the first acre and \$100.00 for each additional acre or portion thereof on which tree removal activities are proposed.
- (b) An escrow fee in an amount of not less than one percent of the estimated replacement cost or \$1,000.00, whichever is greater, may be required by the board to cover expenses of outside agency review of the application and site inspection subsequent to completion of the tree removal activities. Any unused balance will be returned to the applicant after final approval.

(c) A performance guaranty shall be submitted upon approval of an application in an amount estimated by the township engineer to cover the cost of the replacement plan and/or for soil stabilization on the property.

(d) Notwithstanding any limitations set forth in chapter 62 pertaining to land use, following completion of the planting of trees in accordance with the approved replacement plan and as a condition of the release of the performance guaranty, the permit holder shall post a maintenance guaranty with the township clerk for maintenance of the replacement trees. The maintenance guaranty, which may be a surety bond, shall not exceed 15 percent of the costs of the replacement plan and shall be posted for a period not to exceed two years after acceptance of the completed replacement plan. Under the maintenance guaranty, an 85 percent survival rate for the two-year guaranty period shall be considered satisfactory.

(e) Homestead lots are exempt from the requirements of this section.

(Code 1988, § 240-14)

Sec. 118-133. Notice of commencement of tree removal.

(a) The holder of a tree removal permit shall notify the administrative officer, in writing, at least three business days in advance as to when tree removal activity will commence. No activity shall take place on Saturdays, Sundays or legal holidays without express written approval from the administrative officer.

(b) The notice shall also include advice as to the manner of disposal of the removed trees. Where appropriate, the administrative officer shall advise the township recycling coordinator of the name of the permit holder, the location of the removal site, the date removal is to commence and the manner of disposal to be employed.

(Code 1988, § 240-15)

Sec. 118-134. Violations and penalties.

Any person convicted in the municipal court of a violation of this article shall be subject to a penalty as provided in section 1-13. In addition, the township may institute and maintain a civil action in the superior court for injunctive relief restraining the continuation of any unlawful tree removal project.

(Code 1988, § 240-16)