

**CHAPTER 560
Land Disturbance Regulations**

| | | | |
|-------|------------------------------------|-------|--|
| 560.1 | Purpose. | 560.5 | Permit required. |
| 560.2 | Permitted land disturbance. | 560.6 | Completion of land disturbance activities. |
| 560.3 | Regulations for topsoil removal. | 560.7 | Exemptions. |
| 560.4 | Regulations for tree preservation. | | |

Sec. 560.1 PURPOSE.

Montville Township has determined that reducing land disturbance and conserving existing vegetation is beneficial to the community. Therefore, in order to protect and further the public health, safety and general welfare and to promote the coexistence of development and the natural environment, this Chapter establishes regulations for land disturbance, soil removal and tree preservation in connection with the clearing and grading of land for construction-related or other purposes. More specifically the purposes of these regulations are to:

- A. Encourage responsible development and minimize the negative environmental impacts that can be associated with development.
- B. Encourage the preservation of trees in order to reduce air and water pollution and reduce noise pollution, reducing the quantity of storm water run-off, protecting natural stream assets; and protecting, and, where possible, enhancing valuable natural water resources.
- C. Ensure that commercial, residential subdivisions, Planned Neighborhood Developments (PND) and Planned Residential Developments (PRDs) are carefully planned, designed and constructed to maintain and preserve the natural features of the site. (Revised 09/10/09)
- D. Ensure that development integrates the natural features of the site into the development to utilize the natural surface drainage so as to minimize the construction of sewers, reduce the amount of grading and to minimize destruction of trees and topsoil so as to conserve to the extent practicable all natural features that contribute to the overall well being and ecological balances necessary to preserve a healthy community.
- E. Improve property values by ensuring the natural and unique features of the site are conserved, including mature trees, which studies show increase the value of real estate, thereby increasing the amount of property taxes collected by the Township.

Sec. 560.2 PERMITTED LAND DISTURBANCE.

Any nonagricultural related land disturbance including tree clearing, trenching, removal of soil, placement of fill or excavation of gravel or other earth materials shall only be permitted when approved according to Sec. 560.5 and only for purposes of grading or excavating an area in preparation for construction thereon of dwellings, buildings or structures permitted in the district in which the area is located. All such land disturbance activities shall comply with the regulations set forth in this Chapter.

Sec. 560.3 REGULATIONS FOR TOPSOIL REMOVAL.

Whenever topsoil is to be removed from land within the Township, a minimum of four inches of topsoil shall remain or be replaced above the subsoil, clay or other unproductive grounds after completion of the operation. The removal, stockpiling, or replacement of the soil shall comply with other applicable regulations to prevent surface run-off.

Sec. 560.4 REGULATIONS FOR TREE PRESERVATION.

Existing woodlands shall be maintained and preserved on the site according to the following regulations:

- A. Definitions. The following terms are defined for the purposes of these regulations:
 - 1. Diameter at breast height (DBH). The diameter of the trunk of a tree measured at a height of 4.5 feet above the natural grade. If the tree splits into multiple trunks below 4.5 feet, the trunk shall be measured at its most narrow point beneath the split.
 - 2. Mature Woodlands. A stand of trees in which there are 10 or more trees that have a DBH of at least 12 inches whose combined canopies cover at least 50% of the area encompassed by the stand of trees.
 - 3. Stand of Trees. A grouping of two or more trees with contiguous canopies.
 - 4. Young Woodlands. A stand of trees in which there are 10 or more individual trees having a DBH of at least 6 inches whose combined canopies cover at least 50% of the area encompassed by the stand.

- B. Residential Uses: In a residential subdivision, Planned Neighborhood Development (PND) (Effective June 22, 2006), or Planned Residential Development (PRD), trees shall be maintained and preserved according to the following (Revised 09/10/09):

1. A minimum of 50 percent of mature woodlands shall be preserved.
 2. A minimum of 25 percent of any young woodland shall be preserved.
 3. Any tree that is not classified as part of a mature woodland or young woodland shall be maintained and preserved, to the extent practicable, when the tree meets the following criteria:
 - a) The DBH of the tree is 8 inches or more.
 - b) The tree is not located within the area to be occupied by a permanent structure together with fifteen feet on all sides, subject to approval of the location of the structure.
 - c) The tree is not located within the area to be occupied by driveways, accessory buildings, sidewalks, utility installations and similar necessary development subject to approval of the location of said improvements.
 4. In order to implement the standards set forth in Subsection 560.4B.1. thru B.3. above in the best manner possible, the applicant may seek a variance from the Board of Zoning Appeals to reduce the lot requirements or setback requirements set forth herein, in order to permit more of the proposed site to be preserved. In reviewing such a variance request, the Board of Zoning Appeals shall determine that:
 - a) The total number of lots do not exceed the number of lots that could be developed if the tree preservation regulations were not imposed;
 - b) The design of the subdivision or planned residential development substantially complies with the purposes, intent and basic objectives of the zoning district in which the subdivision or planned residential development is located;
 - c) The proposal results in a development of equivalent or greater quality than that which could be achieved through strict application of such standards and requirements; and
 - d) The proposed development shall have no adverse impact upon the surrounding properties or upon the health, safety or general welfare of the community.
- C. Nonresidential Uses: On parcels devoted to nonresidential uses, trees shall be retained and preserved according to the following:
1. Trees that are located within the proposed development area of the site may be removed upon the Zoning Commission's approval of the location of such structures and improvements. For the purposes of this

