

TOWNSHIP OF WEST AMWELL
HUNTERDON COUNTY, NEW JERSEY
Ordinance 11, 2014

AN ORDINANCE TO AMEND CHAPTER 109 OF THE CODE OF THE
TOWNSHIP OF WEST AMWELL – Environmental Features

Chapter 109, Part 1 General Provisions, Article II Definitions, shall be supplemented as follows:

CATEGORY ONE (C1) WATERS

Those waters designated in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15 that have been identified for protection from degradation in water quality because of their clarity, color, scenic setting, and other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources.

CONSERVATION EASEMENT

An area traversed or bordered by a stream or other important natural feature that a landowner or the Township desires to preserve. These areas provide important, natural environmental services that protect water quality, preserve plant and animal habitats, or help prevent pollution, erosion, sedimentation or other impacts from land use practices. These easements shall be of sufficient area and width to protect and preserve the aforementioned features, and such further width or construction, or both, as will be adequate or required to achieve said purposes. Creation of a conservation easement shall not automatically confer rights of public access within the easement area. Such access shall be subject to agreement and permission of the landowner. Such easements shall carry the following limitations:

A. They shall remain undisturbed in order to preserve plant and animal habitats located within the easement area, and to maintain their natural ability to protect the environmental quality of riparian areas, especially water quality, from erosion and excess runoff.

B. No trees or shrubs shall be removed or destroyed on lands in the easement except in accordance with the applicable permitted uses or approved forest management practices.

C. No structures of any description shall be erected unless permitted by the Planning Board or Board of Adjustment.

D. No fill or excavation of any kind shall be permitted.

CRITICAL ROOT ZONE

A circular region measured outward from a tree trunk representing the area of the roots that must be maintained or protected for the tree's survival. It is measured as one foot of

radial distance for every inch of tree diameter (DBH) measured at 4.5 feet above the ground, with a minimum radius of 8 feet. For specimen trees, the critical root zone shall be 1.5 feet for every inch of tree diameter.

DIAMETER AT BREAST HEIGHT (dbh)

The measurement of the diameter of the trunk of a tree planted in the ground taken 4.5 feet from the ground level on the uphill side of the tree.

DRIPLINE

A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground beneath.

FLOODPLAIN

The lowland area adjacent to a stream that floods regularly with high flows from heavy rainfall or after snow melts. The periodic flooding of this area creates a specific habitat for flora and fauna that characteristically inhabit a floodplain. In many areas of New Jersey in recent years, these areas have seen increased development pressure, even though in most cases they are unsuitable areas for building.

FLOODPLAIN, ONE-HUNDRED-YEAR

This is the area that is formed by following the outside boundaries of the area inundated by a one-hundred-year flood. A one-hundred-year flood is estimated to have 1% chance or one chance in 100 of being equaled or exceeded in any one year.

FOREST

See definition for "woodlands". The term "woodland" is used interchangeably with the term "forest".

FOREST STAND

A contiguous grouping of trees growing on a site that is sufficiently uniform in age and class distribution, composition and structure and are of sufficiently uniform quality to be a distinguishable unit.

MUNICIPAL AGENCY

The Planning Board or Zoning Board of Adjustment of West Amwell Township, whichever has jurisdiction to review and approve an application for development pursuant to N.J.S.A. 40:55D-1, et seq.

RIPARIAN ZONE

The waterway's buffer, which under normal conditions, employs natural vegetation to trap sediments from upslope erosion and filter fertilizers, pesticides, and other pollutants than run off farmland and other developed areas. This is often a wet area that supports trees, shrubs, grasses, and other plant and animal species that depend on changeable conditions.

SPECIMEN TREE

An individual tree that measures 60% or more of the circumference at breast height (4.5 feet above grade) of a State record “Big Tree” for that species. The “Big Tree List” is available at the NJDEP, Division of Parks and Forestry, Community Forestry Program.

STEEP SLOPES

Lands having a slope of 15% or greater. Protecting slopes helps control sediment and pollutants and keep development away from unsuitable areas. Undisturbed slopes help preserve stream banks, support groundwater base flows and provide habitat. Steep slopes cannot effectively remove contaminants. The slope shall be protected from concentrated runoff from adjacent land, except for natural streams.

STREAM

A pathway for surface water with bed and banks that confine and conduct continuously or intermittently flowing water. Characteristically, a stream’s flow is a combination of surface water from the direct runoff overland of precipitation, or groundwater from natural features including wet soils, seeps, and springs that discharges into the stream and comprises its base flow. These waters, which include intermittent or ephemeral small streams, shall exhibit characteristics of natural watercourses, and shall not include ponds, lakes, or man-made features such as ditches and detention basins.

