

## Memorandum

ABS 046.12

Date: July 20, 2007

To: Absecon Planning Board

From: Robert L. Reid, AICP, PP, Board Planner

Subject: Proposed Tree Protection Ordinance

---

### Introduction

Like many other municipalities throughout the state, Absecon has grown to meet the needs of housing. With the growth of population, commercial establishments have expanded to meet the needs of Absecon's residents. With the growth of residential and commercial establishments, large wooded areas have been removed and commercial establishments are encroaching on residential districts. There now is a need to protect existing vegetation between commercial and residential uses to create and maintain natural buffers and protect larger specimen trees throughout the commercial districts and multi-family districts of Absecon.

The following Tree Protection Ordinance is submitted for review and comment. This ordinance was composed based on discussions with the Planning Board Master Plan Committee members, Planning Board members at numerous meetings while preparing the 2005 Reexamination of the Master Plan. At those meetings we discussed components of the Reexamination Report and the Tree Protection Ordinance. This proposed ordinance is consistent with and the 2005 Reexamination Report. of the Master Plan.

Upon review and approval by the Planning Board the following Article should be referred to City Council with findings that it is consistent with the Master Plan and recommend it be adopted.

NJSA 40:55D-26a states (in part) that prior to the adoption of a development regulation, or amendment thereto, the Planning Board shall make and transmit to the governing body, within 35 days after referral, a report including identifications of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the Master Plan and recommendations concerning these inconsistencies and any other matters as the Board deems appropriate. Because this proposal originated at the Planning Board and the proposal is consistent with the Master Plan and this proposal is being referred to City Council with the statement that it is consistent with the Master

ORDINANCE NO. \_\_\_\_ OF 2007  
TREE PROTECTION ORDINANCE OF ABSECON CITY

Robert L. Reid, AICP, PP

ABS 046.12

July 20, 2007

Plan, the City Council does not need to refer it back to the Planning Board prior to final adoption.

**ORDINANCE NO. \_\_\_\_\_ OF 2007**

**AN ORDINANCE AMENDING CHAPTER 224, ABSECON  
DEVELOPMENTAL ORDINANCE CREATING  
A TREE PROTECTION ORDINANCE (ARTICLE XXXIV)**

**WHEREAS**, the Absecon City Planning Board adopted a Master Plan Reexamination Report and Master Plan Update on May 23, 2006; and

**WHEREAS**, the Master Plan Reexamination Report and Master Plan Update recommended creating A Tree Protection Ordinance.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body for the City of Absecon City, County of Atlantic and State of New Jersey, that Chapter 224, Absecon Developmental Ordinance is hereby amended as follows:

- A. Purpose. The purpose of this section is to encourage the protection of trees in the City of Absecon through the establishment of protective regulations, in order to control and, to the extent possible, ameliorate problems caused by flooding, wildfires, soil erosion, air and noise pollution, protect the health, safety and welfare of present and future citizen; preserve wildlife habitat; and promote high quality development.
- B. Definitions. As used in this section, the following terms shall have the meanings indicated:

**DISTURBANCE ZONE** — That portion of a commercial or multi-family residential vacant lot or developed lot covered by existing or proposed buildings, structures, or improvements and within a certain distance around, as noted below:

- 1. Principal or accessory commercial or multi-family residential structure of any type up to two stories: 20'.
- 2. Commercial building, Multi-family housing, or other structure over two stories: 30'.
- 3. Garage: 20'
- 4. Pool: 15'.
- 5. Septic system: 20'.
- 6. Underground utility: 10'.
- 7. Sidewalk, driveway, or parking area: 5'.
- 8. Drainage facilities to include retention/detention basins, drainage ditches, and swales: 15'.

ORDINANCE NO. \_\_\_\_ OF 2007  
TREE PROTECTION ORDINANCE OF ABSECON CITY

Robert L. Reid, AICP, PP

ABS 046.12

July 20, 2007

9. Other improvements: 5'.

**TREE** — Any woody perennial plant usually having one main stem or trunk and a definitely formed crown which has the potential, based on its genesis and species, to grow to a height of 10' or more. This definition also includes deciduous shade trees, street trees, ornamental trees, and evergreens.

