

ORDINANCE AMENDMENT

The Town of Smithfield hereby ordains:

Amend Existing Chapter 333 “TREES” as follows:

Delete Chapter 333 “TREES” including:

ARTICLE I Stump removal

333-1. Definitions.

333-2. Enforcement.

333-3. Purpose.

333-4. Disposal of Stumps.

333-5. Stump removal by Town.

333-6. Stump removal plan.

333-7. Violations and Penalties.

333-8. Judicial relief.

Add new “Chapter 333 entitled: “WOODLAND CONSERVATION”

333-1. Authority and Purpose.

The Smithfield Town Council hereby finds that substantial clearing of vegetative cover on parcels can result in the degradation of visual quality of the Town and can cause significant environmental harm and that burying of tree stumps can result in the development of hazardous conditions. Therefore, the Town hereby establishes the following procedures for review and approval of land clearing operations, appropriate disposal of tree stumps/stems, criteria for exemptions from these provisions and penalties for violations.

The purposes for these regulations are:

- A. To preserve existing trees located upon sites that function as future buffers and streetscapes to meet development plan requirements;
- B. To promote land development practices that result in a minimal disturbance to trees and soils;
- C. To minimize surface water and ground water runoff and diversion;
- D. To minimize the need for additional storm drainage facilities;
- E. To preserve and enhance Smithfield’s physical and aesthetic character by preventing untimely and indiscriminate removal or destruction of trees;
- F. To maintain property values;
- G. To reduce sedimentation in the streams, lakes, rivers, storm sewer systems, and waterways;
- H. To ensure prompt development, restoration and replanting and effective erosion control of property after land clearing and mass grading;

I. To protect fish, wildlife and their habitats and promote the retention and restoration of forests; and

J. To ensure that no tree stumps/stems are buried on any property in the Town of Smithfield.

333-2. Definitions.

“Applicant” means the individual, partnership, corporation, or other entity, applying for a certificate to do work under this chapter, including the property owner, and any employee, agent, consultant or contractor acting on behalf of the applicant, or any successor in interest.

“Selective Clearing” means removal of trees less than 6” in diameter and vegetative ground cover.

“Site” means the entire proposed development project regardless of the size of the area of land to be disturbed.

“Stabilized” means the process of establishing an enduring soil cover of vegetation by the installation of temporary or permanent structures for the purpose of reducing, to a minimum, the erosion process and the resultant transport of sediment by wind, water, or gravity.

“Stump Removal” means the extraction or removal of any stump associated or unassociated with the removal of trees for the following purpose: 1.) For the construction of a building for which a building permit is required; 2.) For the construction of a roadway; or 3.) For a subdivision in accordance with a plat or plans approved by or in accord with an ordinance of the Town or any duly authorized board or authority hereof.

“Tree(s)” for the purposes of this Ordinance includes woody plants with a diameter greater than 6” measured at four and one-half (4 ½) feet above ground. If a tree divides into branches at less than four and one-half (4 ½) feet, the trunk shall be measured immediately beneath the dividing point.

“Tree Thinning” means removing less than 50% of the existing trees and/or vegetation outside of required buffers and vegetation protection areas on a lot.

“Tree Warden” shall be the individual appointed by the Town Council and acting pursuant to R.I.G.L. 2-14.

“Vegetation” shall include ground cover, trees, and shrubs.

333-3. Applicability.

Unless exempted under Section 333-4 hereof, a Tree Clearing Certificate shall be required prior to cutting trees, removing vegetation, or removing stumps on any property located within the Town of Smithfield.

333-4. Tree Clearing Certificate Not Required.