STREAM CORRIDOR MANAGEMENT PLAN

The document required under § 109-150.1E that describes the effects of any development approved by the Planning Board or Board of Adjustment within any stream corridor. The stream corridor management plan shall describe in detail all development activities anticipated within the stream corridor, and it shall be filed as part of the normal application review process in accordance with § 109-150.1E.

UNDERSTORY

Lower-growing tree and shrub populations that often comprise a separate plant and animal habitat immediately beneath the forest canopy. Understory species characteristically attain modest height compared to dominant species in a mature forest area, but may reach heights of 25 to 50 feet and generally comprise shade-tolerant tree species essential to the regenerative health of a natural forest stand.

WOODLANDS

A contiguous area of trees and other woody plants having an average canopy height greater than 20 feet and covering a land area of at least 10,000 square feet (.23 acre) and generally characterized by a tree density of 100 or more trees per acre with at least 50% of such trees having a dbh of two inches or greater. A forest may have been cut (but not cleared) in conjunction with an approved forestry management plan or may be intact. Area devoted to an orchard or a tree nursery shall not be included. The term "woodland" is used interchangeably with the term "forest".

WOODLANDS ADVISOR

An expert qualified in woodlands management and forestry retained by the municipal

agency for the purposes of offering advice and recommendations concerning the implementation of the Woodlands Protection Ordinance. The Woodlands Advisor should be a New Jersey approved forester, New Jersey certified landscape architect or New Jersey certified tree expert. In all cases, if no Woodland Advisor has been appointed, Woodland Advisor duties shall be overseen by the Township Engineer.

Chapter 109, Part 4 Zoning shall be supplemented and amended as follows:

Article XXI Critical Environmental Areas Environmental Features

§ 109-142. Purpose.Critical Environmental Areas

A. In order to protect the environmental and potable water supply, the following regulations must be complied with. Most of the Township of West Amwell relies on groundwater for its potable water supply. This is a vital resource which must be protected for the health, safety and general welfare of the community. The ability of soils to assimilate and dispose of sewage via individual disposal systems, in order to avoid contamination of the potable water supply, must be protected. Accordingly these regulations are designed to afford that protection as necessary for both the health and safety of the community.

B. Applicability.

In order to promote environmental soundness in layout and design of subdivisions and land developments in general, the following standards shall apply to subdivision and site plan applications in the Township of West Amwell.

C. Minimum lot area.

The lot area standards of Schedule One Editor's Note: Schedule One, the Schedule of Area, Height and Building Requirements for residential zones, is included at the end of this chapter. shall be adhered to. Critical environmental areas identified in Schedule One include the following environmental constraint factors:

- 1. Slopes of 25% or greater.*
- 2. Flood hazard areas ("V" and "A" zoned areas).*
- 3. Wetlands.*
- 4. Wetlands transition areas.*
- 5. Open water.*

D. Slope disturbance.

The disturbance of sloped areas, relative to any application for subdivision or site plan approval, shall be limited to the following:

- 1. Slopes of 15% but less than 20%: a maximum of 30% of the total area in this slope category may be disturbed for development purposes.*
- 2. Slopes of 20% but less than 25%: a maximum of 20% of the total area in this slope category may be disturbed for development purposes.*
- 3. Slopes of 25% or more: disturbance of slopes in this category shall be prohibited.*

except where an applicant can demonstrate that such disturbance is essential in order to achieve access to a property or in order to establish any reasonable use of the property.

§ 109-143. Applicability. Stream Corridor Protection

In order to promote environmental soundness in layout and design of subdivisions and land developments in general, the following standards shall apply to subdivision and site plan applications in the Township of West Amwell.

A. *Intent and purpose.*

The governing body of West Amwell finds that riparian lands adjacent to streams that are appropriately vegetated provide important environmental protection and resource management benefits. It is necessary to protect and maintain the beneficial character of stream corridors by implementing specifications for the establishment, protection, and maintenance of protected corridors along the streams in West Amwell Township. These stream corridors must be consistent with the interest of landowners in making reasonable economic use of parcels of land that include such designated areas, and with a broader public interest in ensuring water quality, preventing erosion and protecting important plant and animal habitats. This article is intended to:

- (1) *Designate stream corridors and to provide for land use regulation that sufficiently protects water quality in the streams of West Amwell;*
- (2) *Protect riparian and aquatic ecosystems and to provide for the environmentally sound use of land resources in West Amwell;*
- (3) *Maintain the high quality of streams within West Amwell Township by providing an adequate vegetative buffer along stream corridors, including headwaters and intermittent streams, which will protect water resources, including streams that flow into other watersheds that provide drinking water for thousands of New Jersey residents;*
- (4) *More fully protect the water quality in these streams by preserving significant ecological components of stream corridors such as woodlands, wildlife and plant habitats, and other significant natural features within the stream corridors, and protect property from erosion and flood-related damage;*
- (5) *More fully protect these natural stream corridor buffers where, under normal conditions, soils and natural vegetation trap sediments from upslope erosion and filter fertilizers, pesticides, and other pollutants that run off from developed areas. These areas perform a function that is important to our Township's community character, in that they support trees, shrubs, grasses, and other plant and animal species that depend on changeable conditions;*
- (6) *Reduce land development impacts on stream water quality and flows; to protect*

existing natural drainage features; to protect the rights of property owners within the same watershed from adverse effects of improper stream corridor development; to promote passive recreation; and to preserve wildlife migration corridors;

- (7) *Preserve natural features in stream corridors that perform important services to our community, such as headwater areas, groundwater recharge zones, floodways, floodplains, springs, streams, wetlands, woodlands, and wildlife habitats;*
- (8) *Maintain consistency with state, regional and county stream corridor protection and management regulations; and*
- (9) *Support other regulations that may pertain to stream corridors, such as those within the jurisdiction of the Delaware and Raritan Canal Commission and state Department of Environmental Protection. The more restrictive regulations among these shall be followed.*

B. *Establishment of stream corridor.*

- (1) *Stream corridors shall be delineated as follows:*
 - (a) *Category One waters; trout maintenance and production waters.*
 - (1) *For Category One waters, the stream corridor shall be measured as defined in the Flood Hazard Area Control Rules, N.J.A.C. 7:13, or as defined by this chapter, whichever is more restrictive.*
 - (b) *For trout maintenance and production waters, the stream corridor shall be measured as defined in the Flood Hazard Area Control Rules, N.J.A.C. 7:13, or as defined by this chapter, whichever is more restrictive.*
 - (c) *For all other streams, the stream corridor shall be measured from the top of the bank of an intermittent or perennial stream or centerline if the bank is not defined.*
 - (d) *For developed residential properties in existence as of the adoption of this article, the delineated stream corridor shall extend 75 feet perpendicular to and parallel with both sides of the stream.*
 - (e) *For undeveloped residential properties of six acres or less in existence as of the adoption of this article, where construction of a single-family home would be permitted pending issuance of a building permit, the delineated stream corridor shall extend 75 feet perpendicular to and parallel with both sides of the stream.*
 - (f) *For undeveloped residential properties greater than six acres in existence as of the adoption of this article, where construction of a single-family home would be permitted pending issuance of a building permit, the delineated stream corridor shall extend 100 feet perpendicular to and parallel with both sides of the stream.*
 - (g) *For all other properties, the delineated stream corridor shall extend 150 feet perpendicular to and parallel with both sides of the stream.*

- (h) Where steep slopes (in excess of 15%) are located within the designated widths, those slopes will only count for 50% of the dimensional criteria of the stream corridor buffer.
 - (i) Where there is a one-hundred-year floodplain delineated, the stream corridor shall encompass the floodplain.
 - (j) Where a stream's origin is identified, this being its headwaters, and where this location comprises a groundwater source that encompasses groundwater formations commonly known by names such as "wet soils," "seeps" and "springs," and where this area is not under the jurisdiction of state wetlands laws and regulations, the area of stream corridor protection for this headwaters origin point shall be a one-hundred-fifty-foot radius from that point, except for existing developed residential properties where the radius shall be 75 feet.
- (2) A stream corridor is an overlay to the existing zoning districts. The provisions of the underlying district shall remain in full force, except where the provisions of the stream corridor differ, in which case the provision that is more restrictive and more protective of stream corridors and water resources shall apply. The provisions of Subsection A are intended to modify the type of land use, siting of structures, and engineering of all proposed development on parcels located within the stream corridor. These provisions apply to land disturbances resulting from or related to any activity or use requiring application for any of the following permits or approvals, such as:
- (a) Site plan;
 - (b) Construction permit for new construction that results in a net increase in lot coverage;
 - (c) Use variance;
 - (d) Conditional use permit; and
 - (e) Subdivision/land development approval application.
- (3) The Township shall develop a map of streams as required under this article. The sources of information that will comprise this map will be the U.S. Geological Survey (USGS) map, Hunterdon County Soil and Conservation District mapping, the Township tax map, and current state aerial photography. This map shall be updated by the Municipal Engineer as directed by the Township Committee.
- (4) All applicants for a construction permit shall identify on the plot plan all stream segments present within 150 feet of the proposed disturbance associated with the permit or certify as to the absence thereof. All applicants for subdivision review (excluding boundary line adjustments where no new lots are created and agricultural divisions of land) or site plan review shall fully identify and map on their submitted plans all streams and features regulated under this article. All mapped stream segments shall have the appropriate stream corridor applied to them, as stipulated in Subsection A of this article, and these mapped stream

