



VILLAGE OF DOBBS FERRY BOARD OF TRUSTEES AGENDA

MEETING DATE: APRIL 26, 2022
AGENDA ITEM SECTION: PUBLIC HEARINGS
AGENDA ITEM NO. : 1
AGENDA ITEM: CONTINUATION OF PUBLIC HEARING REGARDING PROPOSED REVISIONS TO VILLAGE CODE EXPANDING TREE PRESERVATION AND MANDATING RESTORATION
ITEM BACKUP DOCUMENTATION: <ol style="list-style-type: none">1. MEMORANDUM DATED APRIL 20, 2022 FROM VALERIE MONASTRA, AICP/VILLAGE CONSULTING PLANNER TO MAYOR ROSSILLO AND THE BOARD OF TRUSTEES2. PROPOSED REVISIONS TO DOBBS FERRY ZONING CODE, CHAPTER 300 ARTICLE VI "TREE COMMISSION" AND SECTION 300-51 "TREE REMOVAL PERMITS" (REVISED BASED ON INITIAL COMMENTS – FOR BOARD OF TRUSTEES CONSIDERATION MEETING/ADJOURNED HEARING 4.26.22)



MEMORANDUM

TO: Mayor Rossillo and Members of the Village Board of Trustees

FROM: Valerie Monastra, AICP

Re: Tree Removal and Permit

DATE: April 20, 2022

CC: Melissa Gilbon Ferraro, Village Administrator
Lori Lee Dickson Esq., Village Attorney

At the March 22, 2022, Village Board meeting a review and discussion of proposed changes to the current tree removal and tree permit regulations took place. After the Village Board meeting, additional changes were incorporated into the proposed local law based upon input from the Village Board and the public. This memo highlights the final revisions made to the regulations.

Tree Permit Exemptions

There is no longer an exemption for invasive species.

The Proposed law has the following exemptions:

- a. Removal of any tree not regulated.
- b. Removal of a Downed Tree.
- c. Routine pruning or trimming of a tree to maintain health and natural habit.
- d. Removal of any tree that has been found to be dead, dying, insect-infested or otherwise hazardous as determined in writing on business letterhead of a certified arborist and submitted to the Building Inspector.
- e. The Protected Trees present an unacceptable risk to the person or property of the owner, to the public, to public property or to the person or property of an adjoining property owner. A Tree Risk Assessment should be performed and documented by a Certified Arborist. Circumstances must be such that defects cannot be remedied by reasonable pruning or cabling of the tree.

Proposed Zoning Text Amendments; Dobbs Ferry Code Chapter 300 -
Article VI “Tree Commission” & Section 300-51 “Tree Removal
Permits”

§ 300-XX. Legislative intent.

The Village of Dobbs Ferry finds that the existence of trees within the Village makes a fundamental contribution to the health, safety and general welfare of Dobbs Ferry citizens and the community at large. Trees, in addition to their aesthetic benefits, are essential to riparian habitat, wildlife, energy conservation, temperature moderation and the healthy ecology of the area; trees help improve air quality and reduce global warming. These benefits to the community and environment increase as trees mature. Maturation of trees protects surface water quality, provides shade, offers windbreaks, controls water pollution by reducing soil erosion and flooding, offers a natural barrier to noise, yields advantageous microclimates and fundamental ecological systems. Trees, together with shrubs, contribute to property values of residential and commercial establishments, and preserve and enhance the natural beauty and appearance of the Village and its historic, non-urban character.

Our community's investment in its tree resources has accrued over many years. This investment can be rapidly squandered by indiscriminate damage to and destruction of trees, especially mature and/or specimen trees and shrubs. Unregulated destruction of trees and unacceptable pruning practices cause barren and unsightly conditions, increase municipal expense to control drainage and soil erosion problems, impair the stability and value of developed and undeveloped property and negatively impact the health, safety, environment, ecosystems and general welfare of the inhabitants of the Village of Dobbs Ferry.