The requirement to obtain a Tree Clearing Certificate shall not apply to the activities listed below:

- (A) Normal forestry activities taking place on property which is taxed pursuant to RIGL 44-27-4, Farm Forest and Open Space Act, and in compliance with a RIDEM or USDA approved forest stewardship plan, and provided such activities are accomplished in compliance with the standards set forth in Section 333-7 of this Ordinance;
- (B) Tree removal on properties in strict accordance with a valid final subdivision or land development project approval provided such trees are not a portion of a required streetscape or other landscaping buffer. Removal in the required buffer and vegetative protection areas for projects approved as land developments shall be limited to removal only what is necessary for public utilities, to provide reasonable access for public safety purposes, or as otherwise authorized by the Planning Board;
- (C) Tree removal by public or private agencies within the lines of any public street rights-of-way, utility easements, or other Town property that is considered open space or undeveloped, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to preserve or enhance the aesthetics of such Town property;
- (D) The removal of any tree which is in an unsafe condition, constitute a nuisance or noxious weed, or which by its nature and location is detrimental to sanitary sewers, electrical power lines, gas lines, water lines, streams or conveyance channels, or other improvements, or a tree which is infected with any fungus, insect, or other pest that the Tree Warden determines to be hazardous;
- (E) Tree removal in emergency situations involving immediate danger to life or property or substantial fire hazards;
- (F) Removal of diseased, dead, damaged or dying trees;
- (G) Agricultural operations on existing farmed areas, as defined in RIGL § 2-23-4, The Rhode Island Right to Farm Act, "Agricultural operations" defined;
- (H) Tree removal and/or vegetation removal within one (1) calendar year on a lot outside of the designated buffers and vegetative protection areas described in Section 333-5 and which involves less than ½ acre of land;
- (I) Stump removal by the Town. The Town shall substantially comply with the provisions of this Ordinance when engaging in stump removal for Town purposes;
- (J) Tree removal conducted pursuant to an approved RIDEM DFE Notification of Intent to Cut;
- (K) Selective clearing in required buffers and vegetation protection areas only if the Town Engineer determines that the buffer area will remain substantially intact after said selective clearing and after any required compensatory planting;
- (L) Tree thinning as defined in Section 333-2.

(M) Tree removal and/or vegetation removal on any residentially-zoned lot.

333-5. Required Buffers and Vegetation Protection Areas.

Other than that necessary to gain reasonable access to the property, or as otherwise permitted herein, clearing and/or removal of trees and other vegetation shall be prohibited in the areas listed below. In situations where one or more buffer zones or vegetation protection areas overlap on the same site, then the more restrictive requirements shall apply.

(A) A perimeter streetscape zone having a width of fifty (50) feet as measured from all ultimate property boundaries which adjoin existing roadways or as required by the Smithfield Landscape Ordinance (Chapter 231 of the Town Code of Ordinances). For the purposes of this section, the term “ultimate property boundary” of a parcel or tract shall mean the final demarcation line around the perimeter of a parcel excluding all areas which must be dedicated to the Town for use as rights-of-way.

(B) A perimeter buffer zone having a width of twenty-five (25) feet as measured from all other property boundaries.

(C) Any buffer zone so designated by a duly authorized Town of Smithfield Board or Commission.

(D) Any other areas necessary for the protection of existing vegetation as required by this Ordinance or under the Federal Clean Water Act or State Wetland Act.

333-6. Application Requirements.

A) A Tree Clearing Certificate is not required for those activities which are exempted by Section 333-4 hereof.

(B) An application for a Tree Clearing Certificate shall be filed only by all the owners of the property or by such owners’ authorized agent.

(C) An application for a Tree Clearing Certificate shall be filed with the Engineering Department on a form prescribed by the Department, along with the appropriate fee as prescribed herein.

(D) The application form shall be accompanied by a Vegetation Protection Plan which shall include, at a minimum, the following information on a sheet size no larger than 24 by 36 inches, at a minimum scale of 1 inch equals 50 feet:

1. Vicinity map showing the location of the parcel at a readable scale.
2. A map of the entire parcel, including the property boundary of the entire parcel by courses and distances with references to true meridian and the location and dimension of all on-site and adjacent off-site easements (e.g. drainage, utility, public access, aerial utility, conservation, permanent and temporary construction easements).

