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# TOWNSHIP OF FERGUSON

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**FERGUSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING AGENDA  
Monday, January 11, 2021  
6:00 PM**

**Via Zoom Meeting**

<https://us02web.zoom.us/j/89546581102>

**Meeting ID: 895 4658 1102**

- I. Call To Order
- I. Approval of Regular Meeting Minutes—December 1, 2020
- II. Citizen Input
- III. Community Planning

- A. Tree Preservation Ordinance

The Public Works and Planning & Zoning Department have drafted an amendment to Chapter 22, Subdivision and Land Development to establish a new part, Tree Preservation. The intent of this chapter is to encourage the protection of trees through sound land use and tree management practices. This chapter will preserve, protect and maintain existing trees in Ferguson Township, as well as, increase the overall tree canopy and understory with native species. It will aid in improving tree and ecosystem health on both public and private lands.

The Board authorized staff and the Ferguson Township Tree Commission in September of 2018 to draft a Tree Preservation Ordinance. Staff has received comments from Planning Commissioners and has included with the agenda an updated draft based on those comments received. Staff is prepared to answer any questions the Planning Commission may have.

**Staff Recommendation:** Planning Commission recommend to the Board of Supervisors to approve the Tree Preservation Ordinance and authorize staff to advertise a public hearing.

- IV. Official Reports and Correspondences

- A. Board of Supervisors

- B. CRPC Report
- C. Land Development Plans
- D. Staff Updates

**V. Adjournment**

**FERGUSON TOWNSHIP PLANNING COMMISSION  
REGULAR MEETING MINUTES  
MONDAY, DECEMBER 1, 2020  
6:00 PM**

**ATTENDANCE**

The Planning Commission held its first regular meeting of the month on Tuesday, December 1, 2020, as a virtual meeting. In attendance:

**Commission:**

Jeremie Thompson – Chair  
Rob Crassweller - Secretary  
Jerry Binney  
Shannon Holiday  
Bill Keough  
Lisa Rittenhouse  
Dr. Ellen Taricani  
Ralph Wheland

**Staff:**

Jenna Wargo, Planning & Zoning Director  
Kristina Aneckstein, Community Planner  
Dave Modricker, Director of Public Works  
Lance King, Township Arborist

Others in attendance: Rhonda Demchak, Recording Secretary

Mr. Thompson noted that the Planning Commission meeting had been advertised in accordance to the PA Sunshine Act as a virtual meeting via Zoom. There was also an audio conference bridge that was accessible by dialing the Ferguson Township's main line at 814-238-4651 and then dialing extension 3799. Persons attending the meeting as members of the public and wanted to participate were asked to enter their name, municipality, and topic by utilizing the Q&A bubble at the bottom of the screen. C-NET is recording as well.

Ms. Wargo took roll call and the Planning Commission had a quorum.

**I. CALL TO ORDER**

Mr. Thompson called the Ferguson Township Planning Commission's regular meeting to order on Tuesday, December 1, 2020 at 6:00 p.m.

**II. APPROVAL OF REGULAR MEETING MINUTES OCTOBER 26, 2020**

Mr. Thompson called for a motion to approve the minutes from October 26, 2020. Mr. Binney made a motion to approve the minutes. Dr. Taricani seconded the motion. The motion passed unanimously

**III. CITIZEN INPUT**

None

**IV. REVIEW AND APPROVAL OF THE 2021 PLANNING COMMISSION CALENDAR**

Ms. Wargo reviewed the calendar that was included in the packet.

Mr. Crassweller moved to approve the 2021 Planning Commission Calendar. Mr. Keough noted that February 22, 2021 is not President's Day. Ms. Aneckstein will update the calendar to reflect that the meeting will be held on February 22, 2021. Mr. Keough also noted that he would like the Planning Commission to have a meeting on November 22, 2021. After consideration, it was decided not to hold a meeting on November 22, 2021. Mr. Crassweller amended the motion to change the meeting from February 23, 2021 to February 22, 2021. Mr. Binney seconded the motion. The motion passed unanimously.

