



Town of Westport
Planning and Zoning Commission
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TO: Whom it May Concern

FROM: Planning and Zoning Commission

DATE: December 29, 2021

RE: Explanatory Statement for Draft Text Amendment to modify §5-2, Definitions; §31, Regulations Applying to All Districts; §37, Sediment and Erosion Control Regulations; and §45, Zoning Administration and Enforcement

Background

At the 9/21/21 Zoning Regulation Revision Subcommittee, there was a discussion of how to prevent construction-phase erosion and sedimentation issues. It was pointed out that clear cutting and excessive removal of trees and ground cover, exposing bare soil, exacerbates erosion and sediment migration.

Planning and Zoning staff drafted a text amendment for presentation at the 12/8/21 meeting of the Zoning Regulation Revision Subcommittee. The proposal (dated 11/17/21) included a new definition in §5-2 for Mature Trees as a “live tree with a trunk caliper of twelve (12) inches or more as measured from four (4) feet above ground.” The proposal also included new section §31-17, Tree Preservation Regulations, which would make an as-of-right permit required prior to the removal of any Mature Tree on private property, further restrict removal of Mature Trees within setbacks, and require replacement plantings for any Mature Tree taken down electively. The proposal and topic were discussed, and staff was directed to incorporate feedback into a future proposal at a subsequent Subcommittee meeting.

Proposal

The primary purpose of this amendment is to limit runoff, soil erosion and sediment migration, specifically during the construction phase of development, through the retention and protection of well-established trees and other vegetation. Mature trees provide soil stabilization with their root systems, intercept and impede the rapid flow of rainwater with their crowns, soak up substantial amounts of groundwater, and lessen stormwater infrastructure costs.

Mature trees provide innumerable additional benefits, including filtering pollutants out of stormwater and groundwater, sequestering carbon dioxide, producing oxygen, supporting biodiversity and a healthy ecosystem, providing shade for people and buildings, reducing

heating costs, providing screening, contributing to a neighborhood's aesthetics, and improving health and stress levels.

§5-2

This proposal seeks to add a new definition for Mature Trees to distinguish those that are well-established and confer the greatest benefit to the Town and ecosystem, and thereby most important to preserve. Staff recognizes that it is not feasible or practical to impose barriers on removing every single tree; therefore, efforts should be concentrated on those trees which are most valuable.

The proposal defines Mature Trees as live trees of a non-invasive species with a trunk diameter of 12 inches or more as measured 4 feet above the ground.

§31

This proposal seeks to deter the arbitrary and excessive clearing of all Mature Trees by requiring a property owner to file a Zoning Permit prior to removal, or to specifically designate Mature Trees for removal as part of any simultaneous Zoning Permit, Site Plan, or Special Permit application.

Mature Trees in the setbacks would be further protected on lots of at least 0.25 acres, except in specific circumstances, because development is already restricted in these areas, and lot-line setbacks are the last opportunity to forestall erosion and runoff before it leaves the site. Exceptions include if a licensed Arborist determines the tree is a public health hazard, dead, or diseased, and if necessitated for a septic system which cannot reasonably be located anywhere else on site.

The setback protections are only intended to apply to lots of 0.25 acres or more to acknowledge that smaller lots may present significantly more conflict between preservation and development than larger lots.

To replace any Mature Tree taken down and the benefits lost, a Replanting Plan would be required for any Zoning Permit, Site Plan, or Special Permit application that includes the removal of a Mature Tree. No exemption from replanting is made for Mature Trees taken down due to disease or poor health.

Because larger trees provide significantly more benefits than smaller trees, each Mature Tree taken down would be required to be replaced by at least three trees of at least 2" caliper each.

The types of trees in the ecosystem are critically important to its health and vitality. The proposal therefore states that any replacement trees should be chosen in accordance with the Conservation Department's Planting Guide. Replacement trees should be selected that are similar to that which was taken down, and coniferous trees should be avoided near any street rights-of-way to protect utility lines, as recommended in discussions with the Town's Tree Warden.

