

Village of Mamaroneck



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TO: Mayor Murphy and the Board of Trustees

FROM: Robert A. Spolzino, Esq.

RE: Further Changes to Tree Law

DATE: August 5, 2022

CC: Jerry Barberio, Village Manager
Daniel Sarnoff, Assistant Village Manager
Agostino Fusco, Village Clerk-Treasurer
Sally Roberts, Deputy Clerk

As the Board of Trustees directed, we have prepared an updated version of Proposed Local Law D-2022, which incorporates further revisions to the Tree Law proposed by the Planning Board (Exhibit A). We recently received some additional questions regarding the law which require further discussion (Exhibit B), but wanted to ensure that the Board received the law in its current form, for review.

Exhibit A

PROPOSED LOCAL LAW D – 2022

A Proposed Local Law amending Chapters 192, 318, 341 and A348 of the Code of the Village of Mamaroneck regarding the regulation of trees in the Village of Mamaroneck.

**BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK
AS FOLLOWS:**

*(Language in strike-through ~~abcedefghijk~~ to be deleted; language in **bold** is to be added)*

Section 1.

Section 192-5(B)(1) of the Code of the Village of Mamaroneck is amended as follows:

- (1) An application for a permit shall be filed by the applicant on a form prescribed by the Agency. Such application shall set forth the purpose, character and extent of the proposed regulated activity. The application shall include **(a)** a detailed description of the regulated activity, **(b)** a map showing the area of wetland or adjacent area directly affected, with the location of the proposed regulated activity thereon, **(c)** a deed or other legal description describing the subject property, **(d) where the proposed regulated activity involves the removal of trees, a tree preservation plan in accordance with the requirements of Chapter 318 of this Code**, and **(e)** such additional information as the Agency deems sufficient to enable it to make the findings and determinations required under this chapter.

Section 2.

The definition of “protected tree,” as set forth in section 318-2 of the Code of the Village of Mamaroneck, is hereby amended as follows:

PROTECTED TREE OR SHRUB

Any of the following **unless the tree has fallen down or has been uprooted due to events that are not the result of human intervention:**

- A. A tree with a DBH of eight inches or more, regardless of location;
- B. A tree with a DBH of three inches or more located in a wetland or wetland adjacent area, as defined in § 192-2 of this Code;
- C. A tree with a DBH of three inches or more located on a steep slope;
- D. A tree designated as protected on a site development plan or tree preservation plan approved by the Planning Board;
- E. A significant tree or shrub; or
- F. A tree with a DBH of three inches or more designated by the New York State Department of Environmental Conservation as a protected native plant for our region.

Section 3.

Section 318-7 of the Code of the Village of Mamaroneck is hereby amended as follows:

§ 318-7 Maintenance of trees on private property.

A. Every owner of private property must, at the property owner’s expense:

- (1) prune each tree, shrub or other planting on the property so that the branches of the tree, shrub or other planting does not obstruct or overhang any right-of-way within the Village, does not obstruct the clear space between the surface of the street or sidewalk and eight

feet above the surface of the street or sidewalk, does not obstruct the light from any street lamp, does not obstruct the view of any street intersection or any traffic control device and does not interfere with utilities;~~and~~

- (2) remove any dangerous tree **or tree limb** on the property.

Section 4.

Section 318-8 of the Code of the Village of Mamaroneck (Trees) is hereby amended as follows:

§318-8 Removal of trees on private property.

A. Prohibitions.

- (1) No person may, engage in clear-cutting or injure any protected tree on private property.
- (2) No person may, without a permit issued by the Building Inspector, either purposely or negligently, remove or injure any tree exceeding eight inches in diameter at a height of four **and one half** feet measured from the ground on any private property unless the Building Inspector has issued a permit authorizing the person to do so.
- (3) The previous subsection notwithstanding, a person may remove a tree that has fallen down or been uprooted as a result of natural causes and is not required to replace the fallen or uprooted tree as would otherwise required by this section, but the person must, within three business days of the removal, submit to the Village Manager or the Village Manager's designee documented evidence, including photographs of the broken or uprooted section of the tree, demonstrating the nature and extent of the loss. Failure to submit the required documentation within three business days is a violation of this chapter and subject to fine. The Village Manager or Village Manager's Designee will acknowledge receipt of the documentation within 3 days.**

B. Removal of protected trees in accordance with a permit issued by the Building Inspector. The Building Inspector may grant a permit to remove a protected tree on private property, to the extent necessary, if:

