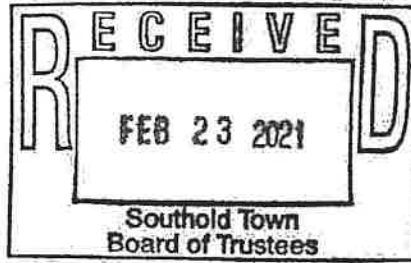


IV-4
2/15-22



Chapter * _____ * Tree Preservation

§ * _____ *-1 Purpose.

A.

The Town Board finds that it has been established that trees stabilize the soil and control water pollution by preventing soil erosion and flooding, reduce air pollution, provide oxygen, yield advantageous microclimatic effects, temper noise and, further, that unusual, large and old trees have unique aesthetic and historic values. Indiscriminate removal of trees causes deprivation of these benefits and disrupts the Town's ecological systems. It is, therefore, the purpose of this chapter to prevent the indiscriminate or unnecessary destruction of trees within the Town of Southold.

B.

The Town, furthermore, takes note of the findings of the New York State Environmental Quality Review Act, among them being the obligation of the Town to serve as a steward of air, water, land and living resources and the obligation to protect the environment for the use of this and further generations. It is the intent of the Town to recognize these responsibilities in part by providing these procedures as well as to preserve the health and welfare and rural character of the community which is reflected in the woodlands of the Town of Southold.

§ * _____ *-2 Applicability.

With the exception of the activities set forth in § * _____ *-4B of this chapter, no tree regulated under this chapter shall be cut or removed from any land in the Town without having first obtained a tree removal permit. No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be cut or removed, except for such trees directed to be cut or removed pursuant to § * _____ *-20 of this chapter. Additionally, any residential or nonresidential lot owner wishing to cut or remove trees upon said lot independent of an application for subdivision, special use permit, or site plan approval shall comply with § * _____ *-8 of this chapter.

§ * _____ *-3 Definitions.

For the purposes of this chapter, the following terms, phrases and words shall have the meanings indicated:

APPLICANT

The property owner or his/her duly authorized agent, requesting a tree removal permit from the Town pursuant to this chapter.

CLEAR CUTTING

The felling of all trees from a given tract of land or forest

DBH (DIAMETER AT BREAST HEIGHT)

The diameter or caliper of a tree measured at a point 1 1/2 feet above ground level at the base of the uphill side of the tree.

DRIPLINE

An imaginary, roughly circular line extending from the maximum spread of the limbs of a tree to the ground.

TREE

A living, woody plant with an erect perennial trunk and a definitely formed crown of foliage and a DBH of six or more inches.

TREE CLEARING

The felling of any trees six inches DBH or greater on a lot.

TREE PRESERVATION PLAN

A plan indicating the location, species, size, drip line and condition of all trees on a property which are six or more inches DBH and detailing the methods and practices to be used to provide protection for all such trees to be preserved.

TREE REMOVAL

Any act which will cause a tree to be cut or removed or to die within a one-year period.

TREE REMOVAL PERMIT

A permit granted pursuant to the requirements of this chapter which allows the removal of one or more trees.

§ * ____ *-4 Tree removal permit required; approval authority.

A.

General regulations. A tree removal permit shall be required prior to any tree clearing or tree removal of any tree with a DBH of six inches or more, on any lot of one half acre or greater where no site plan, special use permit, land contour permit, or building permit has been issued for a project on said lot.

B.

The following shall be exempt from regulation under this chapter:

(1)

Tree clearing on an occupied residential lot of less than one half acre.

(2)

The business and the operation of commercial nurseries, fruit orchards, and tree farms.

(3)

Removal of trees as part of an active agricultural activity on a lot located within a designated agricultural district.

(4)

Cutting or removal of any tree located within a cemetery.

(5)

Removal of trees that are dead, dying, or diseased, or trees which have suffered damage, or any tree whose angle of growth makes then a hazard to structures, roads, or human life as determined by the Highway Superintendent, Building Inspector, Town Engineer, or other duly authorized representative of the Town.

(6)

Removal of trees which appear to cause structural damage to buildings or foundations as determined by the Building Inspector, the Town Engineer, or other duly authorized representative of the Town.

(7)

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.

(8)

Trees directed to be removed by municipal, county, state, or federal authority pursuant to law.

(9)

The removal of trees as required in connection with duly authorized activities of the Town of Southold or any department thereof.

