AN ACT to:
(1) require [[a permit]] certain persons to file, and the Department of Permitting Services to approve, a tree protection plan, and to obtain a right-of-way permit, for certain activities affecting roadside trees;
(2) require certain persons to plant certain trees and to pay into a roadside tree replacement fund under certain circumstances;
(3) require the County Executive to adopt regulations specifying certain roadside tree protection, conservation, and replacement standards; and
(4) generally amend the law regarding streets and roads.

By amending
Montgomery County Code
Chapter 2, Administration
Section 2-112
Chapter 8, Buildings
Section 8-26
Chapter 49, Streets and Roads
Sections 49-35 and 49-36

By adding
Chapter 19, Erosion, Sediment Control and Storm Water Management
Section 19-71
Chapter 49, Streets and Roads
Section 49-36A
Sec. 1. Sections 2-112, 8-26, 49-35 and 49-36 are amended and [Section] Sections 19-71 and 49-36A are added as follows:

2-112. Jurisdiction.

* * *

(c) The Board has the following appellate jurisdiction.

<table>
<thead>
<tr>
<th>The Board must hear and decide each appeal taken under:</th>
<th>Those appeals involve:</th>
</tr>
</thead>
<tbody>
<tr>
<td>* * *</td>
<td>[]Permits for grading and construction]] Right-of-way permits</td>
</tr>
</tbody>
</table>


* * *

(n) Tree protection. If any clearing, construction, or development allowed by any permit issued under this Chapter would result in the trimming, cutting, removal, or injury of any roadside tree (as defined in Section 49-35) or any tree located in a State right-of-way in the County, the Director must not issue that permit until:

1. the applicant obtains a roadside tree care permit as necessary from the State Department of Natural Resources; and
2. the applicant has submitted, in connection with the permit applied for under this Chapter, and the Director has approved, a site-specific tree protection plan that meets the requirements of Section 49-36A(d).

The Department must approve or reject each proposed plan within 30 days after receiving it. If the Department does not act on a proposed
plan within 30 days, the plan is approved by default. The Department
may require further information after a proposed plan is submitted, and
may extend this deadline once for an additional 15 days to receive any
needed information. The Department also may extend this deadline at
the request of the applicant.

(o) Regulations. The Director may recommend, and the Executive may
adopt, regulations under Method (2) to specify standards and practices
needed to protect and maintain roadside trees, including construction
practices needed to prevent or minimize damage to roadside trees, under
subsection (n). These regulations must be at least as stringent as
applicable state roadside tree care standards and requirements.

19-71. Tree Protection.

(a) If any clearing, construction, or development allowed by any permit
issued by the Department of Permitting Services under this Chapter
would result in the trimming, cutting, removal, or injury of any roadside
tree (as defined in Section 49-35) or any tree located in a State right-of-
way in the County, the Director must not issue that permit until:

(1) the applicant obtains a roadside tree care permit as necessary
    from the State Department of Natural Resources; and

(2) the applicant has submitted, in connection with the permit applied
    for under this Chapter, and the Director has approved, a site-
    specific tree protection plan that meets the requirements of
    Section 49-36A(d), unless the applicant is engaged in an activity
described in Section 49-36A(b)(2).

(b) The Department must approve or reject each proposed tree protection
plan within 30 days after receiving it. If the Department does not act on
a proposed plan within 30 days, the plan is approved by default. The
Department may require further information after a proposed plan is submitted, and may extend this deadline once for an additional 15 days to receive any needed information. The Department also may extend this deadline at the request of the applicant.

(c) The County Executive may adopt regulations under Method (2) to specify standards and practices needed to protect and maintain roadside trees, including construction practices needed to prevent or minimize damage to roadside trees, under this Section. These regulations must be at least as stringent as applicable state roadside tree care standards and requirements.

49-35. [Permits for grading and construction] Right-of-way [and roadside]

tree work] permit.

(a) (1) A person must not construct any road, sidewalk, shared use path, curb and gutter, driveway, or drainage structure[, or]; begin any such construction (including clearing, grading, and tree cutting)[,]; or perform any tree work on any roadside tree (including removing a stump in a County right-of-way), without a permit from the Director of Permitting Services. Any permit issued for roadside tree work must comply with Section 49-36A. In this Article, "roadside tree" means any plant that has a woody stem or trunk which grows all, or in part, in the right-of-way of any County public road.

(2) In this Section and Sections 49-36, 49-36A, and 49-37, unless otherwise specified, Director refers to the Director of Permitting Services and Department refers to the Department of Permitting Services.

*   *   *
(b) The Director must collect a fee, set by Method 3 regulation, for each right-of-way [[and roadside tree work]] permit application. However, the Director must not collect a fee for any permit to remove:

(1) a tree that endangers a person or property; or

(2) a stump in the right-of-way.

(c) * * *

[(c)] (d) * * *

[(d)] (e) Any violation of this Section is a Class A violation.

[(e)] (f) [Half] The Director must refund half the fees required by this Section [must be refunded] to the applicant if a permit is rejected or withdrawn [prior to the commencement of] before construction begins. If an applicant proposes to undertake a project using materials, standards, or specifications superior to those required under this Article, the fees charged must be computed on the estimated cost of the project as if it met those requirements.

[(f)] (g) * * *

[(g)] (h) * * *

49-36A. Roadside tree work.

II(a) Definitions. In this Section, the following words have the meanings indicated:

Certified arborist means a person who is certified as an arborist by the International Society of Arboriculture or who the Director finds has an equivalent level of experience and training.

Critical root zone means the minimum area beneath a tree (typically a concentric circle not less than 1.5 feet per diameter/inch of the tree, measured at 4.5 feet above ground level) that must be protected to
preserve sufficient root mass to give the tree a reasonable chance of long-term survival.

Licensed tree expert means a person licensed under Title 5, Subtitle 4 of the Natural Resources Article of the Maryland Code or any successor provision.

Pesticide means a:

(1) chemical or biological preparation used to kill, inhibit, or regulate growth on a targeted plant, plant spore, or plant seed, including:

(A) an herbicide;

(B) an insecticide;

(C) a tree growth regulator; and

(D) a fungicide; or

(2) substance or mixture of substances intended:

(A) to prevent, destroy, repel, or mitigate a pest;

(B) for use as a plant regulator, defoliant, or desiccant; or

(C) for use as a spray adjuvant, such as a wetting agent or adhesive.

Recommended County tree list means a list of trees approved by the Director after consulting the Chief of Tree Maintenance in the Department of Transportation. The recommended tree list must include each tree that the Department identifies as suitable for planting on specific sites and conditions in the right-of-way of a public road.

Roadside tree means any single-stem plant that has a woody stem or trunk that grows all, or in part, in the right-of-way of any County or State public road or shared use trail. [Roadside tree includes the tree's critical root zone.]
Tree work means any activity affecting a roadside tree, including:

(1) removal of a roadside tree or a remaining stump;
(2) planting pruning, root-pruning, or trimming a roadside tree;
(3) application of pesticide directly to or in the critical root zone of] right-of-way abutting a roadside tree;
(4) protection of a roadside tree; or
(5) treatment that may adversely affect the health or growth of a roadside tree.

(b) Applicability; exceptions.

(1) The following activities do not require a right-of-way and roadside tree work permit:

(A) cutting or clearing a public utility right-of-way or land for an electric generating station licensed under Sections 7-204, 7-205, 7-207, or 7-208 of the Public Utilities Article of the Maryland Code, or any successor provision, if:

   (i) any required certificate of public convenience and necessity has been issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code or any successor provision; and
   (ii) the cutting or clearing is conducted in a way that minimizes the loss of forest;

(B) routine maintenance of a public utility right-of-way, and cutting or clearing any tree by a public utility as necessary to comply with applicable vegetation management requirements or to maintain, repair, replace, or upgrade any public utility transmission or distribution line; or
(C) cutting or clearing a public utility right-of-way or land for
a new transmission or distribution line.

(2) A licensed tree expert need not obtain a permit for work
performed on:

(A) a tree that is uprooted or truncated because of a storm or
vehicular collision;

(B) a tree branch that is broken and contacts a telephone,
cable television, electric power, or other wire carrying
electric current; or

(C) a tree or tree branch that a certified arborist or licensed
tree expert finds is endangering a person or property.