- (1) the protected tree is within a distance of 10 feet around the perimeter of a building or structure; or
- (2) the Village Manager or the Village Manager's designee, if either is a certified arborist, or a certified arborist chosen by the Village Manager or the Village Manager's designee and paid for by the property owner, determines that the tree is dead or so substantially diseased that it constitutes a potential danger to life and property, or harbors insects or diseases which constitute a potential threat to other trees within the Village; or
- ~~(3) the protected tree interferes with a permitted use of the property and/or is specifically identified for removal in an approved wetland permit, special use permit, subdivision plat, site plan or landscape plan; or~~
- ~~(4) the location of the protected tree prevents compliance with state, county or local laws or regulations for visual obstructions, sight lines, driveways or intersections.~~

C. **Except in the emergency conditions described in 318-8(K),** ~~the~~ Building Inspector may not grant a permit to remove a protected tree on private property if:

- (1) the property owner seeks a permit to remove more than three protected trees;
 - (2) the property owner or the prior owner of the property has removed more than three protected trees from the property during the preceding 36 months; or
 - (3) the tree is in a wetland area and more than two trees have been removed from any wetland area on the property during the preceding 24 months by the property owner or any prior owner.
- D. No permit is required for the removal of a tree or trees in accordance with a tree preservation plan approved by the Planning Board. Notwithstanding any other provision of this chapter, any property owner applying for subdivision, ~~or~~ site plan, **or wetlands** approval whose plans would require the removal of any trees on the property that is the subject of the application must apply to the Planning Board for approval of a tree preservation plan. The Planning Board will have sole jurisdiction over the removal of trees on any property for which a tree preservation plan has been approved and the Building Inspector may not grant a permit to remove a tree where to do so would inconsistent with the tree preservation plan for the property. The Planning Board may grant or deny an application for a tree preservation plan, and may impose those terms and conditions it deems appropriate, consistent **with sections 192-14(E)**, 342-76, Chapter A348 and the remaining provisions of the Code of the Village of Mamaroneck.
- E. No tree may be removed while an application for site development plan approval or subdivision plat approval for the property on which the tree is located is pending before the Planning Board
- F. Permit procedure.
- (1) Application for permit. An application for a permit under this section must be made in writing on the form prescribed by the Building Inspector.
 - (2) Fee. The fee for the application will be as set forth in § A347-1 of this Code and must be paid at the time the application is submitted.
 - (3) Action on tree removal permit application. The Building Inspector will either approve or deny the application within 21 days from the date on which a completed application is submitted, except that the Building Inspector may not grant an application made in connection with construction which requires a building permit until the building permit is issued.
- G. Conditions. In granting a permit under this section:
- (1) the Building Inspector must require, as a condition of the tree removal permit, that:
 - (a) the applicant replace each tree that is removed with a non-invasive tree species of a similar mature height and of a size determined in accordance with the following schedule:

For lots less than 14,500 sf	
DBH of tree removed (inches)	Replanting requirement
Under 8 inches	No replanting necessary
8 inches or greater	One 2 to 2 ½ inch DBH tree
For lots 14,500 sf and above:	

Under 8 inches	No replanting necessary
8 to 12 inches	One 2 to 2 ½ inch DBH tree
13 to 25 inches	Two 2 to 2 ½ inch DBH trees
26 inches or greater	Three 2 to 2 ½ inch DBH trees

