

Explanation: This Ordinance amends Article X “Tree Removal and Protection” of the Land Development Ordinance of the Township of Branchburg as required by the NJDEP to better manage stormwater discharges and resulting pollutant and nutrient impacts to waterways and to regulate tree removal.

**ORDINANCE NO. 2024-1478**

**ORDINANCE AMENDING ARTICLE X “TREE REMOVAL AND PROTECTION” OF THE LAND DEVELOPMENT ORDINANCE OF THE TOWNSHIP OF BRANCHBURG, COUNTY OF SOMERSET, STATE OF NEW JERSEY**

**WHEREAS**, in accordance with N.J.A.C. 7:14A, on November 1, 2023 the New Jersey Department of Environmental Protection issued New Jersey Pollutant Discharge Elimination System Tier A Municipal Stormwater Permit; and

**WHEREAS**, in order to help better manage stormwater discharges and resulting pollutant and nutrient impacts to waterways, the NJDEP requires Tier A municipalities to adopt specific ordinances to help better manage stormwater discharges and resulting pollutant and nutrient impacts to waterways, including an ordinance to regulate tree removal; and

**WHEREAS**, Land Development Ordinance 2024-1478 was forwarded to the Somerset County Planning Board for review and approval in accordance with N.J.A.C. 7:8-4.4 and any suggestions incorporated herein.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Branchburg, County of Somerset, State of New Jersey, as follows:

**Section 1.** Article X “Tree Removal and Protection” of the Land Development Ordinance of the Township of Branchburg, County of Somerset, State of New Jersey, is hereby amended as follows: **New language is underlined thus and deletions are indicated with strikethroughs ~~thus~~.**

**§ LDO10-1 TREE REMOVAL AND PROTECTION.**

**§ LDO10-1.1 Purpose.**

The Township Committee of the Township of Branchburg, having found that indiscriminate, uncontrolled and excessive destruction, removal and cutting of trees upon lots and tracts of land within the Township causes increased drainage control costs, increased soil erosion and sedimentation, decreased fertility of the soil, decreased groundwater recharge, increased buildup of atmospheric carbon, and increased dust. These impacts tend to adversely impact the character of the Township and decrease property values, render land unfit and unsuitable for its most appropriate use and adversely affect the health, safety and general welfare of the inhabitants of the Township. The Township Committee therefore desires to regulate and control indiscriminate and excessive cutting of trees within the Township, preserve the maximum possible number of trees in the course of development of a site, protect larger, older specimens of trees, encourage innovative design and grading to promote the preservation of existing trees.

**§ LDO10-1.2 Cutting or Removal Restricted.**

With the exception of the exemptions set forth in subsection 10-1.4, no person shall cut or remove, or cause to be cut or removed, any existing tree with a circumference at point of measurement of 19 inches or greater upon any lands within the Township unless the cutting or removal can be accomplished in accordance with the provisions of this Article.

**§ LDO10-1.3 Removal of Trees - Required.**

With the exception of the exemptions set forth in subsection 10-1.4, no tree shall be cut or otherwise removed from any lands in the Township without a tree removal permit. ~~All applications to the Planning Board or Zoning Board of Adjustment for approval of a major subdivision, minor subdivision, or any site plan requiring tree removal, unless otherwise exempt pursuant to this Article, shall include all necessary information required by this Article for tree protection and tree removal. Where an application for a tree removal permit is made for purposes not related to major subdivision, minor subdivision, or site plan approval, an application for a tree removal permit shall be submitted to the Zoning Officer. A Tree Removal Permit is required for any tree removed that is not part of a land use application on any residential or non-residential lot.~~ No tree that was planted or preserved as part of any landscape plan or in accordance with any street tree requirements approved in conjunction with a subdivision or site plan shall be removed. Exception shall be such trees directed to be removed pursuant to subsection 10-1.4F, G and I below.

**§ LDO10-1.4 Exemptions.**

[Ord. No. 2015-1282 § 1]

The following shall be exempt from the requirements of this Article:

- A. Commercial nurseries and fruit orchards.
- B. Christmas tree farms.
- C. Residential lots that are 1.75 times the required lot size or less and are removing no more than 10 trees with a seventy-five-inch circumference or less in any two-year period.
- D. Residential lots that are greater than 1.75 times the required lot size and are removing no more than 10 trees with a seventy-five-inch circumference or less in any two-year period.
- E. Any tree which is part of a cemetery.
- F. Trees directed to be removed by municipal, County, State or Federal authority pursuant to law.
- G. Removal of trees which are dead, dying or diseased, or trees which have suffered damage, or any tree or trees whose angle or growth makes them a hazard to structures or human life.
- H. Pruning or removal of trees within the right-of-way by utility companies for maintenance of utility wires or pipelines and the pruning of trees within sight easements.
- I. Trees removed in conjunction with farmland greater than five acres in size that will be actively devoted primarily to agricultural uses and that yield a minimum annual income of

