

## 1. Authority

Pursuant to Section 225-9, Town of Lynnfield General Bylaws, these Rules and Regulations prescribe the size, form, contents, style, and number of copies of plans and specifications, the procedure for the submission and approval of such plans, and the procedure for determining final compliance with these regulations. If any requirement of these Rules and Regulations conflicts with a provision of the Lynnfield General Bylaw the latter shall govern.

## 2. The Tree Preservation Bylaw will apply when the property owner is:

- Building a new dwelling, including constructing a new dwelling after razing an existing dwelling.
- Seeking a Site Plan approval (as defined in the Lynnfield Zoning Bylaw).
- Seeking a Special Permit (as defined in G.L.c.40A, Sec 9, and in the Lynnfield Zoning Bylaw).
- Seeking a Subdivision approval.
- Undertaking clearing, grading, or other site preparation work withing twelve (12) months prior to undertaking any of the above.

## 3. Locating Protected Trees

Any tree with a Diameter at Breast Height (DBH) of six inches (6") or larger or having an Aggregate Diameter of twelve inches (12") DBH or larger within the following Tree Borders is considered to be a Protected Tree. Table 1 depicts the location on the lot, or Tree Border, where trees 6" DBH or greater must be protected if retained, or mitigated if removed.

**Table 1: Location of Tree Border in Each Zoning District**

| Zoning District   | Tree Yard<br>(distance in feet from lot lines) |      |      |
|---|--|------|------|
|   | Front  | Side | Rear |
| Residential A   | 30   | 15   | 20   |
| Residential B   | 40   | 20   | 20   |
| Residential C   | 40   | 25   | 40   |
| Residential D   | 40   | 30   | 40   |
| Elderly Housing   | 50   | 25   | 30   |
| Limited Business  | 40   | 15   | 20   |
| General Business  | 40   | 15   | 20   |
| Commercial  | 40   | 15   | 20   |
| Limited Industrial  | 100  | 100  | 40   |
| Office Park   | 50   | 50   | 50   |
| Note: The Tree Border is equal to the setbacks in the zoning district |  |      |      |

The diameter of a tree is measured at breast height, which is considered to be the area of the trunk four and one-half (4.5) feet above the existing grade at the base of the tree; the following formula may be used to determine the diameter:

Tree circumference at breast height /  $\pi$  = diameter

*Example:*

*Tree circumference at breast height = 32"*

*$\pi = 3.14$*

*$32'' / 3.14 = 10.18'' \text{ DBH}$*

#### **4. Materials that must be submitted for review when the Tree Preservation Bylaw is triggered, but the project MAY NOT harm a Protected Tree:**

If the Tree Preservation Bylaw applies but the project MAY NOT harm a Protected Tree, the property owner may be eligible for a Certificate of Exemption.

- a. A property owner seeking a Certificate of Exemption for a Tree Permit must submit a Certificate of Exemption application and pay the associated \$50 permit fee to the Planning Board before applying for a Building Permit, Site Plan approval, Subdivision approval, or a Special Permit.
- b. The Certificate of Exemption application must summarize the Building Activity and how it relates to the Protected Trees, if applicable; and attest to one of the conditions below. Examples of activities that DO have the potential to cause harm when performed inside the Critical Root Zone include, but are not limited to, passage and parking of vehicles, materials storage, washout from paint of other substances, filling, excavation, grading, or trenching.
  - i. The Building Activity permit is for improvements outside of the Tree Border, that when reasonably considered, do not have the potential to harm any Protected Trees.
  - ii. The Building Activity permit is for improvements inside of the Tree Border, that when reasonably considered, do not have the potential to harm any Protected Trees.
  - iii. The removal of the Protected Tree has already been mitigated based on a previous Tree Permit.

#### **5. The Planning Board has the discretion to request additional information if deemed necessary, and/or withhold a Certificate of Exemption and require the property owner to submit a Tree Permit application. Materials that must be submitted for review when the Tree Preservation Bylaw is triggered, but the property owner has not been granted a Certificate of Exemption:**

If the Tree Bylaw applies and a Certificate of Exemption has not been granted, the property owner will need to obtain a Tree Permit from the Planning Board.