**TREE PROTECTION ZONE** — That portion of a commercial or multi-family residential vacant lot or developed lot being outside the disturbance zone. That portion of land in any commercial district that adjoins an existing single-family use or residential district for a distance of 25' from the property line that adjoins an existing single-family use or residential district.

C. Applicability.

1. No commercial or multi-family residential property of 5,000 sq. ft. of disturbed area may be cleared without a Certification from the Cape-Atlantic Soil Conservation District.
2. No property in any commercial district that adjoins an existing single-family use or residential district may be cleared of trees or natural vegetation within 25' of the property line that adjoins the existing single-family use or residential district.
3. No commercial or multi-family residential property may be cleared of trees without an approved tree protection plan.
4. All commercial or multi-family properties with existing trees with a size of 24" diameter at breast height (dbh) or greater require an approved tree protection plan.
5. A tree protection plan shall be submitted, being incorporated with the required landscape plan, for all development projects necessitating site plan or subdivision review.
6. The provisions of this section shall be applicable to all owners of commercial and /or multi-family property within the corporate limits of the City of Absecon with the exception of the below-listed cases:
  - i. Trees being cut or removed in accordance with the provisions of a farm conservation plan as approved by the Cape-Atlantic Soil Conservation District, with said plan being filed with the city.
  - ii. Harvesting of timber in accordance with a State Bureau of Forestry approved forestry management plan, with said plan being filed with the city.
  - iii. Trees grown in conjunction with nursery, orchard, or Christmas tree farm uses.
  - iv. Pruning and/or removal of trees by utility companies for the provision of line clearance.
  - v. Pruning and/or removal of any tree, which constitutes an immediate threat to the health or safety of the public.
  - vi. Trees being cut or removed as a result of disease, infestation, or having what would constitute a progressive degenerative condition.

ORDINANCE NO. \_\_\_\_ OF 2007  
TREE PROTECTION ORDINANCE OF ABSECON CITY

Robert L. Reid, AICP, PP

ABS 046.12

July 20, 2007

In these instances, the city may require the submission of a letter from a certified New Jersey arborist or tree surgeon.

- vii. Properties with existing homes in residentially zoned areas and not subject to conditions of a previous approval granted by the Planning Board or Zoning Board of Adjustment.
- viii. Single-family building lots not subject to conditions of a previous approval granted by the Planning Board or Zoning Board of Adjustment.

- 7. The standards contained herein shall be considered the minimum threshold in terms of meeting the intent of the ordinance. Where state or federal regulations have applicability, the more restrictive regulation shall take precedence.

D. Tree protection plan requirements. If the submission of a tree protection plan is deemed necessary, it shall contain, at a minimum, the following elements of information:

- 1. Location of all existing and proposed buildings, driveways, septic systems, easements, underground utilities, drainage systems, and any other pertinent improvements.
- 2. Proposed tree clearing limits line.
- 3. The location of existing or proposed rights-of-way.
- 4. Location, size, and species of all trees, on the site, having a diameter (at breast height) of twelve inches or greater which are to be saved or cut, removed, or potentially damaged as a result of the proposed development.
- 5. Specifications for the protection of all trees during construction in the tree protection zone shall include:
  - i. Placement of snow fencing at the perimeter of the dripline so as to protect exposed roots and low hanging branches. Feeder roots shall not be cut closer than the dripline.
  - ii. Buffering of existing tree trunks and roots from heavy equipment.
  - iii. Prohibition against trees being used for roping, cable, signs, or fencing. Nails or spikes shall not be driven into any part of a tree.
  - iv. The clearing of the area at the base of the tree to allow for absorption of nutrients and water. Impervious coverage shall not be any closer to the main trunk than the distance of the dripline.
  - v. Removal of all vegetative and miscellaneous debris from the site and disposal of same in accordance with city policy.
- 6. Existing topography, to include existing and proposed final grading, within 25' of the proposed disturbance area.
- 7. Location of all watercourses, wetlands, and floodplains.
- 8. Every effort practical must be taken to protect and preserve existing trees on the site that are 24" diameter at breast height (dbh) or greater located in the DISTURBANCE ZONE or the TREE PROTECTION ZONE.