(10)

The removal of trees in accordance with a special use permit, site plan, or subdivision plan, or building permit approved by a duly authorized agency or board of the Town.

(11)

Pruning or removal of any tree growing on or over a public right-of-way or public land; pruning or removal of trees within the public right-of-way by utility companies for maintenance of utility wires or pipelines; and the pruning of trees within sight-line easements.

(12)

Removal of trees as may be necessary to maintain Town, county, state or utility right-of-way, as a control measure to fight forest or other fires or under such other actual or ongoing emergency condition when such tree removal is essential for the protection and preservation of life or property.

C.

Approving authority. The approving authority for all applications under this chapter shall be the Building Department. Where tree cutting or removal is proposed in connection with any site plan, subdivision approval, or land contour permit approval submitted to the Planning Board, trees shall be cut or removed from the subject property only in conjunction with an approved final subdivision plat, final site plan, or final land contour permit approval, in which case a separate tree removal permit shall not be required.

D.

In accordance with the design requirements provided in this chapter, unless otherwise indicated herein, a tree removal permit may be granted if the Building Department determines the application meets one or more of the following criteria:

(1)

Where the area proposed for tree removal is 30 percent or less of the total lot and to be occupied by: a building or other structure; a street or roadway; a driveway; a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line, easement, or right-of-way; and where location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks; or

(2)

Where the location of an existing tree negatively impacts an existing or proposed septic system or septic field; or

(3)

Where no other alternative exists for the placement of a building, building addition, structure, septic field, driveway, deck, patio, or lawn area for the recreational use by the inhabitants of the building or dwelling, or any other authorized improvements, but in the vicinity of an existing tree; or

(4)

Where the location, angle, or growth of an existing tree makes it a hazard to structures or human life as determined by the Building Department.

F.

The Building Department may, as a condition of granting a permit:

(1)

Flag and identify trees for protection measures pursuant to § _____-5 below

(2)

Require the reasonable relocation of proposed foundation walls, driveways, grading, surface and subsurface improvements or drainage systems to preserve specific trees.

(3)

Require that each tree to be cut or removed be marked at one point low enough on the trunk to be visible after removal of the tree so as to permit subsequent inspection.

(4)

Require such safeguards as appropriate to minimize the environmental impact of such removal operations.

(5)

Require that the tree trunk, limbs, stump and any roots remaining above grade be removed to approximately two feet or less.

(6)

Require that the disturbed area be backfilled, replanted and/or reseeded.

(7)

Require that in the case of a tree destroyed, cut, or removed illegally another tree or trees of comparable size, species and/or value be replanted at the expense of the property owner, for each tree cut or removed, in accordance with § * _____*-07.

(8)

Require the planting of a replacement tree or trees in accordance with § * _____*-07.

(9)

Impose such additional conditions as the Building Department deems necessary to ensure compliance with the policies and provisions of this chapter.

§ * _____*-5 **Protection of trees.**

A.

Whenever an application for tree removal is granted under the terms and conditions of this chapter, the following protective measures shall be observed:

(1)

No material or temporary soil deposits shall be placed within the limit of disturbance line of any existing tree to be preserved.

(2)

Except while engaged in tree cutting or removal, no equipment shall be operated within three feet of any tree protected by this chapter nor shall such equipment be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree. Except while engaged in tree cutting or removal, all requirements shall be observed.

§ * _____*-6 **Permit application.**

A.

Any person proposing to conduct or cause to be conducted a regulated activity specified in § * _____*-4A above hereof shall file an application for a permit with the approving authority as hereinafter provided prior to undertaking such cutting or removal. Such application shall include the following information:

(1)

The name and address of the applicant.

(2)

The address and Town Tax Map designation of the property on which the tree(s) is/are located.

(3)

The total percentage of land area involved in cutting operations.

(4)

The number and size in DBH of trees to be cut or removed. In cases where the Planning Board has received or will receive a subdivision, site plan, or land contour permit application involving the disturbance of land and where an acceptable erosion and sedimentation control plan has been or will be prepared for such project and where an environmental impact statement has been or will be prepared for such project, a sampling technique may be used to estimate the number, species and diameter of trees on the site and the number of trees proposed to be cut or removed. The specifics of the sampling technique shall be subject to the approval of the Planning Board in furtherance of the site plan. Notwithstanding the above, all trees six inches DBH and greater proposed to be cut or removed shall be individually identified and marked.