- a. The property owner must submit a Tree Permit application and pay the associated \$100 permit fee to the Planning Board before applying for a Building Permit, Site Plan approval, Subdivision approval, or a Special Permit.

- b. The Tree Permit application must include a site plan that shows the location of Protected Trees. It may be part of a landscape plan or a separate plan. The site plan shall, at a minimum, include the following elements:
- i. Boundaries of the subject property, including all property lines, easements, and rights-of-ways of public and private ways;
  - ii. The location of all existing buildings, driveways, retaining walls, and other improvements, with an indication of those features to be retained or removed, if any;
  - iii. The location of all planned buildings, driveways, retaining walls, grade changes, and other improvements, if any;
  - iv. The location of the Tree Border;
  - v. The location, height, DBH, and species of all:
    - a. Protected Trees to be removed, if applicable;
    - b. Protected trees to be retained, if applicable; and
    - c. Protected Trees that were removed within twelve (12) months prior to application for a Tree Permit, if applicable.
  - vi. All plans must be drawn to a uniform scale (preferably 1" = 10', 1" = 20', or 1" = 30'). All plans shall be a minimum size of 11" x 17" (preferred) and a maximum size of 24" x 36", with 3/4" borders. Letter sizes on plans should be no smaller than 1/8".
  - vii. Additional submission requirements: The Planning Board may require the property owner to submit a to-scale survey prepared, stamped, dated, and signed by a Certified Arborist and/or a Certified Surveyor, to verify the property boundaries, locations of trees or buildings, Protected Tree species, and/or other application requirements, as part of the Tree Permit application. Any applicant claiming hazardous tree designation(s) must include with their application documentation completed by a certified arborist substantiating said designation(s).

In addition to the preceding requirements:

- If Protected Trees are intended to be **retained**, additional elements must be added to the Tree Permit application as outlined in A below.
- If Protected Trees are intended to be **removed and mitigated by planting replacement trees**, additional elements must be added to the Tree Permit application as outlined in B below.
- If Protected Trees are intended to be **removed and mitigated with a contribution to the Lynnfield Tree Replacement Fund**, additional elements must be added to the Tree Permit application as outlined in C below.
- If Protected Trees are intended to be **removed and mitigated by any combination of the above listed provisions**, additional elements must be added to the Tree Permit application as outlined in D below.

**A. Retention of Protected Trees:**

- a. The site plan shall be required to show the location of the Tree Save Area for all Protected Trees to be retained and the tree protection measures to be installed.
- b. The Planning Board may require written documentation prepared, stamped, dated, and signed by a Certified Arborist confirming the Tree Save Area has been installed correctly and consistent with submitted plans prior to the commencement of the project.
- c. For projects that encroach within the CRZ, a maintenance plan shall be submitted for such trees and shall be prepared, stamped, dated and signed by a Certified Arborist; at a minimum, the maintenance plan shall identify the course of action that will be taken to maintain the tree in good health for a period of no less than twenty-four (24) months from the date of Tree Permit issuance.

**B. Planting Replacement Trees:** The site plan shall be required to identify the location, caliper, species, and planting schedule of replacement trees to be planted to mitigate the removal of a Protected Tree(s). The replacement trees must conform to the replacement tree requirements of the Lynnfield Tree Preservation Bylaw Section 225 – 5, and the approved species list available at the Planning Office.**C. Contributing to the Lynnfield Tree Replacement Fund:** The Tree Permit application shall be required to inventory the number of Protected Trees to be removed and the associated contribution amount based on the total DBH inches to be removed, as determined by the Tree Warden and published on an annual basis.**D. Combination of Retention and Mitigation:** Any combination of tree retention, planting of replacement trees, or contribution to the Lynnfield Tree Replacement Fund can be used. Mitigation for those trees removed must be clearly identified either on the submitted plan or in a written document accounting for each DBH inch of Protected Trees removed and the mitigation proposed. This is not required for tree retention.**E.** The Planning Board may request that the applicant submit additional materials for consideration before issuing a Tree Permit.**6. The Tree Permit application will be reviewed as follows:**