ORDINANCE NO. \_\_\_\_ OF 2007  
TREE PROTECTION ORDINANCE OF ABSECON CITY

Robert L. Reid, AICP, PP

ABS 046.12

July 20, 2007

Applicants / property owners are required to preserve such trees. The existing tree(s) should be worked into the site design / site layout. To remove such a tree, the applicant must demonstrate to the board that every effort has been made to preserve such trees. In the event that it is demonstrated by the applicant that it is impractical to preserve such trees, the applicant will be required to replace the tree with new trees. The minimum size replacement tree shall be 3-1/2" dbh, minimum height 14'. The actual number of replacement trees will be based on the size tree to be removed. A minimum of one 3-1/2" dbh tree for each 3" of existing tree diameter to be replaced is required.

The following are examples for various size trees - The number of replacement trees required for a 30" existing tree would be 10 trees at 3-1/2" dbh minimum in size; for a 36" existing tree, 12 trees at 3 1/2" dia. at dbh would be required.

The replacement trees will be required in addition to the required vegetation within the Absecon Developmental Ordinance for the development proposed.

E. Review procedure.

1. For all projects involving the submission of an application for land development, the requisite tree protection plan included with the landscape plan shall be forwarded to the Board Planner for review as part of the application for land development.
2. Any site clearing project prior to an application for land development, the requisite tree protection plan included with the landscape plan and Soil Erosion Certification (If applicable) shall be forwarded to the City Planner for review and recommendation to the Construction Official.
3. Survey of clearing limits prepared by a NJ Licensed Professional Land Surveyor shall be provided for review. Survey must include location of actual clearing limits in relation to the outbounds of the subject property and the originally proposed tree clearing limits line.
4. Clearing limits shall be checked by the Board Planner at the time of performance of the building foundation inspection, and as part of the final inspection process leading to the issuance of the certificate of occupancy.

F. Estimate of Probable Cost

An estimate of probable cost is required. The estimate of probable cost must include all proposed landscaping including replacement trees, if required, snow

ORDINANCE NO. \_\_\_\_ OF 2007  
TREE PROTECTION ORDINANCE OF ABSECON CITY

Robert L. Reid, AICP, PP

ABS 046.12

July 20, 2007

fencing and cost of survey of clearing limits. The estimate of probable cost will be reviewed by the Board Landscape Architect for acceptance.

**G. Performance Guaranty**

A Performance Guaranty is required in accordance with Section 224-176.

**H. Maintenance Guaranty**

A Maintenance Guaranty is required in accordance with Section 224-177.

**I. Penalties.**

In addition to any other penalties provided for by law or regulation, violators of any provision of this section may be required to restore the subject property to its original level type of vegetation.

**Topsoil protection.**

No topsoil shall be removed from the site or used as spoil. Topsoil moved during the course of construction shall be redistributed within the site and shall be stabilized by seeding or planting.

**NOTICE IS HEREBY GIVEN** that the foregoing Ordinance was introduced and passed the first reading at a meeting of the City Council of the City of Absecon City, County of Atlantic and State of New Jersey, held on \_\_\_\_\_, and said Ordinance will be further considered for final passage and adoption at a public hearing to be held at the Municipal Complex located at 500 Mill Road, Absecon, New Jersey 08201, on \_\_\_\_\_, at 7:30 p.m. or as soon thereafter as the matter may be reached.

**BY ORDER OF THE MUNICIPAL COUNCIL OF THE CITY OF ABSECON**

Approved: \_\_\_\_\_  
Peter C. Elco, Mayor

Attest: \_\_\_\_\_  
Carie A. Crone, Acting Municipal Clerk