segments shall be recorded by the township. The approving authority shall verify the stream corridor boundaries based on input from the Municipal Engineer and Environmental Commission, and, where required, the N.J. Department of Environmental Protection.

- (5) *The Planning Board shall recommend approval or denial of requests for permits to the municipal governing body. Municipal approval shall not waive the necessity to obtain the assent or permit required by any other agency, ordinance or statute before proceeding with the proposed activity or use. Other approval of permits that may be required are solely the responsibility of the applicant. The applicant shall initiate no operations or uses until such other approvals or permits as may be required are obtained.*

C. *Permitted uses.*

Stream corridors shall remain in their natural, indigenous state, with no clearing or cutting of trees and brush, altering of watercourses, regrading or construction. The following shall be permitted uses or activities in stream corridors, provided that they do not disturb the indigenous character of the area:

- (1) *Any agricultural use or activity except for the creation of feed lots, barnyards or farm waste disposal facilities or the construction of structures such as barns, stables or poultry buildings, subject to existing zoning regulations and provisions of the township's Right to Farm ordinance;*
- (2) *A disturbance associated with an approved stormwater management plan;*
- (3) *Fishing, swimming, boating and hunting;*
- (4) *Installation of an open fence in accordance with existing zoning requirements;*
- (5) *Trail access to the stream and trails in adjacent parks;*
- (6) *Maintenance of landscaping in place as of the adoption of this article;*
- (7) *Removal of dead vegetation, fallen trees and in-channel debris;*
- (8) *Pruning for reasons of imminent public safety;*
- (9) *Removal of invasive species as noted on a list that will be kept and updated by the Township Environmental Commission;*
- (10) *Other projects that promote the preservation of plant and animal habitats and passive recreation, subject to approval by the Township Planning Board;*
- (11) *Reconstruction of a structure that predates the adoption of this article in the event of damage or destruction by fire, or natural hazards, provided the reconstruction does not have a greater footprint or total area than that of the damaged structure and no change in land use occurs. Any such reconstruction shall be performed in accordance with current state and federal construction standards within floodplains; or*
- (12) *Repair, replacement or alteration of a septic system existing prior to the adoption*

of this article, in accordance with NJAC 7:9A, subject to granting of a waiver from the local Board of Health.

D. Performance standards.

For all stream corridors, the following conditions shall apply:

- (1) All activities regulated under this article shall be designed to provide sufficient areas outside of the stream corridor to accommodate primary structures, any normal accessory uses appurtenant thereto, as well as all planned lawn areas.*
- (2) In order to ensure continued protection of stream corridors, applications subject to subdivision review (excluding boundary line adjustments where no new lots are created and agricultural divisions of land) or site plan review shall permanently restrict regulated stream corridor areas by a recorded deed of conservation easement to West Amwell Township. The conservation easement recorded in this manner shall be in the form approved by the municipality and shall run with the land, and be binding upon the property owner and the successors in interest in the property or in any part thereof. The conservation easement may include language reserving the right to make de minimus changes to accommodate necessary regulatory approvals upon the written consent of the municipality, provided such changes are otherwise consistent with this chapter. The recorded conservation easement shall, at a minimum, include:
 - (a) A written narrative of authorized regulated activities permitted in this section of this article, date of issuance, and date of expiration, and the conservation easement that, in addition, includes all of the prohibitions set forth at N.J.S.A. 13:8B-2b(1) through (7);*
 - (b) Survey plans for the property as a whole and, where applicable, for any additional properties subject to the conservation easements. Such survey plans shall be submitted on the surveyor's letterhead, signed and sealed by the surveyor, and shall include metes and bounds descriptions of the property, the site, and the areas subject to the conservation easement in New Jersey State Plane Coordinates, North American Datum 1983, and shall depict the boundaries of the site and all areas subject to the conservation easement as marked with flags, signs or stakes on site. All such survey plans shall be submitted on paper and in digital CAD or GIS file on a media and format defined by the municipality. The flags, signs or stakes shall be numbered and identified on the survey plan; and*
 - (c) A copy or copies of deeds for the property as a whole that indicate the deed book and pages where it has been recorded in the office of the clerk of the applicable county or the registrar of deeds and mortgages of the applicable county.**
- (3) Any lands proposed for development within all or a portion of any stream corridors shall, as a condition of any land use application, provide for the vegetation or revegetation of any portions of the stream corridor which are not vegetated at the time of the application or which were disturbed by prior land uses,*