section, the development area of the site shall include the area to be occupied by permanent structures, access roads, parking areas, sidewalks, utility installations, and similar necessary improvements, and an additional 15 fifteen feet on all sides of the proposed area to be occupied by such improvements.

2. On all other portions of the site:
 - a) A minimum of 50 percent of the mature woodlands shall be preserved.
 - b) A minimum of 25 percent of any young woodland shall be preserved.
 - c) Individual trees that are not within a mature or young woodland but which have a DBH of 8 inches or greater shall be preserved to the extent practicable, as determined by the Zoning Commission.

D. Reforestation. Upon the approval of the Zoning Commission, a property owner or developer may clear more area than permitted in Subsections B and C above by agreeing to reforest another part of the site at a ratio of 1.2 times the area or the diameter of the trees otherwise required to be preserved. Such approval shall be granted only when it has been determined that alternative measures to preserve these trees are not feasible.

Sec. 560.5 PERMIT REQUIRED.

Any land disturbance including a change in grade shall be permitted only when an application for a land disturbance permit is reviewed and approved by the Zoning Commission in accordance with the procedures for site plan review in Chapter 720.

- A. In addition to complying with the applicable submission requirements, the property owner shall also file the following items with the Zoning Commission:
 1. A location map that clearly depicts the areas to be disturbed and the location of buildings on adjacent properties, roads and the specific location of all natural features.
 2. A map indicating the proposed changes in the contours and natural features that will result from the land disturbance or grading operation. The contour interval of this map shall be no more than 5 feet in an area where the slope exceeds 10 percent and two feet where the slope is less than 10 percent.

- a) Information on the anticipated disturbance, depth of the excavation or amount of fill to be approved for the proposed site.
- b) A tree removal/preservation plan, whenever trees are to be removed. Such plan shall clearly indicate the following:
 - i. The location, common name and size of the following individual trees and groups of trees:
 - (1) The limits of any mature woodlands and young woodlands, as defined in Sec. 560.4A.
 - (2) Trees that have a DBH of eight inches or greater, and which are not otherwise included within the limits of a mature woodlands or young woodlands.
 - ii. All existing trees and woodlands identified in Subsection i. above that are to remain on the site after construction.
 - iii. All existing trees and woodlands identified in Subsection i. above that are to be removed from the proposed site.
 - iv. The location, common name and size of all new trees to be planted on the proposed site.
 - v. A soil removal plan which sets forth the amount of soil to be removed, the proposed disposition, including reuse of the topsoil, and a siltation prevention plan.
- B. No such permit shall be issued for land disturbance unless the Zoning Commission has determined that:
 - 1. Such land disturbance will not create a nuisance because of dust, erosion, soil or water runoff, or other unsafe or unhealthy conditions including damage to water quality in affected waterbodies.
 - 2. Adequate drainage shall continue to exist on the land to be disturbed so that stagnant water or other conditions dangerous to health and safety will not be created.
 - 3. The land disturbance shall not adversely affect adjacent properties.
- C. Appropriate professional consultants may be retained by the Township to review the land disturbance application and provide expert advise to the Zoning Commission. The applicant shall pay the cost of review by the consultant.

- D. A land disturbance permit may be issued simultaneously with a site plan, when required, pursuant to Chapter 720.

Sec. 560.6 COMPLETION OF LAND DISTURBANCE ACTIVITIES.

Any portion of land that is disturbed shall be reseeded or replanted with grass or other satisfactory planting within three (3) months from such disturbance or before the onset of winter whichever comes first, in order to prevent erosion, creation of dust or other conditions of nuisance.

Sec. 560.7 EXEMPTIONS.

The following are exempt from the regulations of this Chapter.

- A. Trees, woodlands or portions thereof which do not comply with the definitions in Sec. 560.4A.
- B. The removal of dead trees and diseased or damaged trees that threaten life or property or that cannot be revived.
- C. The removal of trees in time of emergency or which pose potential danger to life or property.
- D. Any lot in an R-R, R-1, R-2 or R-3 District with an area less than 10 acres and occupied by a single-family dwelling.