

Underline Text proposed to be added and strikethrough deleted by amendment at Town Meeting

ARTICLE XX. TO ADOPT MODIFICATIONS TO THE ZONING BY-LAW TO FURTHER THE SUSTAINABLE TREE INITIATIVE AND PRESERVE EXISTING TREES AND MITIGATE TREE LOSS, THEREBY MAINTAINING THE ECOLOGICAL, ECONOMIC, AND SOCIAL BENEFITS THAT COME WITH A HEALTHY TREE CANOPY.

1. Add or amend the following definitions to SECTION II of the Town of Weston Zoning Bylaw:

Certified Arborist – A professional arborist possessing current certification issued by the International Society of Arboriculture (I.S.A.) and/or the Massachusetts Arborist Association (M.A.A.).

Critical Root Zone (CRZ) - The minimum area beneath the canopy of a tree which must be left undisturbed in order to preserve a sufficient root mass to give a tree a reasonable chance of survival. The CRZ is represented by a concentric circle centering on the tree's trunk. The required minimum radius of the CRZ shall be determined by multiplying a tree's DBH (in inches) by eighteen (18) inches. Example: A tree with a DBH of twenty (20) inches shall have a CRZ with a minimum radius of 360 inches or 30 feet (20" x 18" = 360" or 30').

Diameter at Breast Height (DBH) - The standard measure of tree size for trees that are at least four (4) inches in diameter at a height of four and one half (4.5) feet above the existing grade at the base of the tree. If a tree splits into multiple trunks below four and one-half (4.5) feet above the existing grade, the DBH shall be considered to be the measurement taken at the narrowest point beneath the split.

Invasive Tree – Examples of invasive trees include the following: Acer platanoides L. (Norway maple), Acer pseudoplatanus L. (Sycamore maple); Ailanthus altissima (Tree of heaven); Robinia pseudoacacia L. (Black locust). The current complete list of invasive species may be found on the Massachusetts Invasive Plant Advisory Group (MIPAG) website.

Lot Interior – The area of a lot between the required setbacks where structures can be located.

Solar Energy System – A device, or array of devices, the purpose of which is to provides for generation or storage of electricity from sunlight, or the collection, storage, and distribution of solar energy for space heating or cooling, electric interior lighting, or water heating.

Totally Demolished - pulling down, razing or destruction of the entire building.

2. Add the following Section to V. USES. I. GENERAL PROVISIONS IN ALL DISTRICTS.

6. TREE PROTECTION & PRESERVATION

a. Purpose and Intent:

- (i) The purpose of the Sustainable Tree By-law is to encourage the preservation and protection of trees during certain demolition or construction activities by designating

areas of a lot where trees 6+” DBH must be protected and their removal requires mitigation either by the planting of new trees, the payment of fees to support the Town’s tree planting and maintenance efforts or preservation of trees in the lot interior.

- (ii) Requiring mitigation of tree removal is intended to:
 - (1) Provide visual and acoustical buffering between properties.
 - (2) Reduce topsoil erosion and storm water runoff from one property to another.
 - (3) Enhance the quality of life and the environment of Weston.
 - (4) Improve air quality and sequester carbon.
 - (5) Preserve and enhance habitat for wildlife.
 - (6) Preserve the character of wooded and natural areas; enhance the overall beauty of the Town and protects and increase property values.
- (iii) Recognizing the public cost, which include erosion, storm water drainage, heat gain etc. to the Town due to tree removal on private property.
- (iv) Balancing the rights of individual property owners to develop their properties in accordance with the existing Town and State laws with the public good of the overall health, safety and welfare interests of the community.

b. Applicability: The requirements of this Section shall only apply under any of the following circumstances:

- (i) A principal use building is totally demolished; or
- (ii) Construction of any building on a vacant lot; or
- (iii) Construction which requires a building permit under 760 CMR, Massachusetts State Building Code as amended of one or more buildings or additions to building(s) on a lot, where the total area of the footprint of the new buildings will result in an increase of 100% or more of the total footprint of the pre-existing building(s).

c. Non-applicability: Even under the circumstances under subsection b, “Applicability,” the requirements of this section shall not apply to:

- (i) Construction activity where no trees are being removed from the setback area throughout the construction period
- (ii) Emergency work necessary for public safety, health and welfare or condemnation due to casualty as determined by the Inspector of Buildings, Board of Health, or other empowered town official.
- (iii) Rebuilding in kind within the previous footprint due to casualty loss.
- (iv) Dead trees or trees determined to be High or Extreme Hazard through the ISA Basic Tree Risk Assessment Form by a Certified Arborist.
- (v) Town-owned public trees, including trees that are considered to be Public Shade Trees pursuant to M.G.L. Chapter 87, which are protected by the Town’s Tree Warden.
- (vi) Creation of a driveway when no driveway exists on the property. A 20’ wide swath through one street facing the Zoning Setback Area without mitigation is allowed.
- (vii) Trees for which mitigation was provided as part of a prior application, but which were not actually removed.