including for agricultural use. Said vegetation plan shall utilize native tree and plant species in accordance with an approved stream corridor management plan, described in § 109-150.2E of this article.

- (4) *Any subsequent requests for de minimus changes to a conservation easement not associated with another land use application shall be subject to approval by the Township Committee. Such requests shall be in writing and shall be accompanied by all necessary supporting documentation. Upon the complete submittal of the written request and supporting documentation, the Township Committee shall have 90 days to decide whether to grant the request, pending an extension upon mutual agreement of all parties involved.*

E. Activities permitted in stream corridors only under extreme hardship.

- (1) *For Category One stream corridors, requests for exemptions must be authorized by the state Department of Environmental Protection.*
- (2) *For all other stream corridors, applicable variances may be granted by the Board of Adjustment or the Planning Board, whoever has jurisdiction. In cases of a preexisting lot (existing at the time of adoption of this subsection), when there is insufficient room outside the stream corridors for uses permitted by the underlying zoning and there is no other reasonable or prudent alternative to placement in the stream corridors, including obtaining variances from setback or other requirements that would allow conformance with the stream corridors requirements, a variance may be granted according to § 40:55D-70 of the Municipal Land Use Law, and only if it is shown that the activity is in conformance with all applicable local, state, and federal regulations, including but not limited to the Stormwater Management rules, N.J.A.C. 7:8, and the Flood Hazard Area Control Act rules, N.J.A.C. 7:13.*
- (3) *Any relief granted shall be the minimum required to allow a proposed development project to move forward, in order to meet the intent and purpose of this section and article.*
- (4) *In consideration of such a request, the applicant shall compensate to the maximum extent practical by expanding or rehabilitating a stream corridor area on the same property or on another property owned by the same applicant at a ratio not to exceed two-to-one, based on the number of square feet reduced. Rehabilitation shall include reforestation, stream bank stabilization and removal of debris, in accordance with a stream corridor management plan. The applicant shall also obtain all other relevant permits, such as stream encroachment and freshwater wetlands.*
- (5) *Stream corridor management plan.*
 - (a) *Within any stream corridor, no land disturbance or encroachment shall be permitted unless the effects of such development are accompanied by preparation, approval, and implementation of a stream corridor management plan.*
 - (b) *The landowner, applicant, or developer shall submit to the Planning*

Board or Board of Adjustment, depending on which has jurisdiction, a stream corridor management plan prepared by an environmental professional, professional engineer or other qualified professional which fully evaluates the effects of any proposed uses on the stream corridor. This plan shall identify the existing conditions including:

- (1) Existing vegetation;*
- (2) Field delineated streams;*
- (3) Field delineated wetlands;*
- (4) The one-hundred-year floodplain;*
- (5) Flood hazard areas, including floodway and flood-fringe areas, as delineated by the New Jersey Department of Environmental Protection;*
- (6) Soil classifications as found on soil surveys;*
- (7) Existing subdrainage areas of site with HUC-14 (Hydrologic Unit Code) designations; and*
- (8) Slopes in each subdrainage area segmented into sections of slopes that are above 15% but less than 20%; above 20% but less than 25%; and greater than 25%.*

(c) The proposed plan shall describe all proposed uses/activities, and fully evaluate the effects of all proposed uses/activities in a stream corridor, and all proposed management techniques, including proposed vegetation and any other measures necessary to offset disturbances to the stream corridor. A discussion of activities proposed, as well as management techniques proposed to offset disturbances and/or enhance the site to improve the stream corridor's ability to function effectively as a stream corridor, shall also be included with the management plan submitted to the approving authority.

(d) The plan shall be reviewed by the Township Planning Board Engineer, in consultation with the Environmental Commission. A report with recommendations by the Township Planning Board Engineer shall be submitted to the Planning Board or Board of Adjustment prior to its rendering a decision. For applications from owners of properties defined in § 109-148A(3) and (4), the Board of Adjustment may waive submission of any or all sections of the Stream Corridor Management Plan if the Board decides that the proposed disturbance is limited and that preparation of a full plan is not warranted. In all cases, however, the applicant must, at a minimum, show the location of any stream that is on the property consistent with other sections of this chapter.