- (b) for three or more tree replacements within five years, the property owner must submit to the Building Inspector a plan identifying the proper location for each replacement tree; and
- (2) the Building Inspector may require, where extensive tree cutting is planned, that the applicant pay the cost of a certified arborist assigned by the Building Inspector to supervise the tree removal and ensure the protection of the existing trees that are required to remain.
- (3) If, in the opinion of the Planning Board, the number of trees required for replanting cannot reasonably be accomplished in an approved site plan, the Planning Board will require the applicant to contribute to a Village of Mamaroneck Tree Bank an amount equal, in the judgment of the Planning Board, to the cost to the Village for purchasing and planting each new tree that would otherwise have been required to be replanted.**
- H. Any applicant who has been denied a tree removal permit may appeal to the Village Manager or the Village Manager's designee. The appeal must be submitted in writing to the Village Manager or the Village Manager's designee within 30 days of the determination. In determining an appeal, the Village Manager or the Village Manager's designee may consult a certified arborist selected by the Village Manager or the Village Manager's designee and paid for by the property owner.
- I. All tree planting and associated restoration work must be substantially completed within twelve months from the date the permit is issued, unless the permit is extended by the Building Inspector, in the Building Inspector's reasonable discretion. The Building Inspector may revoke any permit if the work is not proceeding according to permit.
- J. Any trees that does not survive for a period of two calendar years following planting must be replaced by the permit holder at no expense to the Village or the owner of the land, if the holder of the permit is not the owner of the land. The replacement must be made within 60 days of written demand by the Building Inspector or within such longer time as the Building Inspector specifies.
- K. Emergency Removals. If the Village Manager or the Village Manager's designee determines that a tree is a dangerous tree, the Village Manager or the Village Manager's designee may grant a permit for the immediate removal of the tree without following the procedures or requirements otherwise required by this section, including replacement of trees where required, but no tree 18 DBH or greater may be removed on an emergency basis by reason of disease without submitting to the Building Inspector a detailed report by a certified arborist justifying the removal. Removal of any tree is permitted by any person when **a tree has fallen down or been uprooted as a result of natural causes**, or there is an actual or ongoing emergency condition threatening life or property, **and** the immediate removal of a tree is necessary for the protection and preservation of life or property and there is no time to wait for granting of a tree removal permit. Within three business days of **such** removal, documented evidence, ~~such as~~ **including** photographs, along with a completed tree removal application, must be submitted to the Village Manager or the Village Manager's designee

setting forth the nature and extent of the immediate threat. Failure to submit the required documentation within three business days is a violation of this chapter.

- L. Certificate of occupancy. If a permit to remove a tree is issued in connection with construction that requires a building permit, the Building Inspector may not issue a certificate of occupancy until all tree planting and associated restoration work is completed to the satisfaction of the Building Inspector.

Section 5.

Section 342-78(A) of the Code of the Village of Mamaroneck is amended by adding subsection (4), as follows:

- (4) A tree preservation plan in accordance with the requirements of Chapter 318 of this Code.**

Section 6.

Section A348-20 of the Code of the Village of Mamaroneck is amended by adding subsection F as follows:

- F. A tree preservation plan in accordance with the requirements of Chapter 318 of this Code.**

Section 7.

If any section, subsection, clause, phrase or other portion of this local law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, the portion of the law declared to be invalid will be deemed a separate, distinct and independent portion and the declaration will not affect the validity of the remaining portions hereof, which will continue in full force and effect.

Section 8.

This law is adopted pursuant to the authority granted by Municipal Home Rule Law § 10(1)(e)(3) and will supersede the provisions of the Village Law to the extent that they are inconsistent with this local law.

Section 9.

This local law will take effect immediately upon its filing in the office of the Secretary of State in accordance with Municipal Home Rule Law § 27.

Exhibit B

From: [Beverley Sherrid](#)
To: [Robert Spolzino](#)
Cc: [Koller, Gail](#); [Nora Lucas](#); [Mark Goreczny](#)
Subject: Re: tree committee suggestions for the tree law
Date: Friday, August 5, 2022 10:23:42 AM
Attachments: [image9f35f9.PNG](#)
[imagebd12a.PNG](#)
[imageef143b.PNG](#)
[imagebd452b.PNG](#)
[imagece0262.PNG](#)

Caution: This email originated outside of the organization

Correct my explanation about "21 business days" to say that we intended it to represent four calendar weeks (plus one day), not three.

Thank you,
Beverley

From: Beverley Sherrid <BSherrid@vomny.net>
Sent: Thursday, August 4, 2022 11:43 AM
To: Robert Spolzino <RSpolzino@Abramslaw.com>
Cc: Koller, Gail <GKoller@vomny.net>; Nora Lucas <nluca@vomny.org>; Mark Goreczny <MGoreczny@Abramslaw.com>
Subject: Re: tree committee suggestions for the tree law

Thank you Bob. I expected you would make it more legal.

I have a couple of questions:

We removed "natural cause" tree losses from Emergency Removals so they would require only photo documentation, not a permit application. That intention seems to be expressed here in 318-8 A (3).

However, this draft also includes "natural cause" losses under Emergency Removals 318-8 K, and requires a permit.

Are these two sections in conflict?

Second, is it possible to specify that the Tree Bank, 318-8 G (3), exists solely for the use of the Planning Board? We don't want it to become a standard way for people to get out of the replanting requirement.

Finally, would it be possible to amend 318-8 F (3) to specify "21 business days"? Our original intention was business days, or 3 calendar weeks, but we seem to have omitted the word "business"