

ORDINANCE NO. 3-13

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 AMENDING AND SUPPLEMENTING THE REGULATIONS FOR TREE PRESERVATION, REMOVAL AND PLANTING

WHEREAS, the Township of Hanover has for many years had in effect regulations intended to promote the preservation and replacement of trees due to their environmental, esthetic and other benefits; and

WHEREAS, various comments have been submitted by applicants and staff suggesting that the tree regulations be revised to resolve inconsistencies, provide clarification, simplify compliance and administration and to make the ordinance more reasonable in its application; and

WHEREAS, the Township Committee has considered these suggestions and finds that they have merit;

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey that Chapter 166 of the Code of the Township of Hanover, entitled Land Use and Development Legislation, is hereby amended as follows:

Section 1. Subsection M. in 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, if the removal of such tree is not prohibited by §166-131.

- (b) Removal of any number of trees which are dead, dying, critically diseased and/or hazardous to human life or property.

Section 2. Article XVIIIA, *Checklists for Applications for Development*, is hereby amended by revising the item from each of the checklists for the different types of development applications which currently reads, “Applications for development that propose to remove regulated trees shall provide the information required by §166-110.1.B.,” to read, “Applications for development that propose to remove regulated trees shall provide the information required by §166-110.1.A.”

Section 3. Article XVIIIA, *Checklists for Applications for Development*, is hereby amended by deleting item N.(8) in Checklist X.

Section 4. Subsection A. in Section 166-110.1., *Tree removal permits*, is hereby amended to read as follows:

- 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. The application and form and plans shall provide all information required to demonstrate compliance with §166-131. In cases where disturbance of more than one acre is proposed, the plan and application may estimate the number, size and species of trees to be removed based upon a representative sample of trees on the site. Such sample shall be based upon at least one acre of land and the sample area shall be delineated on the tree removal plan and marked in the field. The reviewing agency shall verify that the sample area is representative of the entire area to be affected by tree removal, such that estimated number, size and species to be removed is an accurate representation of the number, size and species to be removed based upon a complete count of the trees to be removed.

Section 5. Subsection C. of Section 166-131., *Tree preservation, removal and replanting*, 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 the required payment in lieu of replanting has been made or for which a final certificate of occupancy has been issued 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) Developments which have received approvals for tree removal and/or planting prior to the effective date of Ordinance No. 19-12, but for which neither a payment in lieu of replanting has been made nor a final certificate of occupancy has been issued, 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.

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(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.

(1) ©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 6. Subsection D. of 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

D. Prohibited activities. The following activities shall be prohibited:

(1) 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; 2) tree removal that provides an environmental benefit, such as but not limited to remediation of a contaminated site, and 3) the removal of dead, dying, diseased or hazardous trees, after prior approval as required by § 166-131.E.

(2) 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.

Section 7. Paragraph (1) in Subsection E of 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

(1) Removal of trees, living or dead, with a DBH of at least six (6) inches.

Section 8. Paragraph (1) in Subsection G of Section 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

(1) Tree removal and replacement. For each living 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 made in accordance with §166-131.G.(5):

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<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

Any trees planted to address the obligation in §166-131.G.(2) shall be credited against this obligation. Notwithstanding the foregoing replacement requirements, no replacement trees shall be required under the following circumstances:

- (a) One tree may be removed on each lot during any calendar year, if such removal is not otherwise prohibited by this chapter or by any current development approval in effect. Any such removal shall be required to obtain a tree removal permit in accordance with §166-131.F.
- (b) Removal of the following invasive species, where otherwise permitted, in circumstances where such trees are determined by the Township Arborist to present a threat to more desirable tree species in the vicinity or to otherwise pose a threat to the public health, safety and welfare:

Black Locust - Robinia pseudoacacia
 Mazzard/Sweet Cherry – Prunus avium
 Norway Maple – Acer platanoides
 Tree of Heaven – Ailanthus altissima

Section 9. Paragraph (2) in Subsection G. of Section 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

- (2) Minimum tree preservation, replacement and planting ratios. There shall be maintained on every lot a minimum number of trees in accordance with the following table. Such trees shall include all trees within the plantable area of the lot which are to be preserved, replaced and planted.

<u>Land Use Category</u>	<u>Minimum Tree Preservation/Planting Ratio</u>
Single-family detached or two-family residential	1 tree per 3,000 sq. ft. plantable area on the lot
Other	1 tree per 750 sq. ft. plantable area on the lot

In administering this requirement, the following shall apply:

(a) 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.
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- The area of contaminated soils or groundwater where tree planting is prohibited.
 - Areas covered by pavement, and curbing.
 - Stormwater detention basins, retention basins or subsurface stormwater retention or recharge structures.
 - Areas 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 designed and used for athletic fields and any team or spectator seating areas for such fields.
 - Easements restricted for access, utilities, drainage and roadway sight distance. In cases where such easements are general in location and/or not limited to only those areas actually needed for such functions, the areal extent of the exclusion shall be determined by the Township Engineer.
 - 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 as part of a proposed development application. This exclusion shall expire for such areas, or portions of such areas, at such time that they are proposed for development in a development application, provided the application is approved and the development actually occurs.
 - 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. This exclusion shall expire for such areas, or portions of such areas, at such time that they are proposed for development in a development application, provided the application is approved and the development actually occurs.

(b) Replacement trees planted or for which a payment has been made in accordance with §166-131.G.(1) shall be credited against this obligation.

- (c) In cases where an existing lot contains fewer trees than required, the obligation for any proposed development shall be calculated using the plantable area within the limits of disturbance, not the entire lot.

Section 10. Paragraph (1).(e) in Subsection H. of Section 166-131., *Tree preservation, removal and replanting*, is hereby amended to read as follows:

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- (e) The topping, pollarding or other severe pruning of trees to remain shall be prohibited. 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 11. 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 12. 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 13. This ordinance shall take effect in accordance with the law.

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

Introduced: January 10, 2013
Adopted: February 14, 2013

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 10th day of January, 2013, 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 14th day of February, 2013 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: January 17, 2013