- a. The Planning Board shall date stamp or otherwise record the date of filing of each Tree Permit application, and complete the review of each Tree Permit application no later than ten (10) business days after the submission of a completed Tree Permit application.
- b. If the applicant's Tree Permit application is consistent with the requirements of the Lynnfield Tree Preservation Bylaw and the Lynnfield bylaws, the Planning Board will issue a Tree Permit.
- c. If the proposal does not satisfy these requirements, the Planning Board will so notify the applicant and inform them as to what is required to complete the application.
- d. If the Planning Board requires a site plan approved by a Certified Arborist and/or Certified Surveyor to verify that the proposal meets the requirements, the Planning Board will so notify the applicant and deny the permit. The Planning Board may conduct a site visit as part of the Tree Permit application review.

- e. If a Protected Tree has been removed prior to the Tree Permit application and is subject to the terms of this article, the Planning Board may use site visits, aerial imagery, and other means to estimate the species and DBH of the removed Protected Tree.
- f. If the Tree Permit application was submitted in connection with a Building Activity permit, the Planning Board shall report to the Building Inspector within ten (10) business days of a request whether said Tree Permit has been granted or denied.
- g. If the Planning Board fails to act on an application deemed to be complete within thirty (30) days after the application has been made, the Tree Permit application shall be deemed to be approved.
- h. In addition to the application fee, the Planning Board has the discretion to impose an additional fee on those applications which require, in the judgment of the Planning Board, review by an outside certified arborist and/or relevant consultant(s) due to the size, scale, and/or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. Hiring an outside certified arborist and/or consultants ensures compliance with all relevant Town bylaws, rules and regulations.
  - i. Submittal of Fees. Certified arborist and/or special consultant fees shall be submitted at a time to be determined by a majority vote of the Planning Board for deposit in an account established pursuant to MGL c. 44, § 53G. Failure to submit the fee as required by the Planning Board shall require the Planning Board to discontinue or suspend the proceedings, and no review work shall commence until the fee has been paid in full. The time prescribed for the Planning Board to review and act on an application shall be tolled day for day while the Planning Board awaits receipts of said fees, and in no event shall inaction by the Planning Board while it awaits receipt of said fees constitute constructive or deemed approval of the application by the Planning Board.
  - ii. Limitations of Fee(s). Fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the review, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's designated recipient and a final report of said account shall be made available to the applicant. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
  - iii. Appeal. The applicant may appeal the Planning Board's selection of an outside certified arborist and/or chosen consultant to the Select Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications of an educational degree in or related field at issue, or three or more years of practice in the field at issue or a related field. The applicant must specify the grounds which the applicant claims constitute a conflict of interest or a failure

to meet minimum professional requirements. The required time limits for action on the application shall be automatically extended by the duration of any appeal to the Select Board.

**7. Compliance with the Tree Permit will be verified as follows:**

- i. As-Built. Upon completion of project, the applicant will submit an as-built plan to the Planning and Conservation office that depicts the boundaries and setbacks of the lot, the locations of all protected trees remaining and the locations of all trees planted for mitigation.
- ii. Nursery Invoice. Upon completion of project, a nursery invoice or related documentation will be provided to the Planning Board with an accompanying as-built plan to substantiate trees purchased and planted as mitigation.
- iii. Final Site Visit. Upon completion of project and submission of As-Built plan, the applicant will request a final site visit for review.
- iv. Sign-Off. A sign-off on the Final Inspection for building activity or issuance of a Certificate of Occupancy by the Building Department, in addition to a letter from the Planning and Conservation office determining permit compliance will serve as verification that all requirements of the Tree Preservation Bylaw have been met or have been assured.
- v. Signed agreement by subsequent owner. If property is sold or otherwise transferred within two years of project completion, the Applicant will provide the successor property owner with written notice outlining ongoing conditions for tree permit compliance and provide a copy of said notice to the Planning and Conservation office.