**V. REVIEW AND APPROVAL OF THE 2021 PLANNING COMMISSION WORK PROGRAM**

Ms. Wargo presented the Work Program that was included in the agenda packet. Routine activities were included from previous years. Staff is dedicating time to the Zoning/SALDO Ordinance Amendments because there were some errors that were left out during the comprehensive update and will continue to monitor. The Pine Grove Mills Small Area Plan is reviewing the Village Zoning District, but the Planning Commission will be involved at a later date. Ms. Wargo noted that the Workforce Housing Ordinance will be on the Board of Supervisors agenda for December 14, 2020. The Planning Commission will assist with implementation activities as identified in the Pine Grove Mills Small Area Plan. Staff will be reviewing Post-COVID-19 Planning and Zoning Observations along with the Planning Commission. It will be reviewed to analyze the impact the Township's ordinances have on different types of businesses and business models. Ms. Wargo noted that if the Recreation, Park, and Open Space plan would come to fruition in 2021, the Planning Commission will be involved with the plan. Under Additional Duties, Ms. Wargo indicated that at a recent Board meeting a Supervisor brought up the Recreation Economy in Ferguson Township with regards to COVID-19. Lastly, the Planning Commission will provide input and technical assistance where necessary to the Ferguson Township Climate Action Ad Hoc Advisory Board.

Mr. Binney inquired if the West College Avenue Streetscape will be included in the work program. Ms. Wargo indicated that representatives from Penn State attended the November 2, 2020 Board meeting and presented a PowerPoint on the West Campus development. After discussions during the Board meeting, the Supervisors decided to pull the contract for the zoning re-writes. Mr. Keough expressed concerns with the alley along the back of the current TSD and noted that the alley is a critical component that has not been addressed. Ms. Wargo noted that historically the Board does not want to be involved with alley's because there is not a clear understanding of ownership. Ms. Wargo noted that if the Planning Commission would like the alley's to be included in the Work Program a motion would be needed because the Board approves the Work Program.

Mr. Keough made a motion to review and study the alley functions within Ferguson Township. Mr. Wheland seconded the motion. The motion passed 7-1 with Mr. Crassweller opposing.

Mr. Crassweller noted he understands the need to address the alley's, but if the Board historically doesn't do anything, why waste the time. Ms. Rittenhouse stated that someone needs to determine who will maintain the alleyways and agrees that it needs addressed. Mr. Modricker stated that he can provide a lot of information and to let him know when they would like to meet to discuss at length. Ms. Holiday asked if there are a lot of alley's or just in a certain area of the Township. Mr. Modricker noted that there are numerous alley's in the older part of the Township and the alleys are treated like private roads. Some of the alleys are maintained nicely by a Homeowners Association and others are neglected. Ms. Aneckstein stated that in the Pine Grove Mills area that the Pine Grove Mills Small Area Plan are investigating alleys and noted that the deeds are inconsistent.

Mr. Keough suggested adding to the Work Program as a low priority item, the Elder Cottage Housing Opportunities (ECHO). Centre County has approved the ECHO process which are temporary cottages for senior citizens that are placed in the backyard of a relative and connects to the relative's utilities. When the cottage is no longer needed, it is removed from the property and taken to another location.

Mr. Keough made a motion to add the Elder Cottage Housing Opportunity program and how the program would fit within Ferguson Township to the 2021 Work Program. Ms. Holiday seconded the motion. The motion passed unanimously.

Mr. Keough made a motion to approve the amended 2021 Work Program. Dr. Taricani seconded the motion. The motion passed unanimously.