\$500 from said farming activities. Where the owner desires to remove any trees for the purpose of expanding farmlands, an inventory of trees to be removed, identified by size and species, shall be prepared and filed with the Zoning Officer prior to any tree removal. In the event the expanded farmlands are not actively devoted primarily to farming activities for a period of five years following tree removal, the tree replacement provisions contained in subsection ~~10-1.5D~~ 10-1.7.G shall apply.

- J. Projects that are required to receive and have received subdivision or site plan approval **shall conform with LDO 5-11.**
- K. Projects which provide over 20 low and moderate income affordable housing units as defined and accepted under COAH requirements of the Township's COAH obligation or accepted as part of any Mount Laurel litigation settlement. Such projects shall, however, be designed in an innovative manner through layout, grading and drainage to minimize excessive cutting of trees and promote the preservation of existing trees.

#### **§ LDO10-1.5 (Reserved)**

#### **§ LDO10-1.6 Residential Lots (Excluding Major and Minor Subdivisions).**

Any residential lot that does not meet the requirements of subsection 10-1.4 shall submit an application for a tree removal permit as follows:

- A. Application form. The application form shall be available from the Zoning Officer and shall include the following information:
  - 1. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation of this or any other state, etc.);
  - 2. Status of the applicant with respect to land (owner, lessee, tenant, purchaser, under contract, etc.);
  - 3. Name and address of the applicant for the permit if other than the owner, accompanied by the owner's written consent;
  - 4. Description of the premises where removal is to take place, including lot and block numbers, and street address if assigned;
  - 5. A list of all trees to be removed with a circumference equal to or greater than 25 inches identified by size and species, including total number of each species to be removed;
  - 6. Purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, etc.);
  - 7. Such other information as may be deemed necessary in order to effectively process and decide such application.
- B. Sketch data.
  - 1. Base information.

- (a) A sketch shall be provided showing the location of the tree(s) to be removed with a circumference of 18 inches or greater in proximity to existing and/or proposed structures and property lines. Such sketch shall be of a scale and clarity to be suitable by the Zoning Officer for the purposes of this Article.
2. Design requirement.
- (a) Trees to be removed shall be those trees necessary to permit the construction of buildings, structures, decks, driveways, septic field, lawn area for recreational use by the inhabitants of the dwelling, and any other authorized improvements. Existing vegetation shall be preserved to the greatest extent feasible.
  - (b) Subsection 10-1.10 of this Article shall be considered in the decision to permit the removal of any regulated trees.
- C. Tree removal criteria. In addition to the design requirements stated above, the Zoning Officer may grant a tree removal permit based upon one or more of the following circumstances:
- 1. Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
  - 2. Where the location of an existing tree negatively impacts on an existing septic field.
  - 3. Where no other alternative exists for the placement of a septic field, driveway, deck, patio, lawn area for the recreational use by the inhabitants of the dwelling, or any other authorized improvements but in the vicinity of an existing tree.
  - 4. Where the location or growth of a tree inhibits the enjoyment of an outdoor pool, patio or deck.
  - 5. Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.
- D. If, in the opinion of the Zoning Officer, the request for tree removal does not satisfy the above criteria, then the application may be forwarded to the Planning Board for action.
- E. Tree replacement.
- 1. Tree replacement shall be provided in accordance with subsection ~~10-1.5D~~ 10-1.7.G.

**§ LDO10-1.7 Tree Removal on Nonresidential Land.**

- A. Any nonresidential lot owner seeking to remove more than five trees with a circumference of 55 inches or less in a two-year period shall submit an application for a tree removal permit to the ~~Township Engineer~~ Zoning Officer. The application ~~and development~~ proposal shall conform to the provisions contained herein. No tree with a circumference of 55 inches or greater shall be removed without a tree removal permit unless exempted pursuant to subsection 10-1.4.
- B. The Zoning Officer may grant a tree removal permit based upon one or more of the

following circumstances:

1. Where the location of an existing tree provides no other alternative but to place a structure outside the permitted building setbacks.
2. Where the location of an existing tree negatively impacts upon an existing septic field.
3. Where no other alternative exists for the placement of a septic field, driveway, parking, or any other authorized improvement but in the vicinity of any existing tree.
4. Where the location, angle or growth of an existing tree makes it a hazard to structures or human life.
5. Where an application for a tree removal permit involves the practice of silviculture based upon an approved plan by the New Jersey Bureau of Forestry.

The Zoning Officer may grant approval subject to the applicant providing, in sufficient detail, a site rehabilitation plan and proving that the proposed tree removal meets the following standards and requirements:

- (a) Access to the area proposed for tree harvesting or thinning shall be direct, follow previously established roads and trails to the maximum extent practical, avoid wetland areas except as are absolutely necessary to harvest wetland tree species or to gain access to the harvesting site, and avoid crossing streams with high and unstable banks and this with approaching slopes exceeding 15% where alternative crossings exist.
- (b) All activities conducted in connection with a harvesting or thinning operation, whether preliminary to, during, or after the harvesting or thinning, shall be carried out in accordance with the current regulations of the New Jersey Bureau of Forestry.
- (c) In undertaking the cutting of trees, each tree selected shall be so marked as to enable identification of the base after removal, all trees shall be cut to the base, all unmarked trees accidentally or necessarily cut shall be left in the woodlot until the owner has been paid for such tree or trees, and all practical steps shall be taken to minimize damage to undesignated trees.
- (d) All damage to the soil or alterations to streams or wetlands shall be repaired to the satisfaction of the Zoning Officer at the conclusion of harvesting or thinning operations, which repairs shall include, but are not limited to, regrading all areas disturbed for access, processing, moving or loading trees to their approximate natural slopes, installing water diversion devices in order to avoid erosion in such areas, stabilizing bare ground areas with vegetation where necessary, removing all debris from streams, collecting all non-vegetative refuse, and removing all hanging trees.
- (e) All applications involving harvesting activities shall ensure the regeneration of the harvested forest and application for tree thinning activities may be conditioned on the planting of seedlings or other replacement trees.
- (f) The applicant, or the owner of the subject property and the applicant if they are of the same, shall submit an undertaking guaranteeing reimbursement to the Township for

moneys expended to repair damage done to any public road, highway, place or property, which undertaking shall be in form for recording in the Somerset County Clerk's office.

- (g) Any application filed with the Zoning Officer to which a "Management Plan" developed by the New Jersey Department of Environmental Protection, Bureau of Forestry is attached shall be presumptively valid and all activities in accordance with the plan shall be permitted.
- C. If, in the opinion of the ~~Township Engineer~~ **Zoning Officer**, the request for tree removal does not satisfy the above criteria, then the application may be forwarded to the Planning Board for action.
- D. Application form. The application form shall be available from the Zoning Officer and shall include the following information:
- 1. Name and address (street and lot and block) of the owner of the premises and status of legal entity (individual, partnership, corporation of this or any other state, etc.);
  - 2. Name and address of the applicant for the permit if other than the owner, accompanied by the owner's written consent;
  - 3. Status of the applicant with respect to land (owner, lessee, tenant, purchaser, under contract, etc.);
  - 4. Description of the premises where removal is to take place, including lot and block numbers, and street address if assigned;
  - 5. Purpose for tree removal (construction, street or roadway, driveway, utility easement, recreation area, patio, parking lot, etc.);
  - 6. Number of trees to be removed, and the species and size of each such tree;
  - 7. Proof that there are no delinquent property taxes or assessments due on the property for which the application is submitted;
  - 8. Such other information as may be deemed necessary in order to effectively process and decide such application.
- E. A sketch shall be provided showing the following information. Such sketch shall be of a scale and clarity found to be suitable by the Zoning Officer for the purposes of this Article.
- 1. Name, address and telephone number of the person preparing the drawing.
  - 2. A drawing of the property specifically designating the area or areas of proposed tree removal, and the proposed use for such area.
  - 3. Clear labeling of the area intended for tree removal including the size and species of each tree in such area.

4. Location of staging areas.
  5. Location of slopes greater than 15% where tree removal is proposed and stream crossing when deemed appropriate by the Zoning Officer.
  6. Such other information as may be deemed necessary in order to effectively evaluate the application.
- F. Tree protection, as deemed appropriate by the Zoning Officer, shall be provided.
- G. Tree replacement.

1. Where clearing of the site results in accidental removal, or severe damage will eventually result in death, of any tree not noted for removal, the applicant shall replace the tree(s) on a one-to-one basis per individual tree in accordance with the following table:

Circumference of Existing Tree Removed	Number of Replacement Trees (with 7 inches to 9 inches circumference)
Less than 19 inches	1
Between 19 and 38 inches	3
Between 38 and 57 inches	4
Between 57 and 75 inches	5
Between 75 and 94 inches	7
Between 94 and 113 inches	4 <u>10</u>
113 inches or greater	The equivalent of 9 inches circumference trees or greater needed to equal the circumference of the removed tree

2. Replacement tree(s) shall be located on site.
3. The type of replacement tree(s) shall be the same as the species removed from the site or other as approved by the Board.

**§ LDO10-1.8 Review Standards.**

In addition to any design requirements provided in this Article and unless otherwise indicated herein, a tree removal permit may only be granted for the following reasons and under the following terms and conditions:

- A. Where the area proposed for tree removal is to be occupied by: a building or other structure; a street or roadway; a driveway; a parking area; a patio; a swimming pool; a recreation area; a power, drainage, sewerage or any other utility line, easement, or right-of-way; a clearance area for the placement of storage of soil, fill or construction materials or debris during tree removal and/or construction operations; or where the area of tree removal is not greater than 20 feet on either side of or around the perimeter of any of the foregoing, whichever is applicable.

- B. In areas proposed for tree removal which are not to be occupied by any of the uses or facilities set forth in paragraph A of this subsection.
  - 1. That the continued presence of such tree or trees is likely to cause danger to persons or property upon the property for which removal is sought, or upon adjoining or nearby property.
  - 2. That the area where such tree or trees are located has a cut, depression or fill of land, or the topography of the land is of such a character as to be injurious or dangerous to such tree or trees, or to tree or trees located nearby.
  - 3. That the removal of trees is for the purpose of conducting forestry activities, which activities include, but are not limited to, the harvesting of trees in accordance with a forest management plan and the thinning out of a heavily wooded area, with some trees to be removed, and other trees to remain.
- C. Upon an express finding by the appropriate decisional authority that the proposed tree removal will not result in or cause, increase or aggravate any or all of the following conditions: impaired growth or development of remaining trees or shrubs on the property of the applicant, or upon adjacent property; soil erosion; sedimentation and dust; drainage or sewerage problems; dangerous or hazardous conditions; and depression in the land value of the subject property and properties in the neighboring area.
- D. The appropriate decisional authority shall have the power to affix reasonable conditions to the granting of the permit for the removal of trees.

**§ LDO10-1.9 Protection of Trees.**

Whenever an application for tree removal is granted under the terms and conditions of this Article, the following protective measures shall be observed:

- A. No material or temporary soil deposits shall be placed within six feet of any existing tree trunk.
- B. Except while engaged in tree removal, no mechanical equipment weighing in excess of two tons, including but not limited to bulldozers, earth movers, or other heavy construction equipment, shall be operated within six feet of any tree protected by this Article and no such equipment shall be operated at any time in such a manner as to break, tear, bruise, decorticate or otherwise injure any living or dormant tree.

**§ LDO10-1.10 Permit Approval.**

- A. Time for approval.

~~1. Where the permit application is submitted as a part of an application for major subdivision, minor subdivision or site plan approval, the time for approval shall be governed by the timing requirements applicable to major subdivision, minor subdivisions or site plans.~~

- 2.1. Where the permit application is not made in connection with a major subdivision or site plan application, the Board shall act on the application within 90 days of its receipt



or within such additional time as is consented to by the applicant. Failure of the Board to act within 90 days, or any extension thereof, shall be deemed to be an approval of the application and thereafter the Zoning Officer shall issue a tree removal permit based thereon.

32. Where the application is made in connection with a single family lot (not part of a major or minor subdivision), the Zoning Officer shall act on the application within 30 days of its receipt or within such additional time as is consented to by the applicant. Failure of the Zoning Officer to act within 30 days, or any extension thereof, shall be deemed to be an approval of the application and thereafter the Administrative Officer shall issue a tree removal permit based thereon.

3. Approval by default with regard to major subdivision, minor subdivision and site plan applications, shall not be deemed to be a waiver of a tree removal permit.

B. No approval shall be granted by the Board or Zoning Officer if the proposed tree removal is contrary to the best interests of the public health, safety or general welfare.

#### **§ LDO10-1.11 Duration of Permits.**

Permits granted for the removal of trees under the terms and conditions of this Article shall run with the land, and shall remain in force and effect for the following periods of time, and not thereafter.

A. If granted for a lot or parcel of land for which no building permit is required - one year from the date of issuance.

B. If granted for a lot or parcel of land for which a building permit is required, but for which no site plan approval is required by the Township Planning Board - until expiration of the building permit granted with such tree removal permit.

C. If granted for a lot or parcel of land for which site plan approval from the Township Planning Board is required as a condition precedent to obtaining a building permit - until expiration of the site plan approval, or expiration of the building permit issued after such site plan approval.

~~D. If granted for a lot or parcel of land for which minor subdivision is sought - one year from the date of granting such minor subdivision.~~

~~E. If granted for a lot or parcel of land for which tentative approval of a major subdivision is sought - until expiration of such tentative approval.~~

#### **§ LDO10-1.12 Inspection.**

Prior to taking final action upon any application for tree removal, an inspection of the site shall be made by:

A. The Zoning Officer in those cases where final determination is to be made as to the granting or denial of an application.

B. Such inspection shall be made of the site referred to in the application, and of contiguous and adjoining lands, as well as of lands in the vicinity of the application, for the purpose of

determining drainage conditions and physical conditions existing thereon.

**§ LDO10-1.13 Notice of Commencement of Tree Removal.**

A. The holder of a tree removal permit shall notify the Zoning Officer in writing at least four business days in advance to when tree removal activity will commence.

1. The notice shall also include advice as to the manner of disposal of the removed trees. Where appropriate, the Zoning Officer shall advise the Township Recycling Coordinator of the name of the permit holder, the location of the removal site, the date removal is to commence, and the manner of disposal to be employed.

**Section 2.** This Ordinance shall be construed so as not to conflict with any provision of New Jersey or Federal law. The provisions of this Ordinance shall be cumulative with, and not in substitution for, all other applicable zoning, planning, and land use regulations. In the event of any inconsistencies or conflicts between this Ordinance and existing ordinances of the Township, the provisions of this Ordinance shall apply.

**Section 3.** If any provisions of this Ordinance shall be adjudged invalid, such adjudication shall not affect the validity of the remaining provisions, which shall be deemed severable therefrom.

**Section 4.** After introduction, the Township Clerk is hereby directed to provide a copy of the within Ordinance to the Planning Board of the Township for its review in accordance with N.J.S.A. 40:55D-26. The Planning Board is directed to make and transmit to the Township Committee within 35 days after referral, a report including identification of any provisions in the proposed Ordinance which are inconsistent with the Master Plan and recommendations concerning any inconsistencies and any other matter as the Board deems appropriate.

**Section 5.** After introduction, the Township Clerk is hereby directed to provide by personal service, certified mail or email with confirmation that the email was delivered, at least 10 days prior to the scheduled hearing, a copy of this Ordinance and a Notice of Hearing in accordance with N.J.S.A. 40:55D-15 to: (1) the clerk of any adjoining municipalities located within 200 feet of the boundaries of the affected properties; and (2) the County Planning Board.

**Section 6.** After adoption, the Township Clerk shall forward to the Somerset County Planning Board and NJDEP a copy this Ordinance for review and approval in accordance with N.J.A.C. 7:8-4.4. This Ordinance shall be effective upon adoption, publication and approval by the Somerset County Planning Board or within 60 days of the Somerset County Planning Board's receipt of the Ordinance and failure to approve, conditionally approve or disapprove of the Ordinance.

**Section 7.** Within 30 days of the effective date of this Ordinance, the Township Clerk shall place the Ordinance on the Township website and notify the NJDEP, Soil Conservation District and State Soil Conservation Committee in accordance with N.J.A.C. 7:8-4.4.

INTRODUCED/PASSED ON FIRST READING: *July 22, 2024*

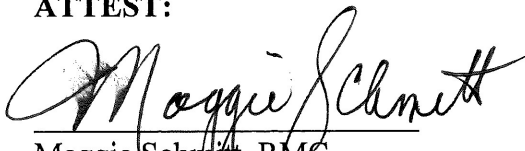
ROLL CALL VOTE				
COMMITTEE MEMBER	YES	NO	ABSTAIN	ABSENT
SCHWORN	✓			
BEATRICE	✓			
OWENS	✓			
YOUNG	✓			
COLUMBUS	✓			

PUBLISHED: *July 26, 2024*

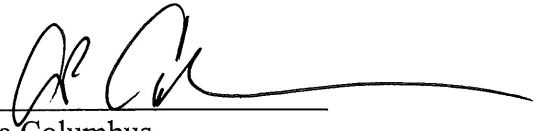
ADOPTED: *August 26, 2024*

ROLL CALL VOTE				
COMMITTEE MEMBER	YES	NO	ABSTAIN	ABSENT
SCHWORN	✓			
BEATRICE				✓
OWENS	✓			
YOUNG	✓			
COLUMBUS	✓			

ATTEST:



Maggie Schmitt, RMC  
Township Clerk



Anna Columbus  
Mayor