(5)

The purpose of the tree removal.

(6)

A boundary and topographic survey prepared by a New York State licensed professional land surveyor of that section to be disturbed, showing location of any water bodies, water courses, and site improvements as well as all trees six inches DBH or greater, indicating those trees to be cut or removed and those trees to be preserved, their species and their diameter. Trees shall have numbering and tagging. The numbering and tagging shall be both in the field as well as illustrated on the plan.

(7)

Application fee.

C.

(1) Landscape plan: The following information shall be provided on a landscape plan shall be submitted with the application for tree removal.

(a)

Information on the landscape plan shall include:

[1]

Location of existing tree canopy within the property boundaries.

[2]

Location of individual trees with DBH equal to or greater than six inches identified by size and species within the area of development/limit of disturbance.

[3]

Location of individual trees with a DBH equal to or greater than six inches identified by size, genus, and species beyond the area of development/limit of disturbance line.

[4]

Location of individual existing trees and their drip lines noted for preservation by the Building Department within the area of development/limit of disturbance line

identified by size, genus, and species. Where clusters of trees are contiguous to adjacent sites, fragmentation of the cluster shall be avoided where possible.

[5]

Proposed location of all required replacement trees.

[6]

Clear labeling of the area(s) intended for tree/vegetation removal.

[7]

Tree protection measures and the limit of disturbance line.

[8]

Location of existing and proposed buildings/structures.

[9]

All bodies of water and wetlands, including existing and proposed stormwater detention areas.

[10]

Location of all existing driveways and parking areas.

C.

The Building Inspector or other designated municipal official shall periodically inspect the site throughout the duration of the work in order to ensure compliance with this chapter and the tree removal permit. Such inspection shall be made of the site referred to in the application, and of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of determining drainage conditions and physical conditions existing thereon.

(1)

Within 30 days after completion of all tree cutting or removal authorized under a permit issued in accordance with this chapter, the applicant shall notify the Building Inspector of such completion.

(2)

Within 10 days of such notification of completion of work, the Building Inspector shall inspect or cause to be inspected the tree cutting or removal site for compliance with all conditions of the permit.

(3)

When all tree cutting or removal authorized under a permit is deemed to be completed in an acceptable fashion, the Building Inspector shall issue a certificate of completion.

(4)

When tree cutting or removal authorized under a permit are deemed not acceptable, the Building Inspector shall so notify the applicant. The notification of noncompliance shall include a list of all conditions in violation of the terms of the permit and shall specify a time limit for the correction of all items so listed.

(5)

The Planning Board, after notice to the permit holder and an opportunity to be heard, may revoke a tree removal permit if it finds that the applicant has not complied with the terms of such permit, has exceeded the authority granted by the permit, or has failed to undertake the project in the manner set forth in the approved application.

(6)

Issuance of a stop-work order by the Building Inspector shall be as provided in the Town Code. A stop-work order may be appealed by filing a written notice of appeal with the Planning Board

not later than 30 days after service of the stop-work order upon the applicant. A hearing shall be scheduled by the Planning Board within 30 days of receipt of request for a hearing. After the close of the hearing, the Planning Board may affirm, modify or cancel the stop-work order.

(7)

The Building Department shall set forth in writing its findings and reasons for revoking or suspending a permit pursuant to this section and keep a copy in the permit application file.

§ * _____ *-7 Tree replacement and reforestation.

A.

The replacement of trees shall occur as prescribed in the following table.

Tree Replacement Schedule

DBH of Existing Tree

Removed

Number of Replacement Trees (3 inch caliper)

Less than 6 inches 0

Between 6 and 12 inches 3

Between 12 and 18 inches 4

Between 18 and 24 inches 5

Between 24 and 30 inches 6

Between 30 and 36 inches 10

36 inches or greater The equivalent of 3 inch caliper trees or greater needed to equal the DBH of the cut or removed tree.

B.

Replacement tree(s) shall be of nursery grade quality, balled and burlapped and located on site. Where replacement trees are required, but not suitable for the particular site prescribed due to the size of the site, the Town may deposit the trees into a community tree bank. Trees deposited into the community tree bank shall be utilized for planting on public land.

C.

The type of replacement tree(s) shall be the same as the species cut or removed from the site or other as approved by the Planning Board.

D.

Newly planted replacement trees shall be monitored for a period of one year to ensure the health of the trees by a person with horticultural training in tree care and planting methods as retained by the applicant/developer. If any of the replacement trees die within the one-year period from their planting, the developer/applicant shall replace the dead tree(s).