- (viii) Areas of property that are either within a jurisdictional Resource Area or within a Buffer Zone to a Resource Area as defined by the Wetlands Protection Act (Mass Gen. Laws Chapter 131) and its implementing regulations (310 CMR 10.00) or that are under the jurisdiction of a local wetlands bylaw, wherein the Conservation Commission regulates the retention and/or replacement of trees; in such areas the Conservation Commission may enforce or waive this act at its discretion. Trees located outside areas under the jurisdiction of the Conservation Commission shall be subject to the procedures of this Section.
 - (ix) Trees removed for activities noted in Article XXX “Farm Preservation” of the Weston Town Bylaws and in the Massachusetts General Laws referenced in that Section defining agricultural activity.
- d. Special Condition: Trees removed for installation of a roof mounted Solar Energy System.
- (i) If pruning a tree will not allow adequate solar exposure, then a tree(s) may be removed without mitigation required under this by-law, provided the removal is documented as necessary in a shade report by a licensed solar installer, and requirements the solar array is installed and operational before the application for Certificate of Occupancy
 - (ii) If at the time of application for a Permanent Certificate of Occupancy the solar energy system is not installed and operational at the proposed or greater capacity, the applicant shall provide mitigation under Section g. prior to issuance of a Certificate of Occupancy
 - (iii) If at the time of application for a Temporary Certificate of Occupancy the solar energy system is not installed and operational at the proposed or greater capacity, the applicant shall provide the required mitigation under g.ii as surety for installation of the solar energy system. The contribution shall be returned when the solar energy system is installed and operational at or greater than the proposed capacity.
- e. Scope: The bylaw shall apply to:
- (i) The Zoning Setback Area, defined as the area between the property line and zoning setback required in Section VI of the bylaw.
 - (ii) Any existing live tree with a DBH of six (6) inches or greater within the Zoning Setback Area
 - (iii) Any tree with a DBH of six (6) inches or greater that was removed from the zoning setback area within the twenty-four (24) months prior to application for any of activities in subsection b. The twenty-four (24) month period shall not apply to removals occurring prior to July 1, 2022. Trees removed in the twenty-four (24) months prior to application shall be presumed to have been alive unless otherwise documented by an arborist or by photographs.

- f. Mitigation: Mitigation for tree removal shall be provided by the planting of replacement trees or by contribution to the Town of Weston Tree Bank Fund, or by preserving existing trees on the property in the Lot Interior (not included in Item e. "Scope,") and not under jurisdiction of the Conservation Commission or by a combination of the three as determined by the applicant, as follows:

(i) Mitigation Table	<u>Planting:</u> ^{1,2,3,4} For every 1" DBH removed replace	<u>Tree Bank Contribution:</u> ⁵ For every 1" DBH removed contribute	<u>Lot Interior Preservation:</u> ⁶ For every 1" DBH removed preserve
<u>Non-invasive tree ≥6" to 24"</u>	<u>1 caliper inch</u> <u>(1:1 ratio)</u>	<u>\$400</u>	<u>1" DBH of native tree ≥6" to 24" or ½" DBH native tree >24</u>
<u>Non-invasive tree >24"</u>	<u>2 caliper inches</u> <u>(1:2 ratio)</u>	<u>\$800</u>	<u>2" DBH of native tree ≥6" to 24" or 1" DBH of native tree >24"</u>
<u>Invasive Tree ≥6" to 24"</u>	<u>¼ caliper inch</u> <u>(4:1 ratio)</u>	<u>\$100</u>	<u>¼" DBH of native tree ≥6" to 24" or 1/8" DBH of native tree >24"</u>

(ii) Notes:

- (1) Replacement trees must have a minimum 2" caliper. Multiple trees may be used to achieve the required DBH inch planting replacement amount.
- (2) For multi-stemmed replacement trees at least 8 feet in height, replacement caliper inches shall be calculated as the height in feet multiplied by 0.25.
- (3) The siting of replacement trees is subject to review and approval by the Town's consultant certified arborist or landscape architect.
- (4) In cases where replacement is chosen, evergreen trees shall generally be replaced with evergreen trees and deciduous trees shall generally be replaced with deciduous trees, as deemed appropriate by the Town's consultant certified arborist or landscape architect. Ideally, trees added should be a natural-looking combination of canopy and understory trees.
- (5) The contribution rates may be revised every five years by the Select Board with recommendations from the Planning Board and Building Inspector.
- (6) The acceptability of preserved trees as mitigation is subject to review by the Town's consultant certified arborist or landscape architect.

- g. Town of Weston Tree Bank Fund: Any mitigation contributions collected under this Section shall be deposited in the Town of Weston Tree Bank Fund which may be used for:

- (i) Tree planting,
- (ii) Maintenance of public trees, or

- (iii) Administration of this act including studies of tree conditions and further remediation strategies.
- h. Tree Protection During Demolition and Construction:
- (i) Establishing the Tree Save Area: A certified arborist in conjunction with the Building Inspector or designee will establish a Tree Save Area as defined by the CRZ. The Tree Save Area may include multiple trees and shall be shown on the submitted Tree Protection and Mitigation Plan.
 - (ii) Protection: Orange safety netting on metal posts at least 4' high shall be installed around the Tree Save Area prior to the issuance of applicable permits and shall remain in place until work on the property is completed.
 - (iii) Confirmation of Compliance: The applicant shall submit to the Building Division written documentation, prepared, stamped, dated and signed by a Certified Arborist, confirming that the required Tree Save Area identified in the Tree Protection and Mitigation Plan has been installed in accordance with by-law.
 - (iv) Encroachments: Temporary or permanent encroachments are allowed within the Tree Save Area under this bylaw; only if approved by the Building Inspector or designee and if however, appropriate steps are shall be taken to ensure survival of the trees such as minimizing heavy equipment traffic, placing wood chips over the CRZ, using air spading, clean cutting roots, and fertilization. Such encroachments may include areas of over-dig for excavation and areas of blasting effect to existing trees where additional mitigation may be necessary.
- i. Tree Protection and Mitigation Plan Review and Permit Issuance:
- (i) Plan Submittal: Prior to the issuance of a permit in connection with one or more of the circumstances set forth in subsection b. "Applicability" above, the applicant shall submit a Tree Protection and Mitigation Plan to the Building Division along with the appropriate application.
 - (ii) In cases where Site Plan Approval is required for any of the circumstances in subsection b. above, the Tree Protection and Mitigation Plan shall be submitted to the Planning Board with the application for Site Plan Approval and shall be reviewed and approved by the Planning Board for consistency with this bylaw and the Site Plan Approval Criteria in Section XI.
 - (iii) If a permit requiring the submittal of a Tree Protection and Mitigation Plan was issued for a property within twelve (12) months prior to the current application for one or more of the circumstances set forth in subsection b. above, then the submittal of a Tree Protection and Mitigation Plan shall not be required for subsequent permits unless any information required in subsection h. iv below is changed or altered.
 - (iv) Tree Protection and Mitigation Plan Requirements: The submitted Tree Protection and Mitigation Plan shall be a to-scale survey or site plan, along with any accompanying documentation, containing information prepared, stamped, dated and signed by an individual(s) appropriately licensed and authorized by the State of Massachusetts to attest to and certify such information, unless a specific certification is referenced herein. The plan shall include, but not be limited to, the following information:

- (1) Boundaries of the subject property, including all property lines, easements, and rights-of-way of public and private ways;
 - (2) The location of all existing buildings, driveways, retaining walls and other improvements, with an indication of those features to be retained or removed/demolished;
 - (3) The location of all proposed buildings, driveways, retaining walls, fences and other improvements;
 - (4) A Limit of Work for the project;
 - (5) The location, DBH, condition and species of all existing trees and trees that were removed within twenty-four (24) months prior to application for an applicable demolition or building permit, within Zoning Setback Area and with a DBH of 6" or greater; Trees further than 50' from the limit of work do not need to be shown on the plan, however these trees will still be considered as within the scope
 - (6) Identification of those trees to be removed and those to be retained, as applicable;
 - (7) Identification of those trees to be removed for exposure to a roof mounted photovoltaic or solar hot water system with the required solar exposure for the system;
 - (8) ISA Basic Tree Risk Assessment Forms completed by a Certified Arborist and other supporting documentation such as photographs for High and Extreme Hazard trees proposed to be removed without mitigation.
 - (9) The Tree Save Area shall be shown for all trees to be retained under the scope of this bylaw;
 - (10) The location, caliper, species, and planting schedule of trees to mitigate the removal of a trees within the scope of this bylaw, if applicable;
 - (11) A maintenance plan prepared, stamped, dated and signed by a Certified Arborist for all trees to remain which are proposed to have encroachment within the Tree Save Zone, if applicable; including areas of over-dig for excavation and areas of blasting effect to existing trees where additional mitigation may be necessary;
 - (12) The amount to be contributed to the Weston Tree Bank Fund to mitigate the removal of trees within the scope of this bylaw if applicable; and
 - (13) Such other information as is required by the Inspector of Buildings pursuant to applicable regulations.
- (v) Building Division Action: If the Tree Protection and Mitigation Plan is consistent with the protection and mitigation requirements contained herein and any established rules, regulations or manuals, and any applicable Weston Tree Bank Fund contribution has been submitted, the Building Division may issue any applicable permit. If the proposal does not meet or satisfy these requirements, the Building Division shall deny all applicable permit applications and so notify the applicant.
- (vi) The Building Inspector shall set the fee for review of the application.

- (vii) Consultant Review: The Building Division may require the applicant to provide review fees for consulting services of a landscape architect licensed in the State of Massachusetts or Certified Arborist for administration of this bylaw.
- (viii) Exclusion of Trees from Protected Area: An applicant may petition the Planning Board to exclude any of the trees typically included under subsection e. from the required mitigation.
 - (1) Exclusion Application and Review Process
 - a) The applicant shall submit the exclusion application with supporting materials on the prescribed form to the Town Planner.
 - b) The Town Planner shall schedule the matter for a public meeting with the Planning Board within 45 days of complete application.
 - c) Notice of the matter shall be given to the abutter and abutters to abutters within 300 feet.
 - d) The Planning Board may form a subcommittee, including a Tree Advisory Group member, to recommend action on requests to exclude trees from mitigation requirements.
 - e) The Planning Board may schedule a site visit at their discretion.
 - f) The Planning Board may require project review fees for retention of professional consultants to assist in reviewing the application.
 - (2) For construction on non-conforming lots requiring a Special Permit and not requiring Site Plan Approval, the Zoning Board of Appeals shall review and approve the application for exclusion according to the criteria below.
 - (3) General Criteria for Exclusion Approval
 - a) The applicant shall have the burden of demonstrating that the trees did not meet the criteria for inclusion under Section V.I.6.e.
 - b) Financial hardship shall not be considered a reason for approval.
 - (4) Specific Criteria for Exclusion Approval
 - a) Trees located within the septic or stormwater infiltration footprints when the applicant can demonstrate that it is technically infeasible to site the primary use structure and associated stormwater and septic systems elsewhere. Accommodation of accessory uses will not be considered to create a technical infeasibility.
 - b) Abutter request for removal of hazardous tree.
 - c) Failure and/or extreme risk condition of a tree due to storm damage or untreatable pests or untreatable disease.
- j. Maintenance of Existing and Newly Planted Trees:
 - (i) Existing Trees: Each tree under the scope of this bylaw which is to be retained shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Final Inspection, or issuance of a Certificate of Occupancy if applicable unless there is failure of a tree due to storm damage or untreatable pests or untreatable disease

- (ii) **Newly Planted Trees:** All replacement trees planted to mitigate the removal of trees under the scope of this bylaw shall be maintained in good health for a period of no less than twenty-four (24) months from the date of Certificate of Occupancy. Should such tree die within this twenty-four (24) month period, the owner of the property shall be responsible for planting a tree equal to or greater than the size of the original replacement tree; such tree shall be planted within nine (9) months of the death of the replacement tree.
- k. **Rules and Regulations:** The Planning Board may promulgate or amend Rules and Regulations which pertain to the administration of this section, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, fees for application, the procedure for the submission and approval of such plans, the procedure for determining final compliance with these regulations, and the criteria and procedure regarding the Planning Board's acceptance of sureties (i.e., bonds, letters of credit, etc.) intended to satisfy the requirements of this section, so long as the Rules and Regulations conform to this section of the Zoning Bylaw.
- l. Severability: Each provision of Section V.6 of this Bylaw shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect