

ORDINANCE NO. 19-2012

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER AMENDING AND SUPPLEMENTING CHAPTER 166 OF THE CODE OF THE TOWNSHIP ENTITLED, LAND USE AND DEVELOPMENT LEGISLATION, BY REVISING THE REGULATIONS FOR THE PRESERVATION, REMOVAL AND PLANTING OF TREES

BE IT ORDAINED, by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey, as follows:

Section 1. Section 166-4., *Definitions and word usage*, is hereby amended by adding and inserting a definition of “LEED,” to read as follows:

LEED – An acronym for Leadership in Energy and Environmental Design, consisting of various rating and certification systems developed by the U.S. Green Building Council for the design, construction and operation of environmentally responsible and resource-efficient buildings, homes and neighborhoods.

Section 2. Subsection A Section 166-4., *Definitions and word usage*, is hereby amended by revising the definition of “dripline” to read as follows:

DRIP LINE - An imaginary line on the surface and subsurface of the ground defined by the outer limits of the branches of a tree and measured plumb from the branches to the ground. When the outer limits of the branches are indistinct or otherwise unclear, the drip line shall be presumed to be located 1 1/2 feet from the center of the trunk of a tree for each inch of the trunk DBH.

Section 3. Subsection A. Section 166-4., *Definitions and word usage*, is hereby amended by revising the definition of “riparian zone” to read as follows:

TREE PROTECTION ZONE (TPZ) - A space above and below the ground within which trees are to be retained and protected in order to prevent or minimize potential injury to designated trees, especially during construction or development. Tree protection zones are generally the same as the area within the drip line, but may be different, depending upon various site, construction factors.

Section 4. Subsection M. of Section 166-48., *Schedule of fees and deposits*, is hereby amended to read as follows:

M. Tree removal permit application fees.

- (1) Tree removal as part of a site plan, subdivision or variance application. No additional application fee above that required by this chapter shall be required for tree removal requested as part of a site plan, subdivision, variance or other development application or appeal submitted to the Planning Board or Board of Adjustment.

- (2) Tree removal for development that does not require Planning Board or Board of Adjustment approval. The application fee shall be \$100 for up to three regulated trees to be removed, plus \$25 for each additional regulated tree to be removed; provided, however, that the application fee shall not exceed \$1,000. Notwithstanding the foregoing, no application fee shall be required for the following tree removal:
 - (a) On each lot, the removal of one tree per calendar year with a DBH less than 18 inches.
 - (b) Removal of any number of trees which are dead, dying, critically diseased and/or hazardous to human life or property:

Section 5. Section 166-110.1., *Tree removal permits*, is hereby amended to read as follows:

§ 166-110.1. Tree removal permits.

Applications for tree removal permits required by § 166-131. shall comply with the following procedures:

- A. The applicant shall submit a completed application form, a plan depicting the proposed tree protection, removal and replanting, and an application fee as set forth in § 166-48.M. Application forms shall be available from the Township Engineering Department.
- B. The tree protection, removal and replanting plan shall be prepared by an individual with sufficient expertise in the subject matter, as the circumstances in each case may require. If deemed necessary, the Township Engineer may require that the plan be prepared by and/or certified by a surveyor, engineer, landscape architect, architect, arborist, certified wetland delineator or other appropriate professional.
- C. The application shall be reviewed for completeness by the Township Engineer or his designee. Such review may include inspection of the subject property. If the application is incomplete, the Township Engineer shall notify the applicant of the deficient information within 10 business days of the application submission; otherwise, the application shall be deemed to be complete. If determined incomplete, no further action shall be taken unless and until the deficiencies are addressed.
- D. Unless determined incomplete, the Township Engineer shall issue or deny a tree removal permit within 10 business days of submission of the application. Failure of the Township Engineer to act within the prescribed period shall be deemed to be an approval of the application. The Township Engineer shall grant or deny the application based upon the criteria in § 166-131. and shall inform the applicant of the decision.

- E. If the application is approved, the holder of a tree removal permit shall notify the Township Engineer or the Township Engineering Department in person, by telephone or in writing at least three (3) business days prior to the commencement of tree removal activities.
- F. Appeals of the issuance or denial of a tree removal permit shall be made in accordance with the procedures for appeals of decisions of the Zoning Officer set forth in §§ 166-21. through 166-24.
- G. Tree removal permits shall expire and be null and void if the approved tree removal does not occur within one year of the date of the permit approval. The Township Engineer may grant extensions of the permit approval for good cause shown.
- H. Emergency tree removal. In the case of an emergency situation requiring immediate removal of the tree(s) in order to avoid or remedy an imminent or clear and present danger to life or property, such trees may be removed without prior approval. In such cases, the property owner shall notify the Township Engineer or his designee no later than seven (7) days after removal, and shall document the emergency conditions that required the immediate removal of the tree(s) in question.

Section 6. Subsection C of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township, *Land Use and Development*, is hereby amended to read as follows:

- C. Applicability to prior approvals. The following provisions shall govern development applications involving tree removal that were filed or approved prior to the effective date of Ordinance No. 19-12:
 - (1) Development activities and approvals for which tree removal has occurred and/or for which the required payment in lieu of replanting has been made prior to the effective date of Ordinance No. 19-12 shall continue to be subject to regulations in effect at the time of the approval.
 - (2) Developers who have received approvals for tree removal and/or planting prior to the effective date of Ordinance No. 19-12, but who have not made a payment in lieu of replanting, shall have the option to comply with the terms of the prior approval or to comply with the regulations of this section, subject to the following:
 - (a) The developer shall be required to comply completely with the requirements of either the prior approval or of this section.
 - (b) If the developer chooses to comply with this section, and such option results in different tree removals or plantings than under the prior approval, the developer shall be required to obtain amended approval.

- (c) If the developer chooses to comply with this section, the developer shall not be entitled to a refund of application fees or other payments made under any prior approvals or to a waiver of any fees or other payments required for any amended approvals.

Section 7. Subsection D. of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township, *Land Use and Development*, is hereby amended to read as follows:

D. Prohibited activities.

- (1) The following activities shall be prohibited:

- (a) Removal of or damage to trees within any riparian zone or area of steep slopes, as defined by this chapter, except for: 1) tree removal necessary to protect the public health, safety or welfare, such as but not limited to necessary linear development for access or utilities when no feasible alternative exists to such disturbance, and 2) tree removal that provides an environmental benefit, such as but not limited to remediation of a contaminated site.
- (b) Removal of or damage to trees within any freshwater wetland or freshwater wetland transition area, except as permitted by the N.J. Department of Environmental Protection rules governing freshwater wetlands.

- (2) Exemptions. Notwithstanding the above prohibitions, the removal of dead, dying, diseased or hazardous trees, after prior approval as required by § 166-131.E.(3), shall be permitted.

Section 8. Subsection E. of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township, *Land Use and Development*, is hereby amended to read as follows:

E. Approval required for tree removal. Prior approval shall be required for the following tree removal activities in accordance with the procedures set forth in Subsection F. below:

- (1) Removal of trees with a DBH of at least six (6) inches.
- (2) Removal of trees of any size within buffer areas required by § 166-125.
- (3) Removal of trees of any size shown to be preserved or planted as part of a currently valid site plan, subdivision or variance application.
- (4) Removal of trees of any size shown to be preserved or planted as part of a currently valid tree removal permit.

- (5) Removal of trees of any size if such removal would violate Subsection G. below or any other provision of this Chapter.

Section 9. Paragraph (2). in Subsection F. of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township entitled Land Use and Development Legislation, is hereby amended to read as follows:

- (2) Other developments. Applicants proposing to remove regulated trees in circumstances that do not require Planning Board or Board of Adjustment approval shall be required to obtain a tree removal permit in accordance with § 166-110.1.

Section 10. Subsection G. of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township entitled Land Use and Development Legislation, is hereby amended to read as follows:

G. Tree preservation, removal and planting requirements. Tree preservation, removal and planting shall be required to comply with the following provisions, and all other provisions of this Chapter:

- (1) Tree removal and replacement. For each tree having a DBH of at least 6 inches, the following number of replacement trees shall be required to be planted on site and/or a payment in lieu:

<u>DBH of Removed Trees</u>	<u>Required Number of Replacement Trees</u>
6 to 11.99 inches	1
12 to 23.99 inches	3
24 to 35.99 inches	5
36 inches or greater	7

- (2) Tree preservation, replacement and planting ratios. The combined number of trees to be preserved, replaced and planted within the limits of disturbance on each lot shall not be less than set forth in the following table:

<u>Land Use Category</u>	<u>Minimum Tree Preservation/Planting Ratio (plantable area within disturbance limits)</u>
Single-family detached or two-family residential	1 tree per 3,000 sq. ft. plantable area*
Other	1 tree per 750 sq. ft. plantable area*

*For purposes of administering this requirement, “plantable area” shall mean the area within which trees may reasonably be preserved and/or planted. The term “plantable area” shall specifically exclude the following:

- Areas covered by buildings within the limits of disturbance.
 - The area of contaminated soils or groundwater within the limits of disturbance where tree planting is prohibited.
 - Areas covered by pavement, and curbing within the limits of disturbance.
 - Stormwater detention basins, retention basins or subsurface stormwater retention or recharge structures within the limits of disturbance.
 - Areas within the limits of disturbance needed to provide exposure to the sun for photovoltaic panels used to produce electricity, where trees would unreasonably interfere with such exposure as determined by the board having jurisdiction or the Township Engineer, as applicable.
 - Areas within the limits of disturbance designed and used for athletic fields and any team or spectator seating areas for such fields.
 - Easements within the limits of disturbance restricted for access, utilities, drainage and roadway sight distance.
 - Areas within the limits of disturbance which have been disturbed solely for the purpose of removing existing structures and which are not proposed to be redeveloped.
 - Areas within the limits of disturbance identified on the currently approved plans as part of a future phase of development, and which are not proposed to be developed until such future phase is developed.
- (3) In determining the number of trees required to be preserved and planted in accordance with Paragraphs G.(1). and G.(2). above, fractions of trees below 0.5 shall be rounded down, and fractions of 0.5 or greater shall be rounded up.
- (4) Credits for sustainable development. In order to encourage development of sustainable buildings, credit against tree replacement and planting obligations in 166-131.G.(1). and (2). above shall be given for buildings that achieve various LEED ratings, as follows:

LEED Rating	Tree Planting Credit
Certified	15% of requirement
Silver	25% of requirement
Gold	35% of requirement
Platinum	50% of requirement

- (a) The requirement against which credit is calculated shall be only that tree planting requirement related to the construction of a LEED-rated building

or buildings. Thus, in a development with one LEED-rated building and one non-LEED-rated building, the credit will be calculated as the LEED-rated building's portion of the total site gross floor area multiplied by the tree planting credit.

- (b) Applicants seeking to obtain tree planting credits for LEED certified buildings shall be required to deposit a cash amount with the Township equal to the cost of any trees for which credit is sought, at a cost of \$400 per tree. The cash amount shall be deposited prior to the issuance of building permits. Thereafter, if the projected LEED certification is achieved, the Township shall refund all or a portion of the deposit, depending upon the level of LEED certification actually achieved. No refund of such deposit shall be made for LEED certifications obtained more than two years after issuance of any certificate of occupancy for the building.
- (5) Payments in lieu of required tree planting. If the developer demonstrates to the reviewing authority that the subject property is not reasonably able to preserve and/or plant the number of trees required by this Section, then the developer shall be required to make a payment in lieu of planting the number of trees to address the deficiency, subject to the following:
- (a) The amount of such payment shall be \$400 per tree.
 - (b) If the developer demonstrates that the number of trees to be replaced by § 166-131.G.(1). and the number of trees to be preserved and planted within the limits of disturbance by § 166-131.G.(2). are together at least 75% of the minimum required, then no payment in lieu of planting trees shall be required in excess of five percent (5%) percent of the total cost of site improvements for the development, excluding building costs, soft costs and land acquisition costs.

Section 11. Paragraphs (1).(d). and (e). in Subsection H. of Section 166-131., *Tree preservation, removal and replanting*, in Chapter 166 of the Code of the Township entitled Land Use and Development Legislation, are hereby amended to read as follows:

- (d) Any clearing within the drip line or within ten (10) feet of a remaining tree, whichever is greater, must be done by hand or with hand-operated equipment unless specifically approved by the Township Engineer.
- (e) When site development results in accidental removal or severe damage which will eventually result in the death or significant deterioration in the health of any tree shown on the replacement/planting plan to remain, the replacement requirements of § 166-131.G.(1). shall apply in the same manner as if the tree were originally proposed and approved for removal.

Section 12. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 13. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 14. This ordinance shall take effect in accordance with the law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: July 26, 2012

DATE OF ADOPTION: August 23, 2012

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, That the foregoing Ordinance was submitted in writing at a meeting of the Township Committee of the Township of Hanover, in the County of Morris and State of New Jersey, held on the 26th day of July, 2012, introduced and read by title and passed on first reading and the Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 23rd day of August, 2012, at 8:30 o'clock in the evening prevailing time, at the Municipal Building, 1000 Route 10, Whippany, in said Township of Hanover, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

JOSEPH A. GIORGIO, TOWNSHIP CLERK
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATED: August 2, 2012