(3) A certified arborist or licensed tree expert who provides tree
work under paragraph (2) must, within one week after an action
is taken, give the Department:

(A) notice of the property address, if available, and general
area where the action was taken; and

(B) a proposed plan to upgrade the work, if necessary, to the
tree work standards in this Section and applicable
regulations.

The Department must approve, modify, or reject the proposed
plan, after reviewing the actions taken, within 14 days after
receiving the information. If the Department does not act on the
proposed plan within 14 days, the plan is approved by default.
The Department may require further information, and may
extend this deadline once for an additional 15 days in
extenuating circumstances. The Director also may extend this
deadline at the request of the applicant.
(c) **Right-of-way and roadside tree work permit required.**

(1) The Department must not issue a building or related permit to an applicant for any demolition, clearing, pre-construction activity, construction, or development that is likely to result in the trimming, pruning, root-pruning, cutting, removal, or injury of a roadside tree unless the applicant first obtains a right-of-way and roadside tree work permit from the Department.

(2) **Except as provided in subsection (b)(1), a right-of-way and roadside tree work permit is required for any tree work on a utility located in a right-of-way, such as a:**

(A) sewer;
(B) water or gas pipe;
(C) storm drain;
(D) electric, telephone, or television cable or conduit;
(E) sidewalk;
(F) driveway;
(G) sump pump;
(H) gutter outflow line; or
(I) roadway or similar structure.

(3) A person may receive a right-of-way and roadside tree work permit to perform tree work if the person:

(A) holds title to the land where the roadside tree is located;
(B) owns property abutting the right-of-way at the point where the tree is located;
(C) is a government agency that has an easement for the public right-of-way where the tree is located;
(D) is responsible for providing tree care to the tree; or
(E) is an authorized agent of any of these.

(d) Permit issuance and administration.

(1) After receiving an application for a right-of-way and roadside tree work permit, the Department may meet with the applicant and conduct an on-site examination of the proposed tree work.

(2) The Department should consult with the Chief of Tree Maintenance in the Department of Transportation regarding any application under which the applicant would perform tree work.

(3) The Department may issue a permit if the applicant shows that the proposed tree work is necessary to:

(A) protect the health of the tree;

(B) eliminate or reduce a hazard to property, public safety, or health;

(C) improve or prevent a deteriorated tree condition;

(D) improve the overall appearance of the right-of-way; or

(E) carry out a development which has received all other applicable development approvals.

(4) The Department may issue:

(A) a permit for a specific tree or group of trees for specific tree work for a term not to exceed 1 year after the permit is issued; and

(B) a permit for a comprehensive and continuing program of general tree work.

(5) A permit issued under paragraph (4)(B) must specify the types of tree work it covers, as allowed by the license of the person who will supervise the program.
(6) If the Department denies a permit application, the Department must notify the applicant of the reason.

(7) The Department may:

(A) modify any term or condition of a permit to best achieve the objectives of this Article; or

(B) suspend or revoke a permit if the holder violates a condition of the permit or a provision of this Section or the Natural Resources Article of the Maryland Code.

(e) Tree work performance; inspection; replacement.

(1) Each permittee must take all necessary measures to protect a roadside tree from damage during all phases of clearing, construction, or development of a building or other structure, including installing protective fencing, avoiding soil compaction, and protecting critical root zones in the right-of-way.

(2) A permittee must repair any damage a tree sustains during construction or development, including any broken limb, root, or scarred trunk, and any damage caused by soil compaction.

(3) (A) Before any bond filed with the Department under this Chapter is released, or (if no bond has been filed) before any certificate of occupancy or similar final approval is issued, the Department must inspect each affected roadside tree to determine, after consulting the Chief of Tree Maintenance in the Department of Transportation, whether the tree has a reasonable chance of achieving the typical maximum age of a roadside tree in that location.

(B) If the Department does not find that an affected tree has a reasonable chance of achieving the typical maximum age
of a roadside tree in that location, or if the permittee has removed a roadside tree, the Department must require the permittee to pay an amount set by regulation into a tree replacement fund maintained by the Department of Transportation.

(C) The amount of payment must be set by Method 3 regulation; must be proportionate to the cost of replacing each affected tree, using a replacement ratio specified by regulation that takes into account the survival rate of newly-planted trees; must be computed according to the size of the affected tree; may consider the species, age, rarity, and historical value (if any) of the affected tree; and must not be less than $35 per circumference/inch of the affected tree.