§32-8 Excavation and Fill Regulations

The Conservation Director, at the 12/8/21 Zoning Regulation Revision Subcommittee, noted that developers sometimes clear-cut properties in anticipation of receiving a Zoning Permit for construction activities. The lapse in time between clearcutting and starting construction leaves the soil particularly exposed and vulnerable. The Excavation and Fill Regulations in §32-8 of the Zoning Regulations include temporary clearing, stockpiling, and reuse of topsoil as activities exempt from an Excavation and Fill permit. This exemption was added to Text Amendment #626 (Resolution #11-004) during the P&Z Commission's public hearing based on comments received from the public. It was noted that these activities are a normal part of site development. Text Amendment #626 was part of an effort by the Commission to strengthen and improve the Excavation and Fill regulations with a minimum of changes to the zoning text rather than a comprehensive rewrite.

The proposal herein would eliminate this exemption to limit the amount of site work that can be done without a Zoning Permit and limit the amount of time that a site remains in a vulnerable state. Staff feels that the topsoil exemption as-is undermines efforts to reduce erosion and runoff and the exemption is contrary to the stated purpose of Text Amendment #626 that it was a part of.

§37

The proposal seeks to limit excessive clear cutting during construction and protect Mature Trees to the greatest extent possible. Construction activities pose significant danger to established trees through root disturbance, pruning not done according to best practices, and damage from heavy machinery. Construction activities, including clear cutting, leave the soil especially vulnerable to erosion.

The proposal would require that any Sediment and Erosion Control (S&E) Plan identify all trees of 8-inch caliper or greater, as required in §44-1.4 for Site Plan Maps.

The Mature Tree protection is accomplished by requiring S&E Plans to include a Tree Protection Action Plan (TPAP) if there are any Mature Trees on site. The TPAP must be developed according to the most up-to-date American National Standards Institute (ANSI) guidelines and must be certified by a licensed Arborist. The goal of this process is to compel developers to consider saving trees, if possible, rather than clearcutting because it is the cheapest or fastest option. Since a Zoning Official and the Conservation Director have a chance to review all S&E, this requirement will force the consideration of whether Mature Trees can be saved from unnecessary clearing. A TPAP will also provide the joint P&Z/Conservation S&E Inspector with a guide to ensure Mature Trees are being properly protected in the field.

Examples of tree protection measures include the installation of welded wire fencing installed around the trunk, the prohibition of storing construction equipment or materials within the tree's dripline, or the prohibition of earthwork activities within the dripline. It is assumed that a licensed Arborist would be up-to-date on best practices and ANSI standards for tree protection.

§45-3

The proposal would add a requirement for Zoning Permits that any Plot Plan shall show the location of existing trees with a trunk diameter of eight (8) inches or more as measured four (4) feet above the ground and mature evergreens of ornamental quality. This is consistent with requirements for Site Plan applications.

2017 Plan of Conservation and Development

The proposed text amendment is consistent with the *2017 Plan of Conservation and Development*, as evidenced by the following sections of the *2017 Plan*

Chapter 4 – Maintain and Enhance Community Character

- *Westport should continue to explore ways to encourage or require the retention of trees as part of new development and redevelopment (especially in residential neighborhoods). Pg 35*
- *Discourage tree clearing as a result of new residential construction and encourage preservation of tree canopies. Pg 36*

Chapter 7 – Protect Natural Resources

- *Protect natural resources and preserve and enhance the quality of the environment in Westport. Pg 53*
- *Protection and improvement of water quality is the most important natural resource protection priority for Westport today. Pg 54*
- *Continue to protect water resources and water quality. Pg 56*
- *Seek ways to get property owners to take responsibility for drainage on their own parcel. Pg 56*
- *Seek to reduce and/or control erosion and sedimentation from all sources (construction, winter sanding, etc.). Pg 56*
- *Continue to preserve important natural resources. Pg 58*
- *Encourage preservation of diverse habitats and:*
 - *Discourage or prevent non-native species, and*
 - *Seek to remove invasive species. Pg 58*

Chapter 10 – Guide Residential Development

- *Manage residential development and redevelopment to ensure that new construction is appropriate in scale and character for its setting. Pg 83*

Chapter 11 – Promote Sustainability and Resiliency

- *Use best efforts to become a Net Zero community by the year 2050, using approaches that are economically viable, of social benefit, and environmentally responsible. Pg 89*
- *Promote sustainability in Westport.*
 - a) *Introduce zoning regulations to promote sustainability. Pg 92*

December 29, 2021

Text Amendment # _____

Submitted: _____

Received: _____

Public Hearing: _____

Adopted: _____

Effective date: _____

Deleted language is [~~struck out and in brackets~~]; New language is underlined.