(e) The management plan shall include management provisions in narrative and/or graphic form specifying:

- (1) The manner in which the area within the stream corridor will be*

owned and by whom it will be managed and maintained.

- (2) *The conservation and/or land management techniques and practices that will be used to conserve and protect the stream corridor, as applicable.*
 - (3) *The professional and personnel resources that are expected to be necessary, in order to maintain and manage the stream corridor.*
 - (4) *A revegetation plan, if applicable, that includes: three layers of vegetation, including herbaceous plants that serve as ground cover, under story shrubs, and trees that form an overhead canopy. Vegetation selected must be native and consistent with the soil, slope and moisture conditions of the site, as defined by guidance provided by the county Planning Board. The revegetation plan shall be prepared by a qualified professional such as a landscape architect or engineer, and shall be subject to the approval of the Municipal Engineer, in consultation with the Environmental Commission. Dominant vegetation in the stream corridor management plan shall consist of plant species that are suited to the stream buffer environment. The Engineer may require species suitability to be verified by qualified experts from the Soil Conservation District, Natural Resources Conservation Service, New Jersey Department of Environmental Protection, US Fish and Wildlife Service and/or state or federal forest agencies.*
- (f) *The Zoning Officer shall verify performance of the stream corridor management plan for a minimum of two years of time. Failure to satisfactorily implement an approved stream corridor management plan shall subject the landowner, applicant or developer to penalties up to and including revocation of a certificate of occupancy.*

F. *Boundary interpretation; appeals procedures; inspections; enforcement.*

- (1) *Boundary interpretations:*
 - (a) *The Zoning Officer, with the advice of the Township Engineer and Environmental Commission, shall make interpretations, where needed, as to the exact location of the boundaries of stream corridors, especially where there appears to be a conflict between the mapped or proposed mapped boundaries and actual field conditions. The Board of Adjustment shall be designated as the agency to act as the appeal authority to hear and decide all appeals from the decision of the Zoning Officer.*
 - (b) *Any applicant wishing to appeal the decision of the Zoning Officer relative to the issuance of a stream corridor permit shall file a notice of appeal within 20 days of receipt of the Zoning Officer's decision, specifying the grounds of such an appeal. The Zoning Officer shall immediately transmit to the Board of Adjustment all the documents constituting the record upon which the action appealed from was taken.*

- (2) Inspections. Lands within or adjacent to an identified stream corridor may be inspected by the Environmental Commission as part of the normal review process when:
- (a) A subdivision or land development plan is submitted;
 - (b) A construction permit is requested for new construction which results in a net increase in lot coverage;
 - (c) A change or resumption of a nonconforming use is proposed;
 - (d) A discontinued nonconforming use is resumed more than a year later. The party contesting the discontinued use shall have the burden of proof to demonstrate when the use was discontinued.
 - (e) Excessive or potentially problematic erosion is present, other problems are discovered, or at any time when the presence of an unauthorized activity or structure is brought to the attention of municipal officials or when the downstream surface waters are indicating reduction in quality.
- (3) Enforcement.
- (a) Unauthorized stream corridor alterations. When a stream corridor has been altered in violation of this section, all ongoing development work shall stop and the stream corridor shall be restored. The township shall have the authority to issue a stop-work order to cease all ongoing development work and order restoration, rehabilitation or replacement measures at the expense of the owner or other responsible party, as appropriate, in order to compensate for violation of the provisions of this Section.
 - (b) Site investigations: The Zoning Officer is authorized to make site inspections and take such actions that are necessary in order to enforce the provisions of this section. A prompt investigation shall be made by the appropriate personnel of West Amwell, of any person or entity believed to be in violation hereof. If, upon inspection, a condition which is in violation of this article is discovered, a civil action in the Special Part of the Superior Court, or in the Superior Court, if the primary relief sought is injunctive or if penalties may exceed the jurisdictional limit of the Special Civil Part, by the filing and serving of appropriate process. Nothing in this article shall be construed to preclude the right of West Amwell pursuant to N.J.S.A. 26:3A2-25, to initiate legal proceedings hereunder in Municipal Court. The violation of any section or subsection of this article shall constitute a separate and distinct offense independent of the violation of any other section or subsection, or of any order issued pursuant to this article. Each day a violation continues shall be considered a separate offense.

