



BOROUGH OF HIGHLANDS  
COUNTY OF MONMOUTH

## ORDINANCE 22-09

### ORDINANCE AMENDING SECTION 21-84B "STEEP SLOPES AND SLUMP BLOCKS" OF THE BOROUGH OF HIGHLANDS MUNICIPAL CODE

**WHEREAS**, Section 21-84B of the Borough Code entitled "Steep Slopes and Slump Blocks" addresses land use and construction requirements for properties located in steep slope and slump block areas; and

**WHEREAS**, the governing body of the Borough of Highlands wishes to better guide the development and preservation of the Borough's steep slope properties and has determined that it is in the best interest of the Borough to revise Section 21-84B to update and clarify these provisions to promote the public health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the governing body of the Borough of Highlands as follows:

**SECTION I.** Borough Code Section 21-84B "Steep Slopes and Slump Blocks" is hereby deleted in its entirety.

**SECTION II.** Borough Code Section 21-84B "Steep Slopes" shall be added as follows:

#### **21-84B STEEP SLOPES.**

- A. Areas Covered.** The areas of Highlands covered by this section (referred to hereafter as "slope area") are any properties south of Shore Drive and the Highlands-Sea Bright Bridge, including Blocks 1 through 29, inclusive, Blocks 34 through 38, inclusive, Blocks 40, 60, and 61, and Blocks 103 through 120, inclusive, as described by the Tax Assessment Map of the Borough of Highlands.
- B. Permit requirement exceptions.** A slope area permit is required for any work or disturbance affecting a slope area, except when the area of the proposed work or disturbance:
- (1)** Contains no slopes greater than 10%, nor any slope greater than 15% within 100 feet, and the work or disturbance is:
    - (a)** Soil disturbance of five cubic yards or less;
    - (b)** Change in impervious ground cover of 200 square feet or less;
    - (c)** Removal of five trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground;
    - (d)** Removal or disturbance of vegetation covering 200 square feet or less.
  - (2)** Contains no slopes greater than 15%, nor any slope greater than 20% within 100 feet; and the work or disturbance is:
    - (a)** Soil disturbance of three cubic yards or less;
    - (b)** Change in impervious ground cover of 100 square feet or less;
    - (c)** Removal of three trees or less, having a circumference of up to 20 inches each, measured at four feet above the ground;
    - (d)** Removal or disturbance of vegetation covering 100 square feet or less.
  - (3)** Contains slopes greater than 15% and the work or disturbance is:
    - (a)** Soil disturbance of one cubic yard or less;
    - (b)** Change in impervious ground cover of 25 square feet or less;
    - (c)** Removal of one tree, having a circumference of up to 20 inches measured at four feet above the ground;
    - (d)** Removal or disturbance of vegetation covering 25 square feet or less.
    - (e)** All items described in Subsection B(1), (2) and (3) above represent a cumulative total per lot, per calendar year.
  - (4)** Inspection for tree trimming.
    - (a)** In slope areas of greater than 15%, no normal tree topping to provide a view, protecting adjacent structures or the removal of dead or unhealthy trees shall take

place prior to an inspection and a determination as to how much of the tree may be trimmed or what trees may be removed. Such determination shall be subject to the Tree Commissioner and shall require a permit as set forth in Section 22-1 of the Borough Code.

- (b)** Where site plan or subdivision approval is also required, the slope area permit review will be performed along with that approval process, and the applicant will submit copies of all required information to the Land Use Board. Although the Board cannot grant or deny a slope area permit (except for an appeal under Subsection J), the Board shall consider all plans submitted under this section in any application for site plan or subdivision approval affecting a slope area.
- (5)** Additions to a single-family residence shall be exempt from the lot coverage, impervious coverage and lot disturbance provisions of this section if the following conditions exist:
- (a)** That the size of any one-story addition, deck, patio or excavation is less than 200 square feet. Soil logs and testing for future subsurface disposal systems shall not be exempted.
- (b)** That no slope greater than 10% exists within 20 feet of the area to be disturbed.
- (c)** The applicant provides plans or a written statement describing soil erosion and stabilization measures which will be used as part of construction.
- (d)** A final inspection fee of the equivalent of one hour of the Borough Engineer's time is posted prior to the issuance of the permit.

**C.** Application for permit. An application for a slope area permit shall be made to the Highlands Construction Official. The application shall include at least:

- (1)** Property description by Tax Map block and lot, and by street address if available.
- (2)** Scalable drawing of location of proposed work or disturbance along with existing and proposed topography. This drawing shall also include a delineation of the proposed limit of disturbance with area calculation.
- (3)** Areas clearly identified showing the following, as measured between ten-foot contour lines: Area 1, 30% or greater; Area 2, 20% but less than 30%; Area 3, 15% but less than 20%; Area 4, less than 15%.
- (4)** Calculation, in square footage and acres, of amount of area in the various slope categories listed above. All applications shall contain calculations demonstrating compliance with Subsections E(1) through E(4) of this Section.
- (5)** Statement of proposed work or disturbance.
- (6)** Any other additional information as is reasonably necessary to make an informed decision, including, but not limited to, the items listed below and in Subsection F:
- (7)** Where site plan or subdivision approval is required, the following exhibits shall also be submitted:
- (a)** Topographic map showing existing contours at two-foot intervals.
- (b)** Extent and erosion potential of exposed soils.
- (c)** Length, steepness and surface roughness of exposed slopes.
- (d)** Resistance of soil to compaction and stability of soil aggregates.
- (e)** High water table, water infiltration capacity and capacity of soil profile.
- (f)** Chemical, physical and biological nature of subsurface soils.
- (g)** Type and location of construction activity, including the amount of site grading, and depth of such grading.
- (h)** The time period of exposure of erodible soils during construction.
- (i)** The area and density of woodlands and forest, within the construction site and on contiguous lands for a distance of 200 feet, or such other distance as deemed appropriate by the Borough Engineer. All significant tree specimens four inches or greater in diameter, measured at four feet above the ground; all dogwood, American holly, and mountain laurel; and all other vegetation on slopes 15% or greater shall be indicated on the application plans as well as physically marked on the construction site.
- (j)** The extent of impervious surface to be constructed.
- (k)** Location of construction access roads.

- (l) Calculation of amount of site grading, to include a cut-and-fill balance sheet, including cross sections, and indicating, where applicable, the volume of and source of off-site fill.
  - (m) Extent of on-site erosion sediment control measures, during and after construction and until any affected area is stabilized.
  - (n) Any other information as is reasonably necessary to make an informed decision.
- D. Application review and standards of approval.
- (1) The Borough Engineer shall review every slope area application to determine whether the proposed work or disturbance may have a detrimental impact upon any slope area. Such review shall include at least an on-site inspection.
  - (2) The Borough Engineer shall thereafter approve only those applications where the proposed work or disturbance will:
    - (a) Have no detrimental impacts.
    - (b) Control velocity and rate of water runoff so that such velocity and rate are no greater after construction and development than before, and are within tolerances deemed safe by the Borough Engineer, and the project or site plan complies with all other provisions of the Borough Code and Article XXIV of the Land Use Volume of the Borough Code, Flood Damage Prevention.
    - (c) Minimize stream turbidity and changes in flow.
    - (d) Protect environmentally vulnerable areas.
    - (e) Stabilize exposed soils both during and after construction and development.
    - (f) Prevent soil slippage.
    - (g) Minimize number and extent of cuts to prevent groundwater discharge areas to underlying soils.
    - (h) Preserve the maximum number of trees and other vegetation on the site and avoid disturbance of the critical hillside, slope and forest areas.
    - (i) Control water infiltration at the top of the slope and thus decrease the tendency for shear failure and erosion.
    - (j) Control the growth of vegetation, which is detrimental to slope stability and promote the establishment of plant species which add to the stabilization of the slope.
    - (k) Control construction techniques to mitigate damage to steep slopes at the time of greatest vulnerability.
  - (3) The Borough Engineer may impose such conditions upon any approval as said Engineer deems necessary to achieve the purposes of this section. All permanent improvements necessary to achieve the purposes of this section shall require performance and maintenance bonds in forms and amounts to be reviewed and approved by the Borough Engineer and Borough Attorney. Said maintenance bond shall continue for two years after complete stabilization.
  - (4) Any approval may be subject to the condition that, for safety reasons, the applicant provides and adheres to a detailed construction and inspection schedule, copies of which shall be supplied to the Borough Construction Official for the purpose of monitoring the progress of the work and compliance with the construction schedule. Said approval may be further conditioned upon submission of periodic certifications by the applicant as to compliance with the construction schedule, and, in the event of noncompliance, written assurance as to the nature and time when steps will be taken to achieve compliance with the construction schedule.
  - (5) If the applicant does not comply with the construction schedule or any other requirements or conditions attached to the approval of the application, and the Borough Engineer or the Borough Construction Official certifies such lack of compliance, the Borough Construction Official shall thereupon revoke approval of the application, after notice to the applicant, and no further work may be performed on such site, with the exception for temporary measures necessary to stabilize the soil and to protect the site from stormwater damage or other hazards created by construction activity on the site.
- E. Lot size, development density, lot coverage and disturbance. To meet the purposes, goals and standards set forth in this section, in areas of slopes greater than 15%, the applicable provisions of this chapter relating to minimum lot sizes and density of development, and