The Village hereby establishes policies, regulations and standards necessary to ensure that the community will continue to realize the benefits provided by our trees. The provisions of this ordinance are enacted to:

- A. Control and regulate the indiscriminate cutting and destructive or excessive pruning of trees.
- B. Increase species and age diversity of our tree population to provide long-term stability of the aggregate canopy and ecosystem by requiring re-planting when trees are removed.
- C. Preserve our trees and the non-urban appearance of our Village by encouraging owners of existing homes, vacant lands and commercial parcels to save or replace mature tree species when developing their parcels.
- D. Protect public trees in municipal parks and easements.
- E. Facilitate Village stewardship of air, water, land and living resources, to sustainably protect the environment for the use of this and future generations.

Note – these definitions will be included with the definitions in DF Zoning Code

§ 300-14. Definitions.

CERTIFIED ARBORIST – An individual who has obtained knowledge and competency in arboriculture or forestry through an accredited body such as the International Society of Arboriculture (ISA) arborist certification program, the American Society of Consulting Arborists, the New Jersey Society of Certified Tree Experts, the State of Connecticut Department of Environmental Protection or the New York State Cooperating Consultant Forester Program.

CERTIFIED ARBORIST REPORT – A report prepared by a Certified Arborist containing specific information on the tree(s) and/or shrubs to be removed, including, but not limited to: species, size, location, condition, structure, height, crown integrity, crown spread, age, pruning history and presence of pests or disease. The report shall include the arborist's name, address, business affiliation, certification information and signature.

CLEAR-CUTTING - The cutting of 5 or more trees with a diameter of six inches or more at a height of 54 inches (diameter at breast height or DBH) above the natural grade on a given lot within a twelve-month period.

CRITICAL ROOT ZONE (CRZ) – The area containing the volume of roots necessary for maintenance of tree health and stability. The CRZ is determined as a circle with a diameter calculated from the Diameter at Breast Height (DBH) using the equation: $(DBH \times 1.5) \times 2$, which typically extends beyond the Dripline of the tree (as defined below).

DBH (DIAMETER AT BREAST HEIGHT) – A standard measurement of tree size taken by measuring the diameter of the trunk at a height of 4.5 ft (54 inches) above ground level. Guidelines for determining DBH in some of the more complicated situations are as follows:

- A. If the tree has branches, bumps or forks that interfere with DBH measurement, measure below that point and record the height at which DBH was determined.
- B. If the tree is growing vertically on a slope, measure DBH from the uphill side of the slope.
- C. If the tree is leaning, measure DBH in the direction of the lean.
- D. If the tree splits into several trunks close to the ground (i.e. has a multi-stemmed or low-branched habit), the DBH of the tree is the sum of the DBH of each trunk.

DESTRUCTIVE PRUNING PRACTICES – Pruning of a mature tree in ways that are in violation of Best Practices, as defined by the American National Standards Institute Guidelines for Tree Pruning [ANSI A300 Part 1]. Destructive Pruning Practices include, but are not limited to, tree topping, defined as cutting back large diameter branches to stubs, and removal of more than 25% of a tree's canopy.

DOWNED TREE – A tree that has fallen over or is broken and is lying on the ground or on a structure.

DRIPLINE – The outermost limit of the canopy of a tree as delineated by the perimeter of its branches and which, extended perpendicularly to the ground, encloses the tree.

GIRDLING - An activity that removes or injures the bark of a tree trunk, typically extending around much of the tree's circumference.

HAZARDOUS TREE – A tree that exhibits serious defects, that is, obvious and visible signs that the tree is failing and that it presents an imminent threat to the health and safety of persons, property, power lines or places where people gather.

Examples of serious defects include, but are not restricted to, one or more of the following conditions:

- A. Excessive damage by an act of God, usually a weather event such as windstorm, lightning strike or flooding, with major broken branches, split trunk, large cracks or other defects that cannot be corrected by pruning.
- B. Severe cracks in the main stem or in branch unions that penetrate deeply into the wood of the tree.
- C. Advanced decay associated with cracks, branch unions, cavities in the tree or root flares and buttress roots. Evidence of fungal activity including mushrooms, conks, and brackets growing on root flares, stems, or branches can be indicators of advanced decay.
- D. Leaning beyond 45 degrees from vertical with evidence of recent root exposure, soil movement or soil mounding.
- E. Supported solely by the action of another tree or object.