§ 109-144. Minimum lot area.Woodlands Protection

A. Purpose.

- (1) The purpose of this article is to retain and protect the Township's woodlands and to promote the goals and intent of the West Amwell Township Master Plan and the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-2) by protecting critical environmental resources, including air quality, water quality, soil cover, animal and plant habitat and viewsheds. These resources provide great benefits to the quality of life in West Amwell, but they often are greatly impaired when woodlands are removed during development.
- (2) Protection and retention of woodlands helps to control the velocity and amount of stormwater runoff, thereby reducing flooding; filters sediments and pollutants before they reach streams; promotes groundwater recharge; stabilizes the soil and reduces soil erosion; improves air quality by filtering pollutants from the air; preserves scenic views that residents often come to cherish; offers a stable habitat for associated plant species and for animal wildlife; and provides shade and windbreaks that help moderate the effects of climate conditions.

B. Applicability.

- (1) The regulations set forth herein shall apply to any tract of land containing woodlands (as defined by §109-4. of the West Amwell Land Development Ordinance) that is the subject of an application for major site plan or major subdivision approval.

C. Woodland retention and preservation plan.

- (1) A woodland retention and preservation plan shall be submitted for the approval of the municipal agency, in consultation with the Woodland Advisor. The plan shall include a report articulating how the requirements of § 109-269 of this chapter will be met by the proposed subdivision and site plan; how the proposed development will affect the existing natural resources on the tract; the quantity of existing woodlands, and of individual trees not located within a designated forest stand that will be removed and that will be retained; and what specific techniques will be used to protect woodlands and individual trees during the construction process.
- (2) The woodland retention and preservation plan shall be prepared using the information identified below and which is requested in § 109-274 of this chapter and shall be certified by a New Jersey approved forester, a New Jersey certified landscape architect or a New Jersey certified tree expert:
 - (a) A table listing the tract area in square feet; the square footage of existing and proposed woodlands located within the tract; A clear, graphic indication of the existing and proposed woodlands located on the tract; A clear, graphic indication of the proposed limit of disturbance lines, tree save fencing specifications and other proposed tree protection measures;
 - (b) Any specimen trees located in the area of disturbance;
 - (c) Locations of proposed soil stockpile areas; and
 - (d) Existing and proposed preservation/conservation easements on the tract.

D. Woodland retention requirements.

- (1) The intent of this article is to retain rather than to replace existing woodlands. To that end, development shall be designed to maximize the area of existing woodlands to be retained. If woodlands are to be disturbed or removed, the applicant shall design the development in such a way as to avoid or minimize removal of woodlands.
- (2) To the extent that the use of the clustering or lot averaging techniques permitted in the applicable zoning district will maximize the retention of woodlands in the development of the tract, such techniques should be considered.
- (3) Woodlands existing on the tract as of the date of this ordinance may be removed for development in accordance with the following:
 - (a) Only those trees necessary to permit the construction of buildings, structures, streets, driveways, infrastructure and other authorized improvements, as shown on an approved site plan or subdivision plan, may be removed. In addition, removal of woodlands on any lot shall not exceed the permitted maximum lot coverage of the zone which the tract is located or the following, whichever is greater:

| | <u>Maximum Area of Existing Woodlands Removed^o</u> |
|------------------------------|---|
| <u>Acreage of Lot</u> | <u>(square feet)</u> |
| <u>Less than 1.00</u> | <u>20,000</u> |
| <u>1.00 - 1.99</u> | <u>25,000</u> |
| <u>2.00 – 2.99</u> | <u>30,000</u> |
| <u>3.00 – 3.99</u> | <u>40,000</u> |
| <u>4.00 – 4.99</u> | <u>50,000</u> |
| <u>5 and over</u> | <u>60,000</u> |
| | <u>NOTES:</u> |
| | <u>(*) Additional woodlands, not to exceed 8,000 square feet, may be removed to comply with Section 173-21 concerning reserve disposal areas.</u> |