3. General information about the parcel, including but not limited to the owner of the parcel; the current zoning of the parcel, the area of the parcel, the conditional-use zoning conditions, and master plan requirements, if applicable.
4. The location and use(s) of all existing building(s) on the parcel.
5. The owner, current zoning and present use of all contiguous properties (including property on opposite side of adjoining streets).
6. Width and pavement material of existing and proposed roadways.
7. The location and width of all future/existing buffers and associated vegetation protection areas, including riparian buffers, perimeter buffers and perimeter streetscapes.
8. The proposed limits of timbering activities, including the location and extent of all tree protection fencing as required under the Smithfield Landscape Ordinance (Chapter 231 of the Town Code of Ordinances).

(E) The application shall be accompanied by a copy of an approved Soil Erosion Permit if the project is subject to the requirements of the Smithfield Soil Erosion and Sediment Control Ordinance (Chapter 299 of the Town Code of Ordinances).

(F) The Town Engineer (Engineer) may reduce or waive the requirements for a Vegetation Protection Plan in situations where it can be demonstrated that all vegetation removal will take place outside of required vegetation protection areas.

(G) Stump/vegetation Removal Statement: The applicant shall indicate which method(s) of stump disposal will be employed as allowed herein.

(H) Stump Disposal- Under no circumstances shall tree stumps, stems or branches be buried in the Town of Smithfield. All stumps removed from land-clearing activities, as defined under the definition of Stump Removal, shall be disposed of in the following manners:

- (1) Stockpiled at a designated on-site area and left to decompose;
- (2) Removed from the site and taken to a state-approved area which accepts stumps; or
- (3) Ground in a tub grinder of sufficient capacity on site. The waste from the grinding operation shall be stockpiled, dried, and used for mulch.

333-7. Procedure.

Prior to the commencement of any tree removal or stump removal on any property located in the Town of Smithfield, the applicant must demonstrate to the satisfaction of the Town Engineer exemption from the requirements of this Ordinance, or submit the required application materials and applicable fees for a Tree Clearing Certificate.

(A) Upon receipt of documentation that a property is exempt from obtaining a Tree Clearing Certificate, the Town shall review all materials and make a determination if a property is exempt from the requirements of this Ordinance, or if said requirements apply. In situations where exemption status is claimed based on forestry use, this documentation shall include proof that the property is taxed under the Farm, Forest and Open Space Program, is managed in accordance with an approved forest stewardship plan approved by RIDEM or USDA, or has an approved RIDEM DFE Notification of Intent to Cut.

(B) If a property is not exempt from the provisions requiring a Tree Clearing Certificate, then such application materials shall include a Vegetation Protection Plan consistent with the requirements listed in Section 333-6 (D) hereof.

(C) The Vegetation Protection Plan shall be reviewed by the Town Engineer based upon the provisions of 333-7 of this Ordinance. The Town Engineer may approve, approve with conditions, deny, or defer the decision on the Vegetation Protection Plan to the Zoning Board of Review if the Town Engineer has concerns about the plan's ability to meet the standards of this Ordinance.

(D) An applicant for a Tree Clearing Certificate shall be notified upon approval of the Vegetation Protection Plan, and upon such notification shall be free to erect or install any and all barriers necessary to protect existing vegetation within required buffer areas and vegetation protection areas from damage during tree clearing and/or removal activities. Failure to protect these areas shall result in penalties as indicated in Section 333-8, Non-compliance and Penalties.

(E) Once all barriers for the protection of existing vegetation have been installed, a property owner or agent shall request inspection of such barriers for compliance with the requirements of this Ordinance.

(F) Upon a passing inspection of vegetation protection barriers, the Town Engineer shall issue a Tree Clearing Certificate, and authorized vegetation clearing and/or removal may commence.

(G) An approved Tree Clearing Certificate shall be valid for a period of not more than twelve (12) months from the date of issuance.

333-8. Non-compliance and Penalties.