§5 DEFINITIONS

5-2 Specific Terms

New Mature Tree

A live tree of a non-invasive species with a trunk diameter of twelve (12) inches or more as measured from four (4) feet above ground.

§31 REGULATIONS APPLYING TO ALL DISTRICTS

New Section 31-17 Tree Preservation Regulations

31-17.1

The removal of any Mature Tree on private property, except for those located within setbacks pursuant to §31-17.2, may be conducted after obtaining a Zoning Permit and shall be specified on a Site Plan or Special Permit application as applicable.

31-17.2

Mature Trees within setback areas on lots of at least 0.25 acres shall be preserved to the greatest extent possible. Such Mature Trees shall not be removed unless:

- A. A determination is made by a licensed Arborist that the tree is dead, diseased, a public health hazard, or otherwise unfit to remain.
- B. The removal is necessary for the installation of a septic system as required by the Westport Weston Health District and said septic system cannot reasonably be located anywhere else on site.

31-17.3

The removal of any Mature Tree, even if diseased or unhealthy, shall be accompanied by a replanting plan prior to the approval of any applicable Zoning Permit, Site Plan, or Special Permit. Each Mature Tree shall be replaced by at least three (3) new trees with a caliper measurement of at least two (2) inches each. The replanting plan at a minimum shall show the location, caliper size, and species of each replacement tree.

New plantings shall be of native species, in accordance with the Conservation Department's Planting Guide, and of a similar type to that which was removed to ensure compatibility with the local ecosystem. Coniferous trees should be avoided adjacent to street rights-of-way. The

replanting shall be conducted within 1 calendar year of the Mature Tree's removal and prior to the issuance of a Zoning Certificate of Compliance.

31-17.4

All pruning, trimming, and repairing of Mature Trees shall be carried out in accordance with American National Standards Institute (ANSI) guidelines.

31-17.5

Nothing in these Zoning Regulations shall prohibit the immediate removal or pruning of any tree that poses an imminent public health risk. In such a situation, a retroactive Zoning Permit and replanting plan shall be filed within seven (7) days of removal of a Mature Tree.

31-17.6

Nothing in these Zoning Regulations shall be interpreted to interfere with the duties and responsibilities of the Town's Tree Warden.

§32 SUPPLEMENTARY USE REGULATIONS

32-8 Excavation and Filling of Land

32-8.1 Activities that require an Excavation & Fill Permit and Exempt

32-8.1.1

All regrading of properties regardless of the amount of disturbance or quantity of material involved shall require Site Plan and Special Permit approval by the Planning & Zoning Commission for an Excavation & Fill Permit except as noted below.

32-8.1.2

Exemptions: The following activities shall be exempt from requiring an Excavation & Fill permit but shall conform to the standards listed in [§32-8.2](#) and [§32-8.3](#):

- a. Excavations or filling of earth products in connection with the construction or alteration of a principal building or structure, swimming pool, tennis court, sports court, septic fields or driveway on the same premises no more than 25 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.
- b. Excavations or filling of earth products in connection with the construction or alteration of subsurface drainage systems on the same premises no more than 5 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.
- c. Construction, grading or changing of contours in accordance with plans for the same that have been approved by the Planning & Zoning Commission, covering the roads, lots and other improvements in an approved Subdivision, Site Plan or Special Permit application.
- d. Municipal activities involving roadways, bridges, culverts or other infrastructure for the purpose of maintenance, repair, realignment, reconstruction or public safety projects as listed in this subsection that by necessity involve extending excavation or fill onto private property where grading rights have been obtained.

- e. Construction of a retaining wall used solely for the purpose of constructing a driveway or roadway.
- f. Construction of approved shoreline flood and erosion control structures.
- g. The placement or installation of utility lines or services.
- h. Incidental filling, grading or excavation in connection with maintenance or repairs to a property.
- i. Customary landscaping ~~and temporary collecting, stockpiling and reuse of topsoil.~~

§37 SEDIMENT AND EROSION CONTROL REGULATIONS

37-1 Purpose

The purpose of these Sediment and Erosion Control Regulations is to reduce accelerated soil erosion; reduce the danger from storm water runoff and to minimize nonpoint sediment pollution resulting from and being developed.

37-2 Activities Requiring a Sediment and Erosion Control Plan (S&E Plan)

An S & E Plan shall be submitted with any application for development when the disturbed area of such development is cumulatively more than one-half (1/2) acre.