maximum percentage of lot coverage, shall be modified, and limitations including maximum impervious surfaces and maximum lot disturbance shall be added as follows:

**(1) Minimum lot size; density.**

**(a)** The minimum lot size shall be determined by multiplying the total land area in various slope categories by the following factors and totaling the results. This modified minimum lot size shall be used as the lot size in density calculations. Slope calculations shall be based on elevation intervals of 10 feet.

<b>Slopes</b>	<b>Factor</b>
30% or greater	0.1
20% but less than 30%	0.2
15% but less than 20%	0.5
Less than 15%	1.0

**(b)** As the result of the computation of the total density allowed, any fractional amount shall be rounded down or truncated to the nearest whole integer. If the total density allowed is less than one, and prior to this section the lot dimensions met or exceeded the minimum lot size for its zone, than the total density allowed shall be one.

**(2) Determination of maximum lot coverage.**

**(a)** The maximum lot coverage area shall be determined by multiplying the total land area in various slope categories by the following factors, totaling the results and multiplying the result by the maximum lot coverage percentage allowed for the appropriate zone. Slope calculations shall be based on elevation intervals of 10 feet.

<b>Slopes</b>	<b>Factor</b>
30% or greater	0.25
20% but less than 30%	0.50
15% but less than 20%	0.75
Less than 15%	1.00

**(b)** Where the modified maximum lot coverage area is less than the minimum gross floor area required for the proposed building, the minimum gross floor area required shall be the modified maximum lot coverage area.

**(3) The maximum impervious surface area permitted in slope areas shall be determined by multiplying the total land area in various slope categories by the following percentages and totaling the results:**

<b>Slopes</b>	<b>Percentage</b>
30% or greater	10%
20% but less than 30%	15%
15% but less than 20%	25%
Less than 15%	35%

**(4)** The maximum lot disturbance shall be no greater than 130% of the maximum impervious surface permitted for the lot.

**(5)** No disturbance or improvements shall be permitted in the areas within fifteen (15) feet of the top of slope and no structures shall be located within twenty-five (25) feet of the top of slope; nor shall there be any disturbance within ten (10) feet of the toe of the slope or any structures located within fifteen (15) feet of the toes of the slope

**(6)** Setbacks of all structures necessary for slope area stabilization shall be sufficient to allow for any future maintenance that may be necessary.