(D) The permittee must pay the required amount within 30 days after the Director notifies the permittee that the payment is required. The Director may treat any unpaid funds as a lien on the property where the affected tree is located, and must not issue a certificate of occupancy or similar final approval for the site until full payment is received.

(f) Use of pesticides.

(1) Any permittee who applies a pesticide directly to a roadside tree must be certified and licensed as required by the State Department of Agriculture, and must comply with applicable state regulations.
(2) Any permittee who applies a pesticide must only use a pesticide that is registered for that use by the U.S. Environmental Protection Agency and the State Department of Agriculture. Any permittee who applies a pesticide must follow the manufacturer’s label directions for proper use.

(3) Before applying a pesticide, a permittee must notify the Department of the approximate time and place of application.

(4) Unless the Department directs otherwise, a permittee must not apply an herbicide to a tree if the tree is 6 feet tall or higher.

(5) A permittee must remove dead plant material resulting from the application of an herbicide if removal is necessary for safety reasons.

(6) A permittee must take reasonable precautions in selecting and applying a pesticide on or near a roadside tree to:

(A) avoid the use of an herbicide on vegetation that contributes to soil retention, especially at a highway cut or fill and any other area with a steep slope; and

(B) prevent stream pollution and damage to any adjoining property.

(g) Roadside tree planting.

(1) Any tree that is planted on a public right-of-way must be of a species and variety from the recommended County tree list and must conform to the American Standard for Nursery Stock or standards that the Director identifies as equivalent.

(2) Each roadside tree planting must comply with a planting plan approved by the Department after consulting the Chief of Tree
Building or related permit to an applicant for any demolition, clearing, pre-construction activity, construction, or development that is likely to result in the trimming, pruning, root-pruning, cutting, or removal of, or injury to, a roadside tree unless the applicant obtains a right-of-way permit from the Department under Section 49-35.
(1) A person (including a government agency) may receive a right-of-way permit to perform tree work on a roadside tree if the person:

(A) holds title to the land where the roadside tree is located;

(B) owns property abutting the right-of-way at the point where the tree is located;

(C) is a government agency that has an easement for the public right-of-way where the tree is located;

(D) is responsible for providing tree care to the tree;

(E) is a public utility; or

(F) is an authorized agent of any of these.

(2) The following activities are not subject to this Section (except subsection (f)) and do not require a right-of-way permit:

(A) cutting or clearing a public utility right-of-way or land for an electric generating station licensed under Sections 7-204, 7-205, 7-207, or 7-208 of the Public Utilities Article of the Maryland Code, or any successor provision, if:

(i) any required certificate of public convenience and necessity has been issued under Section 5-1603(f) of the Natural Resources Article of the Maryland Code or any successor provision; and

(ii) the cutting or clearing is conducted in a way that minimizes the loss of forest;

(B) routine maintenance of a public utility right-of-way, and cutting or clearing any tree by a public utility as necessary to comply with applicable vegetation management
requirements or to maintain, repair, replace, or upgrade any public utility transmission or distribution line; or

(C) cutting or clearing a public utility right-of-way or land for a new transmission or distribution line.

(3) (A) A licensed tree expert need not obtain a right-of-way permit for tree work performed on:

(i) a tree that is uprooted or severely damaged because of a storm or vehicular collision;

(ii) a tree branch that is broken and contacts a telephone, cable television, electric power, or other wire carrying electric current; or

(iii) a tree or tree branch that a licensed tree expert finds immediately endangers a person or property.

(B) A licensed tree expert who provides tree work under subparagraph (A) must, within one week after an action is taken, give the Department:

(i) notice of the property address, if available, and general area where the action was taken; and

(ii) a proposed plan to upgrade the work, if necessary, to the tree work standards in this Section and applicable regulations.

The Department must approve, modify, or reject the proposed plan, after reviewing the actions taken, within 14 days after receiving the information. If the Department does not act on the proposed plan within 14 days, the plan is approved by default. The Department may require further information, and may extend this deadline once for
an additional 15 days in extenuating circumstances. The Director also may extend this deadline at the request of the applicant.