37-3 Exemptions

A single family dwelling that is not a part of a subdivision of land shall be exempt from these sediment and erosion control regulations.

37-4 Procedure

All S & E Plans shall be submitted to the Conservation Director for recommendation prior to the filing of any application with either the Planning and Zoning Commission or the Zoning Board of Appeals, as applicable or prior to the issuance of a Zoning Permit. The Conservation Director shall review the plan to determine compliance with § 37-5 below and shall inform the appropriate authority and the applicant of his/her recommendation within thirty (30) days of the date of receipt of said plan. Upon receipt of the Conservation Director's recommendations the Zoning Enforcement Officer shall certify that the plan complies with the requirements of this Section.

37-5 Inspection

Following approval of the S & E Plan and based on the schedule identified on said plan the Zoning Enforcement Officer shall inspect the site for compliance with said plan.

37-6 Standards

Any S & E Plan submitted pursuant to this Section shall include but not be limited to the following:

- a. The cumulative area(s) of disturbance, including any areas of excavation, filling or stockpiling of earth material;
- b. Existing and proposed grades or spot elevations;

- c. Location of any inland wetlands, tidal wetlands, watercourses, existing or proposed drainage facilities on or adjacent to the site, and trees of 8" diameter or more as measured four (4) feet above the ground;
- d. Anticipated start and completion dates;
- e. Agent's name;
- f. Sequence for installation of soil erosion and sediment control measures;
- g. The minimum Soil Erosion and Sediment Control Plans shall be developed using the principles outlined in Chapters #3 & #4 of the Connecticut Guidelines for Soil Erosion and Sediment Control.
- h. A bond may be required in accordance with §43-13 of the Zoning Regulations.
- i. A Tree Protection Action Plan (TPAP) that preserves, to the greatest extent possible, any Mature Trees on site, and protects any preserved Mature Trees in accordance with current American National Standards Institute (ANSI) guidelines and certified by a licensed Arborist. Any Mature Trees to be removed shall be clearly identified. (See also Tree Preservation Regulations in §31-17.)

§45 ZONING ADMINISTRATION AND ENFORCEMENT

45-3.2 Plot Plan

The application shall be accompanied by three (3) copies of a plot plan drawn to scale on a sheet, not to exceed 24" x 36" and certified "substantially correct" by a licensed Civil Engineer or Land Surveyor, based on a Class A-2 Survey, not more than ten (10) years old showing the following information as of the date of application:

45-3.2.1

Name of applicant and name of the owner of record.

45-3.2.2

Assessor's map and lot numbers and street address of property.

45-3.2.3

North point, graphic scale and date.

45-3.2.4

Dimensions of the present lot and lot area.

45-3.2.5

Size and location of all existing and proposed buildings, or additions, structures, and uses. Coverage information must be identified and represented in square footage and percentage form.

45-3.2.6

The minimum required setback lines must be shown and dimensions of all setback lines observed by buildings and structures.

45-3.2.7

Location of parking areas, driveways, curb cuts, easements and rights-of-way.

45-3.2.8

Location of sewer lines or septic tank, leaching field and reserve areas.

45-3.2.9

Location of water line or water well.

45-3.2.10

Location of high pressure gas lines and high tension transmission lines.

45-3.2.11

Location of waterbodies, watercourses, swamps and flood prone areas with delineated channel encroachment lines, wetland boundary lines, twenty five (25) year flood line, one hundred (100) year flood line, floodway boundary line, CAM boundary line, or mean high water line.

45-3.2.12

Location of all storm drainage facilities on the property.

45-3.2.13

Existing and proposed contours at two (2) foot intervals which may be based on Town of Westport topographic maps, and must be verified in the field by a surveyor.

45-3.2.14

When an application is located in a flood prone area include existing and proposed site grades, contours or elevations, base flood elevation data, top-of-foundation elevations, finished floor elevations, and any proposed watercourse relocation.

45-3.2.15

When an application for development involves one half (1/2) acre or more of cumulative disturbed area(s), a Sediment and Erosion Control (S&EC) Plan pursuant to Section 37-1 shall be submitted. However, an S & E Plan may be required for applications with disturbed land of less than one half (1/2) acre, if deemed necessary by the Zoning Staff.

New 45-3.2.16

Location of existing trees with a trunk diameter of eight (8) inches or more as measured four (4) feet above the ground and mature evergreens of ornamental quality.