Failure to comply with the provisions of this Ordinance shall constitute a violation, and shall subject an offending party to penalties as listed below.

(A) If, at any stage, the work in progress and/or completed under the terms of a Tree Clearing Certificate does not conform to such plan, a written notice from the Town Engineer to comply shall be transmitted to the owner or agent. Such notice shall set forth the nature of corrections required and the time limit within which corrections shall be completed. Failure to comply with the required corrections within the specified time limit shall be considered a violation of this Ordinance and penalties as detailed herein shall be assessed.

(B) Upon determination that a violation of a provision of this Ordinance has occurred, the Town Engineer shall withhold issuance of other permits from the Town, including but not limited to permits for building construction and water and sewer connections, for the affected property until corrective action is taken by the responsible party. However, if mitigating circumstances exist and a reasonable commitment for corrective action is made, the Town Engineer may authorize issuance of such permits. Such corrective action may include:

1. Restoration of surface vegetation with plant material similar in character and extent as existed prior to the unauthorized clearing;
2. Implementation of drainage and erosion control measures; and/or
3. Replanting of trees to replace those lost through unauthorized clearing.

(C) If a person engages in activities covered by this Ordinance without a Tree Clearing Certificate, or if a person does not correct a violation within the specified time as provided for herein, such person shall be subject to a fine as follows:

Clearing of vegetation/improper stump disposal on a site of the following size:	Fine
Up to .5 acres	\$100.00
.5 acres to 1.5 acres	\$200.00
1.5 acre to 5 acres	\$300.00
5 acres to 10 acres	\$500.00
Over 10 acres	\$600.00
Improper Disposal of Stumps	\$100.00

Each day a violation continues shall be considered a separate, distinct offense. Violators shall also be liable for court costs.

(D) Any person who commits, participates in, assists or maintains such violation may be found guilty of a separate offense and suffer the penalties as set forth in subsection C of this paragraph and also be subject to a lien being placed upon the subject site by the Town of Smithfield in an amount not to exceed the cost to remove all stumps, correct all violations, and finish all associated work to the approval of the Town Engineer.

(E) In addition to the penalties set forth in subsection C of this paragraph, tree, vegetation, or stump removal activities covered by this Ordinance which are engaged in without a Tree Clearing Certificate are declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in Superior Court or other court of competent jurisdiction.

(F) Certificate Expiration. A Tree Clearing Certificate shall expire and become null and void unless activities are commenced within 180 business days of issuance of the certificate or if activities lapse for a period exceeding 60 business days. Any certificate granted shall expire one year from the date of issuance. Any site for which the grading or clearing certificate expires shall be stabilized to prevent erosion within a ten calendar day period. Upon a showing

of good cause, a certificate may be extended by the Town Engineer for one six month period. No refunds will be made for certificate fees paid for permits that expired due to the failure to commence activities or lapse and abandonment of activities. The Town Engineer shall notify the certificate holder of the certificate expiration and send the written notice by hand delivery or by mailing a notice, by certified mail, return receipt requested, to the address on the certificate application.

333-9. Fees.

Prior to issuance of a Tree Clearing Certificate, the applicant shall first pay a review fee which will cover the review of the Vegetation Protection Plan and subsequent inspections. If a Tree Clearing Certificate is issued, fees will be in accordance with the following schedule:

Clearing of vegetation on a site of the following size:	Fee
Up to .5 acres	\$25.00
.5 acres to 1.5 acres	\$50.00
1.5 acre to 5 acres	\$75.00
5 acres to 10 acres	\$100.00
Over 10 acres	\$125.00

333-10 Appeals.

If a decision made by the Town Engineer is unsatisfactory to the applicant, the applicant may, within twenty (20) days of the decision, file a written appeal with the Zoning Board of Review. The Zoning Board of Review may affirm, reverse or modify the Town Engineer’s decision by a majority vote. During the period in which the appeal is pending, and until such time as a final decision is rendered on the appeal, the decision of the Town Engineer shall remain in effect.