## **VI. TREE PRESERVATION ORDINANCE**

Ms. Wargo introduced the ordinance that was provided in the agenda. The Public Works and Planning & Zoning Department have drafted an amendment to Chapter 22, Subdivision and Land Development to establish a new part, Tree Preservation. The intent of this chapter is to encourage the protection of trees through sound land use and tree management practices. This chapter will preserve, protect and maintain existing trees in Ferguson Township, as well as, increase the overall tree canopy and understory with native species and improve tree and ecosystem health on both public and private lands. The Board authorized staff and the Ferguson Township Tree Commission in September 2018 to draft a Tree Preservation Ordinance. Since that time, the Tree Commission has met to review this ordinance several times. Mr. Lance King, Ferguson Township Arborist, reported that since his employment in 2015 he has had multiple people inquire on how to stop cutting down all the trees within the Township. Ms. Wargo presented a PowerPoint in which the goals are to Preserve, Protect & Maintain, Increase Tree Canopy, and Respect Existing Trees. The ordinance would apply to applications submitted to the Township for Grading Permits, Subdivision Plans, and Land Development Plans.

### Discussion

Mr. Keough expressed issues with subdivision plans going through the reporting process and suggested taking out the Subdivision Plan from the ordinance because all it will do is move lot lines. Mr. Keough suggested adding language to the ordinance that represents single landowners. The current draft ordinance currently states that there is no difference between a single landowner purchasing a lot and a developer who could purchase multiple acres. Ms. Wargo noted that she will address Mr. Keough's concerns within the ordinance. Mr. Binney asked if existing condo developments would be exempt. Ms. Wargo will add an exemption for condo's in the ordinance. Mr. Keough expressed concerns with all of the definitions of trees. Mr. King noted that they were trying to be consistent throughout the ordinance, because that is what is listed in the Zoning Ordinance. Mr. Keough suggested under Hedgerow, to remove the second sentence due to it being an opinion. Mr. Keough noted that Heritage Tree and Significant Tree have the same definition.

Ms. Wargo continued with the presentation. The ordinance would not apply to the following:

1. Agricultural Business
2. Existing Single-Family residences
3. Removal of Trees (Horticultural Properties)
4. Utility Construction & Maintenance
5. Timbering and Forestry Practices

Ms. Wargo reviewed the process. Once the application is submitted to the Township the applicant is required to provide an existing Tree Survey Plan. All applicants must preserve 20% existing tree canopy. Additional trees may be planted to increase tree canopy. The Township would issue a parking credit not to exceed 20%.

Mr. Wheland expressed concerns with the grammar in the ordinance and reviewed the issues. Ms. Wargo will address the issues. Mr. Keough inquired about Agricultural Business exemptions and suggested exempting RR and RA. Mr. Keough expressed concerns with mixing urban canopy and urban tree environment with rural canopy and rural tree environment because of the differences. Mr. Binney suggested to add more context to the Applicability and Exemption sections to better understand the ordinance better.

## **VII. OFFICIAL REPORTS AND CORRESPONDENCES**

### **A. Board of Supervisors**

Ms. Wargo noted that at the October 16, 2020, meeting the Board had four public hearing on the agenda. The Board approved the Zoning and Map Amendments. The Board tabled the Workforce Housing Ordinance and the Resolution for Schedule C to include the Workforce Housing fee-in-lieu amount until the December 14, 2020 meeting. The Board approved the ordinance regarding family child-care in homes. There was also a Tree Canopy Survey presentation given to the Board. Mr. Keough requested the maps to be sent to the Planning Commission from the survey.

### **B. CRPC Report**

Dr. Taricani reported that at the November meeting, Ms. Wargo and Ms. Aneckstein gave a presentation on the Planning Process and thanked them. They also talked about the new part of the Arboretum gardens. The next meeting will be held in January.

### **C. Land Development Plans**

Ms. Aneckstein noted that they are on their second review of the West College Student Housing project.

### **D. Staff Updates**

Ms. Wargo reported that typically during this time of year it slows down, and staff is working on scanning the land development plans. Mr. Binney thanked the staff for all their hard work this past year especially during the pandemic. Mr. Keough noted that at the special budget meeting last month, the Board is proposing to pull the Township's participation in Agricultural Preservation from the 2021 budget. Ms. Wargo stated that she will verify the information and update Mr. Keough.

## **VIII. ADJOURNMENT**

Mr. Binney made a motion to adjourn the December 1, 2020 Planning Commission meeting at 8:00 p.m. Mr. Wheland seconded the motion. The motion passed unanimously.

Respectfully Submitted,

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Rob Crassweller, Secretary  
For the Planning Commission

ORDINANCE NO. \_\_\_\_\_

FERGUSON TOWNSHIP  
TREE PRESERVATION AND PROTECTION ORDINANCE

**Intent.**

Trees improve air and water quality. Trees reduce soil erosion, noise, and glare, while providing habitat for desirable wildlife. Trees moderate the climate and enhance community image, property values, and protects the public health, safety, and general welfare. The purpose of these regulations is to encourage the protection of trees through sound land use and tree management practices by:

1. Preserve, protect and maintain existing native trees in Ferguson Township and to increase the overall tree canopy and understory with native species and improve tree and ecosystem health on both public and private lands.
2. To preserve and evaluate healthy trees on site whenever possible, in partnership with the applicant, by ensuring that all applications for grading permits, land development plans, and subdivision plans respect existing trees as a natural resource.
3. To preserve and protect all individual and groups of heritage trees as defined herein.

**Definitions.**

Words and terms in this part shall have the meanings given herein. Unless expressly stated otherwise, and pertinent word or term not part of this part but vital to the interpretation of this part shall be construed to have their legal definition, or in absence of a legal definition, their meaning as commonly accepted.

1. Words used in the present tense shall include the future tense;
2. Words used in the plural number shall include the singular and plural number, and the plural number shall include the singular number;
3. The words "shall" and "will" are mandatory and are not discretionary;
4. The word "may" is permissive;
5. The word "lot" shall include the words "place," "parcel," and "premises";
6. The word "building" means a structure, including any part thereof having a roof and used for shelter or enclosure for persons or property;
7. The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," or any other legal activity;
8. The word "person" shall include the words "individual," "corporation," "Governmental agency," "trust," "estate," "partnership," "association," "venture," "joint venture," "participant," or any other legal activity;
9. As used in this part, the following terms shall have the meanings indicated;

**APPLICANT**—The property owner or authorized representative.

**ARBORIST**—The Arborist of Ferguson Township. The Arborist is a professional in the practice of arboriculture. This term shall include the Township Arborist as well as any consultants engaged to perform similar services in the promulgation and enforcement of the Ferguson Township Ordinances.

**APPROVED PRESERVED TREE**—Any tree that is inside the limit of disturbance and is to be properly protected and not destroyed or injured during construction as required by this chapter and as approved by the Township Arborist.

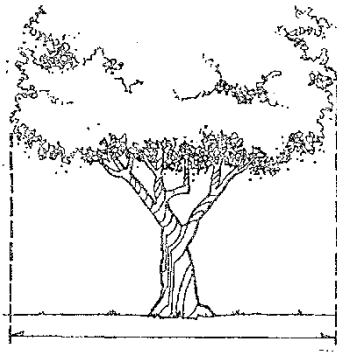
**BOUNDARY TREE**—A tree on an adjacent property whose root drip line intrudes across the property line of the property under consideration.

**CALIPER**—A measure of nursery stock measured in diameter. For four-inch diameter stock or smaller, the measure is taken at six inches above the root ball. For stock above four inches, the measurement is taken at 12 inches above the root ball.

**CANOPY TREE**—A tree, either single-stemmed or multi-stemmed (clump form), which has a caliper of at least 2 inches at planting and is of a species which, at maturity, shall reach a height of at least 30 feet with a spread of at least 30 feet. See the Township’s official plant list for a listing of permitted canopy trees.

**DBH**—Diameter at breast height; a measure of trunk diameter in inches, taken at 4 ½ feet above the natural ground line. The measured section of the tree should be free of branches and representative of the typical age of the tree species. DBH measurement is applied to existing trees (compared to caliper used for nursery stock).

**DRIPLINE**—The boundary created by the outermost branches of a tree.



*Rendering for illustrative purposes only.*

**DRIPLINE**

**EVERGREEN TREE**—A tree, either single-stemmed or multi-stemmed (clump form), which is a minimum of six (6) feet tall at planting and is a species which at maturity can be expected to reach a height of at least 20 feet. See the Township’s official plant list for a listing of permitted evergreen trees.

**FARM-BASED BUSINESS**—A scale of operation essential to farm activities and based on production of products.

**FLOWERING/ORNAMENTAL TREE**—A tree, either single-stemmed or multi-stemmed (clump form), which has a caliper of at least 1 ½ inches at planting and is of a species which, at maturity, can be expected to reach a height of at least 10 feet. See the Township’s official plant list for a listing of permitted trees.

**GROUND COVER**—A low-growing perennial plant.



**HEDGEROW**—A narrow linear vegetated area with a mix of woody trees and shrubs enclosing or separating farm fields and pastures.

**HERITAGE TREE**—Any tree or stand of trees located on public or private property, of landmark importance due to age, size, species horticultural quality or historic importance that has a DBH greater than 36 inches or an age greater than 75 years, and has been approved as a heritage tree by the Board of Supervisors and which has been accepted by the tree owner or responsible party.

**INVASIVE SPECIES**—Any plant that appears in the most recent invasive plants list published by the Pennsylvania Department of Conservation and Natural Resources (DCNR).

**LIMIT OF DISTURBANCE**—Boundary line to be shown on a plan delineating the area outside of which no activity of any sort relating to transplanting, demolition, grading, construction, drainage, storage or any other project activities is permitted.

**LOT**—A designated parcel, tract or area of land established by a plot or otherwise as permitted by law to be used, developed or built upon as a unit and which is described and/or held in single and separate ownership.

**NATIVE PLANTS**—A plant species indigenous to the Northeastern United States that occurs naturally in a particular region, state, ecosystem, and habitat without direct or indirect human actions.

**PROPERTY OWNER**—Any person, agent, operator or corporation having a legal or equitable interest in the property; or recorded in the official records of the Commonwealth of Pennsylvania, County of Centre or Ferguson Township as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

**REMOVED TREE**—Any tree that is destroyed, injured or otherwise not protected according to the provisions of this chapter.

**REPLACEMENT TREE**—A tree required to be planted per this chapter to compensate for the removal or damage of existing trees on a site.

**SIGNIFICANT TREE**—Any tree or stand of trees located on public or private property that is of landmark importance due to age, size, species, horticultural quality or historic importance that has been approved as a significant tree by Ferguson Township's Tree Commission and which status has been accepted by the tree owner or responsible party.

**TREE**—Any hard-wooded perennial plants, whether evergreen or deciduous, or a species which normally reaches a height of eight feet or more at maturity.

**TREE CANOPY**—The layer of leaves, branches, and stems of a tree or trees that cover the ground when viewed from above.

**TREE COMMISSION**—Ferguson Township's Tree Commission.

**TREE CONDITION**—An assessment of tree health and structure by the Arborist or a qualified arborist as approved by Ferguson Township's Arborist.

**TREE PROTECTION ZONE**—An area approved by the Arborist that is radial in all directions to the trunk of a tree to be protected. The tree protection zone shall be 15 feet from the trunk of the tree to be retained, or the distance from the trunk to the dripline (the line marking the outer edge of the branches of the tree), whichever is greater. Where a group of trees or woodlands is to be protected, the tree protection area shall be the aggregate of the protection areas for the individual trees.

**TREE RISK RATING**—A method that ranks both the relative degree of risk and consequence of tree failure by considering tree condition and defects, the size of the tree part prone to failure and the vulnerability and value of any target that may be struck. Tree risk ratings include:

**IMPROBABLE**—Tree is not likely to fail even in severe weather.

**POSSIBLE**—Failure could occur but is unlikely during normal weather conditions.

**PROBABLE**—Tree failure is expected under normal weather conditions.

**IMMINENT**—Tree failure has started or will occur in near future.

**TREE SURVEY PLAN**—Plan identifying the size, location, species and canopy of all existing trees having a diameter at breast height (DBH) of six inches or greater.

**Applicability.**

1. Any applicant who submits an application for a grading permit, land development plan, or subdivisions plan of four parcels or fewer shall comply with the terms of this chapter.
2. Any applicant submits a Minor Alteration Plan may choose to take advantage of incentives within this chapter by compliance with the terms herein.
3. This chapter is not intended to apply to:
  - a. Farm-based business.
  - b. Subdivisions of four parcels or fewer.
  - c. A land development plan of a residential structure unless located within the Ridge Overlay Zoning District.
  - d. The removal of trees from a lot containing an existing single-family residence, unless such removal is a part of grading activities that impact one acre or more of area. However, no property owner or occupant shall be permitted to remove trees if such trees have been planted or preserved to meet the requirements of Township ordinances or an application approved by the Township.
  - e. The removal of trees identified as dead or diseased by the Township Arborist.
  - f. The removal of trees for sale in the ordinary course of business from horticultural properties, such as farms, nurseries or orchards.
  - g. The removal of any tree, including preserved, Heritage and Significant, which is deemed a probable or imminent hazard by the Arborist as established by ISA Tree Risk Assessment.
  - h. The removal of trees required for approved utility construction and maintenance within established easement areas.
  - i. Timbering and forestry practices as defined by the Pennsylvania Municipalities Planning Code.

**Tree preservation, protection and replacement.**

1. Tree Survey Plan.
  - a. Every application for a grading permit, land development plan or subdivision plan shall include an existing tree survey plan and a proposed tree plan except any action that does not include ground coverage disturbance.
    - i. Minor Alteration Plans that choose to take advantage of the incentives within this Chapter shall submit an existing tree survey plan, a proposed tree plan and comply with the terms of this chapter.
  - b. Existing Tree Survey Plan. The existing tree survey plan shall contain existing topographic information at two-foot contour intervals and shall show all existing buildings and structures, driveways, parking areas, drainage structures, water detention/retention areas, utilities and all limits of grading.
    - i. The existing tree survey plan shall denote each tree currently on the lot over 6 inches in caliper and the existing canopy coverage. It will denote each tree that will be saved, the location of the tree protection fences for each tree to be saved and trees to be removed.
      1. Existing tree survey methodologies must be approved by the Township Arborist.
  - c. Proposed Tree Plan. The proposed tree plan shall contain proposed topographic information at two-foot contour intervals and shall show all proposed buildings, structures, driveways, parking areas, drainage structures, water detention/retention areas, utilities and all limits of grading.
    - i. The proposed tree plan shall denote the proposed tree replacement schedule, including the pre-existing trees that will be saved, and the proposed tree canopy of the replacement trees at maturity. The species of proposed replacement and additional trees shall be species listed on the Official Township Planting List. The proposed tree plan shall also include the landscaped buffer and all interior landscaping as required in §27-707, Landscaping.
  - d. The existing tree survey plan and proposed tree plan shall be reviewed by the Township Arborist.
  - e. The number of trees shall be calculated using the guidelines listed in this chapter.
  - f. Heritage, Significant and boundary trees shall be individually noted on the existing and proposed tree plans.
2. Tree preservation and protection.
  - a. Tree preservation. Every application for a grading permit, land development plan or subdivision plan application shall preserve 20% of the existing tree canopy on the lot, except where it can be demonstrated that it is not practical to do so and approved by the Township Arborist. The conditions for determining the practicality of tree preservation on a given lot shall be as follows:
    - i. Condition: Trees that are dead or determined to be in poor condition by the Township Arborist are not eligible for preservation.
    - ii. Species: Any invasive species as defined by this ordinance is not eligible for preservation.
  - b. The applicant may preserve more than the required 20% of the existing tree canopy on the lot to offset parking requirements for that site (as required by §22-501.C, Off-Street

Parking and Loading in the Subdivision and Land Development Ordinance), not to exceed 20% of parking credited.

- c. The applicant may plant additional trees on the lot to increase the overall tree canopy to offset parking requirements for that site (as required by §22-501.C, Off-Street Parking and Loading in the Subdivision and Land Development Ordinance), not to exceed 20% of parking credited.
- d. The credit (round up) for approved preserved trees and additional canopy tree plantings to offset parking requirements shall be calculated as follows:

Percentage of Existing Tree Canopy	Parking Credit
20%	Required
30%	10%
40%	15%
50%	20%

- i. Approved preserved trees around the perimeter of the property may offset the buffer requirements for the land development or subdivision (as required by §27-707, Landscaping, of the Zoning Ordinance). The number of trees required to be planted in buffer yards may be reduced by canopy tree credit for approved preserved trees as follows:
  - 1. The credit for approved preserved trees to offset buffer yard landscaping requirements shall be calculated as follows:

Diameter of Trunk of Preserved Tree (DBH in inches)	Number of Trees Credited
30 or greater	8
18 to 29	6
12 to 17	4
6 to 11	2

- ii. Any tree preserved within 20 feet of any proposed building or within five feet of a proposed road or sidewalk (measured from edge of curb or edge of right of way) shall not be considered an approved preserved tree by this Ordinance.
- iii. The Township Arborist will perform a tree assessment for each proposed preserved tree on the lot to assess the health and structure prior to credit calculations.
- e. The applicant is encouraged to maintain contiguous tree masses.
- f. Additional tree planting requirement.
  - i. If the applicant chooses to increase the tree canopy by planting additional trees, every additional tree must measure at a minimum 2 inches in caliper at time of planting and be listed on the Official Township Plant List.
  - ii. The species of additional planted canopy trees shall be subject to the recommendation of the Tree Commission. Species are to be hardy to the area and noninvasive and 60% shall be native, consistent with the provisions of this

section. The applicant can refer to Ferguson Township's Official Plant List for selections.

- iii. Subject to the approval of the Tree Commission:
  - 1. A Maximum of 30% of the additional planted canopy trees may be replaced with evergreen trees (at a minimum of 6 feet in height at the time of planting) at a ratio of two evergreen trees per required two-inch-caliper canopy tree.
  - 2. A maximum of 20% of the additional planted canopy trees may be replaced with ornamental/flowering trees at a ratio of two understory trees per required two-inch-caliper canopy tree.
  - 3. A maximum of 10% of the additional canopy trees may be replaced as shrubs with a minimum size of 2 gallons at time of planting and will reach 24" in height at maturity at a ratio of six shrubs per required two-inch-caliper canopy tree.
  - 4. A maximum of 10% of the additional canopy trees may be replaced as groundcover at a ratio of 40 plants to one two-inch-caliper canopy tree. The minimum size of the groundcover will be a one-gallon container.
- iv. Calculation and estimation of existing trees and canopy to be indicated on the existing tree survey plan shall be performed before any clearing commences and shall be performed in the presence of the Township Arborist.
- g. Protective fencing. Every application subject to this Ordinance shall be prepared in such a manner to preserve the healthy trees and shrubs on the site.
  - i. Prior to the preconstruction conference with the Township Arborist, protective fencing shall be placed around trees to minimize damage to root systems. Fencing shall be a minimum of 8 feet in height and constructed of chain link or other material approved by the Township Arborist.
  - ii. The protective fencing shall be placed around the dripline of the tree. Nothing shall be stored, stockpiled, temporarily placed, excavated or allowed in the protective fencing
  - iii. This fence will be installed prior to any and all work conducted; e.g., excavation, grading, trenching (especially silt fence), cleaning, etc.
  - iv. No fuel storage, refueling or maintenance of equipment or wash down of cement handling equipment shall be permitted within any protective fencing.
  - v. Any damage to the fencing or encroachment on the protected areas shall be remedied immediately. Any observed damage to the trees or roots shall be immediately reported to the Township and remedied as soon as is practicable.
  - vi. At the discretion of the Township Arborist, approved preserved trees that have not been adequately protected or damaged may be required to be removed and replaced at the expense of the applicant in addition to paying a fine of \$1,000.00.
    - 1. If the approved preserved tree was identified as a Heritage Tree, the applicant will be required to remove and replace the Heritage Tree in addition to paying a fine of \$1,000.00 and the appraised value of the Heritage tree as determined by the Township Arborist in accordance with established ISA tree appraisal standards.