**(7)** All land required to be maintained as permanent open space shall be indicated as such on any approved plans.

**F. Environmental appraisal and applicability.**

**(1)** When site plan or subdivision is required, an environmental impact report or request for waiver shall be prepared. The Borough Engineer shall review and approve the report in accordance with specifications and procedures required by this section.

**(2)** No application for slope area permit shall be approved unless it has been affirmatively determined, after an environmental appraisal, that the proposed project:

**(a)** Will not result in a detrimental impact on the environment; and

(b) Has been conceived and designed in such a manner that it will not significantly impair natural processes.

- G. Review and inspections fees. The applicant shall deposit an initial application filing fee of \$425 with the Chief Financial Officer. If additional escrow fees are required, the applicant shall deposit with the Chief Financial Officer an amount equal to the estimated review fee, as determined by the Borough Engineer. Inspections shall be required before, during stabilization and upon completion of the work or disturbance, during and for two years after complete stabilization, or for any other reasonable time, as determined by the Borough Engineer, to insure the purposes of this section are met. No permit will be issued until a deposit is placed with the Chief Financial Officer, equal to the estimated inspection fee, as determined by the Borough Engineer. If additional inspection fees are required, the applicant shall deposit with the Chief Financial Officer an amount equal to the new estimated inspection fee before any work can continue. The inspection fee deposit account shall remain for two years after complete stabilization. Any deposit accounts shall be maintained at levels sufficient at all times to cover all estimated fees or work may be halted. The Chief Financial Officer will keep the Borough Engineer aware of account balances as necessary.
- H. Municipal liability. The granting of any permit or approval in any slope area shall not constitute a representation, guarantee or warranty of any kind by the Borough, Borough Engineer, Borough Attorney, Construction Official, or by any other official, employee or representative thereof of the practicability or safety of any structure, use or other plan proposed, and shall create no liability upon, or a cause of action against, such public body, official or employee for any damage that may result pursuant thereto.
- I. Penalties. In addition to penalties already provided in Section 1-5 of the Borough Code, the Court may order any person convicted of violating this section to pay the Borough all costs for and associated with necessary stabilization or corrective measures, as determined by the Borough Engineer.
- J. Appeal. The Land Use Board shall have the power to hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, decision (including review and inspection fees under Subsection G) or refusal made by the Borough Engineer based on or made in the enforcement of this section. All such appeals under this section from the decisions of the Borough Engineer shall be taken within 20 days by filing a notice of appeal with the Borough Engineer specifying the grounds of such appeal. The Borough Engineer shall immediately transmit to the Land Use Board all papers constituting the record upon which the action appealed from was taken. All such appeals shall be heard by the Land Use Board upon notice given by the applicant as required by Section 21-11 of the Land Use Volume of the Borough Code. The Land Use Board may permit, or require, the record on appeal to be supplemented with such documents or other evidence or information as are reasonably necessary to make an informed decision as to whether the requirements of this section have been met.

**SECTION II. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance, which shall otherwise remain in full force and effect.

**SECTION III. REPEALER.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

**SECTION IV. EFFECTIVE DATE.** This ordinance shall take effect immediately upon its passage and publication in accordance with law.

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First Reading and Set Hearing Date for O-22-09:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES			X			
CHELAK		X	X			
MELNYK			X			
OLSZEWSKI			X			
BROULLON	X		X			

This is a Certified True copy of the Original Resolution on file in the Municipal Clerk's Office.

DATE OF VOTE: May 4, 2022

Nancy Tran, Acting Municipal Clerk  
Highlands

Public Hearing and Adoption for O-22-09:

	INTRODUCED	SECOND	AYE	NAY	ABSTAIN	ABSENT
CERVANTES			X			
CHELAK			X			
MELNYK			X			
OLSZEWSKI		X	X			
BROULLON	X		X			

This is a Certified True copy of the Original Resolution on file in the Municipal Clerk's Office.

DATE OF VOTE: June 15, 2022

Nancy Tran, Acting Municipal Clerk  
Highlands

Carolyn Broullon, Mayor