PROTECTED TREE -- Any of the following:

- A. A tree with a DBH of eight (8) inches or more, regardless of location.
- B. A tree with a DBH of three (3) inches or more located in a Wetland, Watercourse Buffer or Watershed Buffer (as defined elsewhere in Village Code).
- C. A tree with a DBH of three (3) inches or more located on a slope of 25% or greater.
- D. A tree that has been planted as a specific requirement of Site Development Plan approval or as part of a previous Replanting or Restoration Agreement.
- E. A tree of Historic or Unique Value to the Village (as defined herein).
- F. A tree with a DBH of three (3) inches or more designated by the New York State Department of Environmental Conservation as a protected native plant for our region.

PUBLIC PROTECTED TREE – Any of the following:

- A. A tree with a DBH of 8" or more located on lands owned by the Village or land upon which property rights such as easements are imposed for the benefit of the Village.
- B. A tree, regardless of size, planted in a designated tree well or curbside in the public right of way.

REPLANTING AGREEMENT – A written agreement between the property owner and the Village specifying types and sizes of trees and/or shrubs to be planted as replacements for those that have been removed.

TREE REMOVAL (TR) APPLICATION – A completed form entitled "Tree Removal Permit Application" available from the Building Department or the Village website, to be submitted by any party wishing to remove one or more Protected Trees as outlined herein.

TREE OF HISTORIC OR UNIQUE VALUE -- A tree with unique or noteworthy characteristics or intrinsic value, including, but not limited to species, age, location, historical significance, ecological value, or incomparable or irreplaceable aesthetic benefit to the community or environment. Examples include:

- A. "Champion" tree listed on an accredited tree registry or shown to be of comparable size to such listed tree.
- B. Rare or endangered species on federal or state lists.
- C. Specimen tree exhibiting qualities such as noteworthy leaf color or shape, peeling bark, floral display, fruit, overall form or habit, unique wildlife habitat support, or rarity.

Note: The following will be added to §300-21 (C) Powers and Duties"

The Tree Commission, on its own or upon recommendation or nomination from the public, shall prepare a proposed list of Trees with Historic or Unique Value and provide such list to the Board of Trustees for consideration and adoption by resolution. Upon adoption a copy of such list shall be provided to the Village Clerk who shall maintain such list as a Village record. Said list should not be deemed all-inclusive or complete and may be periodically reviewed and updated as set forth herein.

TREE COMMISSION (TC) – As defined in Article VI of this Chapter.

TREE FUND -- A special purpose fund into which shall be deposited any penalties for violations or payments in lieu of restoration/replanting which shall be used at the discretion of the Village Board of Trustees to promote the intent and purpose of this Chapter, including the purchase and maintenance of trees, shrubs, plants and green spaces. The Board of Trustees may request from, and/or consider a written recommendation initiated by, the Tree Commission as to the use of the funds. The Village Board of Trustees shall establish any fee or basis of payments in lieu of

replanting and same shall be included in the master fee schedule and be revised in accordance with Chapter 175.

TREE REMOVAL PERMIT – A permit approved by the Tree Commission and duly issued by the Building Department or designee pursuant to the terms of this chapter. The permit consists of a written document in form determined by the Building Department acknowledging which trees have been approved for removal and is accompanied by a Permit Sign to be posted publicly. The permit may also include additional compliance requirements such as a Replanting Agreement or Landscape Plan.

TREE RISK ASSESSMENT – A determination of the extent to which a tree is hazardous using an industry-wide rating scale taken from “A Photographic Guide to the Evaluation of Hazard Trees in Urban Areas” published by the International Society of Arboriculture. Risk is rated by evaluating the probability of failure of the tree, its size and the targets that could be damaged if it fails.

UTILITY DISTRIBUTION LINE VEGETATIVE MANAGEMENT – The procedure by which electrical utility companies manage potential or existing conflict between power lines and vegetation, thereby minimizing tree-related power outages. While most vegetative management involves tree trimming, trees that pose hazards to power lines because of ill health, proximity to the lines or other problems may be determined to be hazardous by the utility’s arborist and be removed.

§ 300-XX. Allowable activities.

Tree Removal Permit is not required for:

- A. Removal of any tree not regulated by this chapter.
- B. Removal of a Downed Tree.
- C. Routine pruning or trimming of a tree to maintain health and natural habit.
- D. Removal of any tree that has been found to be dead, dying, insect-infested or otherwise hazardous as determined in writing on business letterhead of a certified arborist and submitted to the Building Inspector.
- E. The Protected Trees present an unacceptable risk to the person or property of the owner, to the public, to public property or to the person or property of an adjoining property owner. A Tree Risk Assessment should be performed and documented by a Certified Arborist. Circumstances must be such that defects cannot be remedied by reasonable pruning or cabling of the tree.

§ 300-XX. Prohibited activities.

No person, firm or corporation shall purposely, carelessly or negligently take any action that will result in killing, destroying or significantly degrading the immediate or long-term viability of any Protected Tree. Such actions include, but are not limited to:

- A. Removal of a Protected Tree without a permit.
- B. Clearcutting.
- C. Destructive Pruning Practices
- D. Girdling or partial girdling or other significant bark damage.
- E. Compaction of CRZ due to construction or other activity. Disallowed activity within the CRZ includes: traversal, access or parking by construction vehicles; manual construction activities excluding landscaping (unless specifically authorized by an approved site development plan); excavation and stockpiling of materials.
- F. Installation of impervious surfaces over more than 25% of root zone.
- G. Severing or trenching through more than 25% of the root zone.
- H. Grade change exceeding three (3) inches within the CRZ.
- I. Poisoning or application of chemicals causing a failure to thrive.

§ 300-XX. Regulated activities; permit required for removing Protected Trees.

- A. Protected Tree. No person, firm or corporation shall purposely, carelessly or negligently cut down any Protected Tree or take any action that will result in the cutting down of any Protected Tree unless a Tree Removal Permit is obtained, as provided in this chapter.
- B. Clearcutting. A TR Permit Application is required if an aggregate of five (5) or more trees (as defined in the Zoning Code, 6 inches or more DBH) are being removed on any single lot within any given 12-month period.
- C. Notwithstanding any other provision of this chapter, where Protected Tree or Clearcutting removal is proposed in connection with any site plan or subdivision application submitted to the Planning Board or Village Board for approval, Protected Trees may be removed from the affected property only in conjunction with and subsequent to the approval of a final subdivision plat or final site development plan and are subject to the requirements of Section 300-XX, Tree Valuation.

§ 300-XX. Granting of Tree Removal Permits.

- A. Permits for the removal of Protected Trees may be granted if the Protected Trees are healthy but cause undue hardship by substantially interfering with a permitted and intended use of the property. No report from a Certified Arborist is required for a healthy tree. However, the applicant should supply a description of the intended use and why the Protected Trees present an undue hardship.

- B. A Replanting Agreement for the replacement of 50% of the total aggregate diameter of trees proposed for removal as regulated under this Article with new trees or other appropriate vegetation such as shrubs in accordance with Tree Valuation criteria (see § 300-XX: Tree Valuation) is required for any tree removal permit.

§ 300-XX. Procedural requirements for Tree Removal Permits.

- A. Applications for Tree Removal Permits shall be filed with the Building Department which shall review them and when determined as complete shall be referred to the TC for its review. The TC has the authority to request additional information deemed to be necessary to rendering its decision.
- B. TR applications must be made in writing according to rules and regulations set forth by the Building Department. A permit and escrow fee shall be established by resolution and adjusted from time to time by the Board of Trustees and included in the Fee Schedule in accordance with Chapter 175. The permit fee shall be remitted with the application.
- C. Tree removal plan indicating the trees that are proposed to be removed.
- D. A landscape plan showing the locations, quantities, species, varieties and sizes of trees and/or shrubs to be planted. The plan may also include the locations of existing trees and other landscape features per the requirements of **§ 300-XX. Tree Valuation** must also be attached to the application.
- E. The TR Application shall contain an acknowledgement by the property owner that members of the TC may require access to the property to inspect Protected Trees. Advanced notification of inspection visits will be provided unless specifically waived by the property owner. TC members may be accompanied by a Certified Arborist and other consultants and photos may be taken for purposes of site documentation.
- F. The TC shall document any decision and comments on an Application for TR Permit in writing, a copy of which will be provided to the property owner by the Building Department.
- G. If the TC approves the permit, in addition to the written decision of the TC, the Building Department will issue both the permit and a permit sign for public posting on the site at a location clearly visible from the street. The sign must be posted at least three (3) days before tree removal begins. Permits must be available on site for presentation to Building Inspector, code enforcement officer or other enforcement officer upon request while the removal is in progress. The tree must be tagged with a clearly visible ribbon or blaze during the period of

notice.

- H. Applicant will be required to sign the Replacement Agreement upon receipt of the TR permit.
- I. Tree Removal Permits expire upon the expiration of six calendar months after the approval date.

300-XX. Emergency removal of Protected Trees.

- A. The provisions of §300-XX above shall not apply for the removal of a Hazardous Tree under the following Emergency Procedure:
 - i. A TR Application designated as an Emergency Removal shall be filed with the Building Department which contains a certification by a Certified Arborist as to the need for the Emergency Removal.
 - ii. Within 5 business days of any emergency tree removal conducted prior to issuance of a Tree Removal Permit, the property owner must submit a TR Application after the fact which contains written statement by a Certified Arborist of the need and circumstances for the immediate Emergency Removal for safety reasons and such other documentation of the emergency event, including photographic documentation of tree before and after removal.
- B. Removal of a Protected Tree without adherence to the Emergency Procedure shall be a violation of this chapter.
- C. The Emergency Procedure will be waived:
 - i. When a tree is determined to be dangerous by a police officer, firefighter, Public Works official or civil defense official acting in their professional capacity during or in the aftermath of catastrophic events or states of emergency.
 - ii. When tree removal is determined to be necessary by fire department personnel actively engaged in fighting a fire.

§ 300-XX. Tree valuation.

- A. In the case of non-violation conditions, Tree Valuation is defined as “equivalent diameter inches”, i.e. a 20” DBH tree would be deemed equivalent to up to 20” caliper of replacement trees.
- B. In connection with all tree permits, subdivision, and site plan applications, the project shall meet the minimum requirement of the replacement of 50% of the

total aggregate diameter of trees proposed for removal with new trees in accordance with the approved plan for tree replacement. Tree replacement shall be required on site unless the approving authority determines that, because of site constraints, it is impracticable or impossible to fully meet this mitigation requirement on site. In such case, the approving authority may consider payment of a fee in lieu of planting into the Village Tree Fund to satisfy the unmet portion of the tree replacement requirement.

§ 300-XX. Public Protected Trees; Utility Distribution Line Management.

- A. Public Protected Trees may be removed only by a Village employee, or by a firm or individual retained or duly authorized by the Village. Removal of or damage to a Public Protected Tree by any other person, firm or corporation is a violation of this chapter.
- B. A TC application is not required for the Village to remove a Public Protected Tree, but a recommendation to the Village Board from the TC is required. Information such as an arborist report and any test results leading to the Village's decision for tree removal shall be made available upon request. Documentation of Public Protected Trees that have been removed shall be forwarded to the TC.
- C. In the case of tree removal as a part of Utility Distribution Line Vegetation Management, performed by the utility company's contractors, TC applications and permit signs are not required. A list of trees slated for removal by the utility shall be submitted to the Building Department with a copy forwarded to the TC before tree removal begins.

§ 300-XX. Penalties for violations.

- A. Penalties. In addition to any penalty or fine provisions elsewhere in the Code, including §300-29 (D)(8), and any available remedy at law or equity, any person or entity removing or causing the removal of one or more Protected Trees without first obtaining the required Tree Removal Permit, or causing significant or irreparable damage to a Protected Tree, or otherwise violating this chapter shall be subject to penalties including:
 - i. Mechanical damage to a Public Protected Tree, such as knocking over, breaking or uprooting the tree, bark tearing, limb breakage, tree well damage or damage to the tree roots caused by a vehicle: up to \$500 per violation.
 - ii. Violations affecting a Protected Tree or Public Protected Tree: up to \$500 per violation.
 - iii. Violations affecting a Protected Tree within a conservation easement, wetland, watercourse or designated buffer area: up to \$1,000 per

violation.