- h. Preconstruction conference. Upon approval of any permit subject to this Ordinance, and prior to any construction, or earth disturbance on the site, a preconstruction conference shall be held on the site between the Township Arborist and the applicant. The Arborist shall inspect the tree protection fences and other protective devices which have been installed to protect trees.
- i. Notification. After the preconstruction conference, the Township Arborist shall notify the Planning and Zoning Department of his/her findings in writing. Upon approval of the tree protection measures by the Township, grading and construction may proceed, provided that all pertinent permits have been secured.
- j. Invasive vines. Invasive vines which threaten the health of any approved preserved tree shall be cut at the base using a hand saw, snips or loppers, and treated with a basal herbicide to minimize regrowth. The vine shall not be pulled out of the tree but shall be allowed to die in place.
- k. Post-construction. Calculation of approved trees remaining after construction shall be performed by the applicant and reviewed and approved by the Township Arborist based on a procedure similar to that used in completing the tree survey. In the event the completed project is not in compliance with the approved schedule of preserved trees on the final plan, the applicant shall receive written instructions from the Township addressing reparation for all removed trees. The applicant shall complete the reparation, weather permitting, within 45 days of receiving such notification.
- l. Replacement guarantee. All replacement and additional tree plantings shall be guaranteed and maintained in a healthy and/or sound condition in perpetuity or shall be replaced with a new tree of the same species with a minimum caliper of 2 inches.

**Modifications and Waivers.**

- 1. Where the applicant shows to the satisfaction of the Township that compliance with any mandatory provision of these regulations and causes undue hardship to the Applicant because of peculiar conditions pertaining to the particular property, the Township may grant a modification or waiver to one or more provisions of this Chapter. Such modification and/or waiver, however, shall not have the effect of nullifying the intent and/or purpose of this Chapter.
  - a. The Applicant shall follow the procedure outlined in §22-105. Modification and Waivers.

**Violations and Penalties.**

Failure to comply with any provisions of this Chapter shall be a violation of this Chapter.

- 1. Complaints Regarding Violations. Whenever a violation of this Chapter occurs, or is alleged to have occurred, any person may file a complaint to the Township Arborist stating fully the causes and basis thereof. The Township Arborist shall record such complaint, immediately investigate and take action thereon as provided by this Chapter.
- 2. Notice of Violation. If the Township Arborist shall find a violation, he/she shall initiate enforcement proceedings by sending an enforcement notice as provided herein:
  - a. The enforcement notice shall be sent to the owner of record of the lot on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.

- b. An enforcement notice shall state the following:
  - i. The name of the owner of record and any other person against whom the Township intends to take action.
  - ii. The location of the property in violation.
  - iii. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Chapter.
  - iv. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
  - v. That the recipient of the notice has a right to appeal to the Courts within thirty (30) days by filing a request for appeal in writing with the Courts within the said thirty (30) days period.
- c. Failure to comply with the notice within the said thirty (30) days, unless extended by appeal by the Courts, constitutes a violation with possible sanctions, which may be as much as five hundred dollars (\$500) per day of each violation plus all court costs, including reasonable attorney fees the Township incurs as a result of prosecution of such violation.
- d. Civil Enforcement. The Township Arborist may institute civil enforcement proceedings as a means of enforcement if authorized by the Manager or the Board of Supervisors.