§ * _____ *-8 Conditions for granting of permit.

A.

The approving authority may, as a condition of granting a permit:

(1)

Require the reasonable relocation of proposed foundation walls, driveways, grading, surface and subsurface improvements or drainage systems to preserve specific trees.

(2)

Regulate the days and hours of operations.

(3)

Require that each tree to be cut or removed be marked at one point low enough on the trunk to be visible after removal of the tree so as to permit subsequent inspection. Notwithstanding the above, where the use of a sampling technique has been approved, trees less than 14 inches in diameter at breast height need not be marked.

(4)

Require such safeguards as appropriate to minimize the environmental impact of such removal operations.

(5)

Require that the tree trunk, limbs, stump and any roots remaining above grade be removed to approximately two feet or less.

(6)

Require that the disturbed area be backfilled, replanted and/or reseeded.

(7)

Require that in the case of a tree destroyed or cut or removed illegally, another tree or trees of comparable size, species and/or value be replanted at the expense of the property owner, for each tree cut or removed.

(8)

Require the planting of a replacement tree or trees.

(9)

Impose such additional conditions as the approving authority deems necessary to ensure compliance with the policies and provisions of this chapter.

§ * _____ *-10_Fee.

A.

A tree removal permit application shall be accompanied by a fee in an amount set by the Town Board.

§ * _____ *-11_Term.

A.

Any issued permit shall expire if the work authorized has not commenced within 12 months after the date of issuance or has not been completed within 18 months from such date. If no zoning amendments or other regulations affecting the property have been enacted in the interim, the Building Inspector may authorize, in writing, the extension of the permit for an additional six months. Thereafter, a renewal permit shall be required. Standards for issuance of renewals shall be the same for the issuance of permits.

§ * _____ *-12_Penalties for offenses.

A.

Any person, firm, corporation, or other entity who or which undertakes any regulated activity without a tree removal permit required by this chapter or who violates any condition attached to a tree removal permit, or who otherwise violates any of the provisions of this chapter shall be

guilty of an offense punishable by a fine of not more than \$2,500. Each tree cut or removed without a tree removal permit required by this chapter or in violation of any condition attached to a tree removal permit or otherwise in violation of this chapter shall constitute a separate offense. For a second and each subsequent violation within a one-year period, the violator shall be guilty of an offense punishable by a fine of not more than \$5,000 or a term of imprisonment of not more than 15 days, or both. Each violation of the provisions of this chapter shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. In addition, the court may order or direct a violator to replace any or all trees cut or removed illegally, with a size and type selected by the Building Department, Planning Board, Code Enforcement, or other suitable governmental authority. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Building Inspector.

B.

In addition to the criminal penalties provided in this chapter any person, firm, corporation, or other entity who or which undertakes any regulated activity without a tree removal permit required by this chapter, or who violates any condition attached to a tree removal permit, or who otherwise violates any provision of this chapter shall also be liable for a civil penalty not to exceed \$5,000 for each such violation. For a second and each subsequent violation within a one-year period, the violator shall be guilty of an offense punishable by a fine of not more than \$10,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of the violation shall be considered a separate offense. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Planning Board upon due notice and with right to specification of the charges and representation by counsel. Such civil penalty may be recovered in an action brought by the Town in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Town and any action commenced to recover the same may be settled and discontinued by the Town.

C.

The Town also shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this chapter and to compel the replacement of any or all trees cut or removed illegally and the restoration of the land affected to its condition prior to the violation of the provisions of this chapter.

D.

The Town shall not issue a building permit, temporary certificate of occupancy, or certificate of occupancy, or certificate of completion for any property for which a violation of this chapter has been served, or for which an administrative or judicial proceeding has been commenced under this section, until said violation or proceeding is dismissed or resolved to the satisfaction of the approving authority or court, as is appropriate.

§ * _____ *-13_Appeals.

A.

A determination by the Building Department to grant or deny a tree removal permit may be reviewed by the applicant or any other aggrieved person by the filing of an appeal to the Zoning Board of Appeals and should the appeal not be granted by the commencement of an action pursuant to the provisions of Article 78 of the Civil Practice Law and Rules.

§ * _____ *-15_Severability.

A.

If any provision of this chapter shall be held for any reason to be invalid, such determination shall not invalidate any other provision hereof.