(c) **Basis of permit.** The Department may issue a right-of-way permit if the applicant shows that the proposed tree work is necessary to:

(1) protect the health of the tree;
(2) eliminate or reduce a hazard to property, public safety, or health;
(3) improve or prevent a deteriorated tree condition;
(4) improve the overall appearance of the right-of-way; or
(5) carry out a development which has received all other applicable development approvals.

(d) **Tree protection plan.**

(1) The Department must not issue a right-of-way permit for tree work under Section 49-35 until the applicant has submitted, and the Department has approved, a site-specific tree protection plan that requires the applicant to take all necessary measures to protect, and minimize damage during development to, any affected roadside tree.

(2) If the advice or consent of any County department, in its role as owner of or otherwise responsible for the care of any tree in a County right-of-way, is needed or requested before the state Department of Natural Resources may act on a permit allowing tree work on a tree in a County right-of-way, that County department must not give its advice or consent until the Department of Permitting Services has approved a tree protection plan under this subsection, Section 8-26, or Section 19-71.
The Department must approve or reject each proposed tree protection plan within 30 days after receiving it. If the Department does not act on a proposed plan within 30 days, the plan is approved by default. The Department may require further information after a proposed plan is submitted, and may extend this deadline once for an additional 15 days to receive any needed information. The Department also may extend this deadline at the request of the applicant.

Tree replacement.

Each permittee who removes a roadside tree in a County right-of-way must:

(A) plant a tree from the recommended County tree list in a County right-of-way, at or near the location of the original tree, which is suitable to that location, unless the Director waives this requirement because:

(i) compliance at the particular site would not be feasible; or

(ii) the removed tree was already dead or posed a danger to persons or property; and

(B) pay an amount into a Street Tree Planting Fund maintained by the Department of Transportation, unless the Director waives this requirement because the removed tree was already dead or posed a danger to persons or property, at a rate set by regulation that will allow the Department of Transportation to plant 2 more suitable replacement trees, or 3 more replacement trees if the Director has waived the on-site planting requirement because compliance at the
particular site would not be feasible, at suitable locations in the right-of-way of a public road in the County.

(2) The permittee must pay the required amount within 30 days after the Director notifies the permittee that the payment is required.

(3) The Department of Transportation must use funds in the Street Tree Planting Fund only to plant trees in the right-of-way of a public road in the County, and must not use funds received under this subsection to hire additional County staff or to supplant funds otherwise appropriated for that purpose.

(4) In locating, selecting, and planting trees under this subsection, the Department must:

(A) give highest priority to those areas of the County, such as central business districts and other urban and suburban areas, that have relatively low tree canopy coverage; and

(B) take every reasonable measure to avoid interference with utility transmission and distribution lines.

(f) Roadside tree planting.

(1) In this Section, recommended County tree list means a list of trees approved by the Director after consulting the Department of Transportation. The list must only include trees that are also on the State recommended tree list and must include each tree that the Director identifies as suitable for planting on specific sites and conditions in the right-of-way of a public road in the County.

(2) Any tree that any person plants on a public right-of-way must be a species and variety listed on the recommended County tree list and must conform to the American Standard for Nursery Stock.
(g) **Enforcement.** In addition to any other procedure or remedy allowed by law, the Director may issue a stop work order to prevent or correct any violation of this Section or any permit issued or plan approved under this Section. Sections 8-20 and 8-22 apply to any stop work order issued under this Section.

(h) **Regulations.** The County Executive must adopt regulations under Method (2) to administer this Section that are at least as stringent as applicable state roadside tree care standards and requirements. These regulations may include:

1. criteria and procedures to issue, deny, modify, suspend, or revoke permits for work on roadside trees;
2. tree work standards and practices needed to protect and maintain roadside trees, including construction practices needed to prevent or minimize damage to roadside trees; and
3. supplementary roadside tree planting requirements and specifications, and criteria and procedures needed to administer the Street Tree Planting Fund.

**Sec. 2. Effective Date.** This Act takes effect on March 1, 2014, and applies to any permit applied for under Chapter 8, Chapter 19, or Section 49-35 on or after that date.
Approved:

Nancy Navarro, President, County Council
7/26/13

Isiah Leggett, County Executive
July 31, 2013

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council
July 31, 2013