- iv. Violations affecting a Tree of Historic or Unique Value: up to \$2,000 per violation.
- v. Other violations, including, but not limited to, the removal of five (5) or more trees without a permit: up to \$2,000 per violation.
- vi. Each tree may be considered a separate violation and a penalty shall be assessed accordingly.

B. Upon receipt, such penalty amounts shall be deposited into the special purpose fund as established herein known as the Tree Fund to be used at the discretion of the Village Board of Trustees to promote the intent and purpose of this Chapter. The Board of Trustees may request from, and/or consider a written recommendation initiated by the TC as to the use of said funds.

C. Any person or entity violating the tree provisions in this Chapter may be required to enter into a binding and enforceable Restoration Agreement with the Village in addition to any other penalties or fines associated with the violation. The Village Administrator is authorized to execute such agreement on behalf of the Village.

- i. The Building Inspector has the sole discretion to determine the need for a Restoration Agreement based on the particulars of the violation at issue.
- ii. A Restoration Agreement shall include enforceable provisions for re-planting of replacement trees and/or other vegetation on the property, the totality of which must be comparable in value (e.g. species, quality, quantity, size), based on a valuation analysis (See § 300-51 XX: Tree Valuation) and the particulars of the violation at issue. The Restoration Agreement shall include a detailed landscape plan which must be reviewed and approved by the Village. The Building Inspector shall refer the proposed landscape plan for review and written recommendation, the expense of which shall be the sole responsibility of the violator, by either a qualified consultant retained directly by the Village, or by the TC which may also obtain the services of a qualified consultant.
- iii. Should on-site restoration be determined by the Village's qualified consultant or the TC to be impractical and/or undesirable in full or in part, an equivalent monetary value amount shall be deposited into the Tree Fund.
- iv. To assist the Village in determining the elements of the Restoration Agreement, the services and reporting of an arborist or horticultural consultant, or other qualified consultant may be required. Any expense

associated with obtaining such services will be the sole responsibility of the violator. The Village may require the deposit of funds into escrow for use in the payment of consultants. Any escrow fee shall be established by resolution and adjusted from time to time by the Board of Trustees and included in the Fee Schedule in accordance with Chapter 175.

- v. Restoration shall be completed within 6 months of execution of the Restoration Agreement and the Building Department shall be notified within ten (10) business days after restoration work has been fully completed so that a final site inspection may be conducted. If seasonal planting requirements prevent the timely completion of restoration, the timeline may be extended in writing by the Building Inspector.
- vi. No Certificate of Occupancy shall be issued by the Building Inspector until the restoration work is completed to the reasonable satisfaction of the Building Inspector, subject to conditions as Building Inspector may prescribe.
- vii. If trees or other specified vegetation included in the Restoration Agreement fail to survive for a period of two calendar years following planting, they shall be replaced by the party to the Agreement with identically specified items unless a modification of the Restoration Agreement is obtained from the Building Department. Said replacement shall be within 60 days following written demand from the Building Inspector for such replacement, or within an extended period of time as may be specified. Should the party to the Agreement fail to replace the trees or vegetation pursuant to demand within the required period of time, the party to the Agreement may be subject to further penalties, fines or other enforcement actions.

§300-XX. Appeals

- A. Applicants may appeal any final decision of the Tree Commission, in writing, to the Zoning Board of Appeals. Such written appeal is to be filed with the Building Department. Said appeal shall state specifically the location of the trees in relation to roads, structures and adjoining properties and shall further state the reasons why the permit application should have been decided differently. The appeal should refer to the criteria for granting permits noted in Subsection XX above. The ZBA may engage with one or more consultants, the costs for which shall be borne by the appealing party in accordance with escrow procedures established by this Code.
- B. Appeal of decisions as to tree removal and restoration by the Board of Trustees and Planning Board, shall be made according to the standard appeal provisions for those boards and approval processes.