- (4) *If woodlands are to be disturbed or removed, the applicant shall design and schedule (to minimize disturbance of nesting Threatened and Endangered species) the development in such a way as to avoid or minimize removal of woodlands which provide enhanced environmental or scenic value, which shall consist of woodlands in any of the following categories:*
- (a) *Any woodlands within required stream corridor buffers, wetlands, wetland transition areas or floodplains;*
 - (b) *Woodlands on slopes of 15% or more or woodlands located in highly erodible soils on slopes of less than 15%, with the steepest slopes having the highest priority;*
 - (c) *Woodlands associated with a critical groundwater recharge area, defined as having a recharge rate greater than or equal to the median recharge rate for the municipality as a whole;*
 - (d) *Woodlands along a scenic road identified in the municipal Master Plan;*
 - (e) *Woodlands identified in the New Jersey Landscape Project as either Forests or Forested;*
 - (f) *Woodlands that create a habitat having a ranking of 3, 4 or 5 for rare, threatened or endangered species;*
 - (g) *Woodlands that are connected to a larger woodlands corridor extending beyond the tract boundaries; and*
 - (h) *Woodlands and hedgerows that provide visual screening or are associated with an historic site or line a rural roadway.*
- (5) *The following procedures and requirements for the protection of the woodlands and individual trees to be retained shall be adhered to in the construction phase of the development:*
- (a) *During construction, no permanent or temporary material, including soil, shall be placed or deposited within the critical root zone or within eight feet, whichever is greater, of any tree to be retained or of the trees at the perimeter of any forest stand to be retained. Such area shall be protected by orange blazed fencing placed outside of such area during construction, and the fencing shall be inspected and approved by the Woodlands Advisor prior to the start of any site disturbance.*
 - (b) *Where necessary, pursuant to an approved grading plan, to fill or remove soil within an area that encompasses either the critical root zone or the area within eight feet, whichever is greater, of any individual tree to be retained in the area of disturbance or of the trees within the perimeter of any forest stand to be retained, the existing grade around each tree shall be maintained to the extent of the critical root zone or eight feet, whichever is greater, by a tree well and extension tiles (in the case of fill) or by a retaining wall (in the case of a cut).*

- (c) No chemicals shall be disposed of and no concrete trucks shall be rinsed within the critical root zone of any tree or of the trees at the perimeter of any forest stand to be retained.
- (d) During construction, individual trees to be retained and trees located at the perimeter of a forest stand to be retained shall be maintained in accordance with a maintenance schedule and plan under the direction of the Woodlands Advisor.
- (e) If equipment must temporarily invade the critical root zone of any individual tree to be retained or of any tree(s) located at the perimeter of a forest stand to be retained, the Woodlands Advisor shall approve and inspect the installation of required critical root zone protection measures within the path of such equipment, shall inspect the invasion of the critical root zone and shall thereafter inspect the removal of all temporary protective measures and the replacement of the protective fencing.
- (f) If the approved plan calls for the installation of any pavement or utilities within the critical root zone of any individual tree to be retained or of any tree(s) located at the perimeter of any forest stand to be retained, special techniques for such installation shall be employed to minimize the impact on the critical root zone(s), and such installation shall be directed, inspected and monitored by the Woodlands Advisor.
- (g) In the event any of the foregoing procedures and requirements for construction are violated, the municipal engineer or construction official shall issue a stop-work order until the violation is remedied.

E. Exceptions.

- (1) Any dead or diseased tree, subject to verification of its dead or diseased status by the Township's Woodlands Advisor.
- (2) Portions of a lot used as a Christmas tree farm.
- (3) Portions of a lot used as a nursery or fruit orchard.
- (4) Trees directed to be removed by municipal, county, state or federal authority pursuant to law.
- (5) Any invasive species of tree as listed in the West Amwell Township Natural Resources Inventory subject to verification by the Township's Woodland Advisor.

F. Fees.

- (1) The fees charged for inspections undertaken and other services provided by the Woodlands Advisor shall be established by the municipal governing body by ordinance at the time of the appointment of the Woodlands Advisor. Such fees may, from time to time, be amended by ordinance.
- (2) B. All charges made against escrow accounts for the services of the Woodlands Advisor shall be in accordance with N.J.S.A. 40:55D-53.2.

§ 109-145 shall be DELETED in its entirety.

Chapter 109, Part 4 Zoning, Article XXII Stream Corridor Protection shall be DELETED in its entirety.

Chapter 109, Part 10 Woodlands Protection shall be DELETED in its entirety.

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

This ordinance shall take effect immediately upon final passage and publication as provided by law, and upon filing a copy thereof with the Hunterdon County Planning Board in accordance with N.J.S.A. 40:55D-16.

APPROVED BY TOWNSHIP COMMITTEE

Zach Rich, Mayor

ATTEST:

Lora L. Olsen, RMC
Township Clerk

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading at a meeting of the governing body of the Township of West Amwell, in the County of Hunterdon, State of New Jersey, held on June 25, 2014. It will be further considered for final passage, after public hearing thereon, at a meeting of the governing body to be held in the municipal building, 150 Rocktown-Lamb. Rd., Lambertville NJ on July 23, 2014 at 7:00 p.m. All interested parties will be heard at this time.