

*Julius 6/27/89
adopted 7/11/89*

Ordinance No. 943-89 AS INTRODUCED 6/27/89

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER 146 - ZONING - OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF ATLANTIC HIGHLANDS
PROVIDING FOR ENGINEERING REVIEW
AND PERMITS FOR ANY WORK, DISTURBANCE OR
OTHER ACT AFFECTING STEEP SLOPES

WHEREAS, N.J.S.A. 40:55D-2 encourages municipal action to guide the appropriate use or development of all lands in New Jersey, in a manner which will promote the public health, safety, morals, and general welfare; and

WHEREAS, the Atlantic Highlands Master Plan of 1964, revised 1966, states in part: "The eastern half of the Borough largely consists of soil which is basically sand, silt, and clay. The ruggedness of the topography provides for picturesque roads and breathtaking views, but the instability of the soil requires extreme care in development. It would be difficult to safely support very heavy structures, such as residential towers; even more important, slopes must be kept from eroding by careful maintenance of strong hillside vegetation and, in case of more intense development, the construction of engineering works to carry away storm water."; and

WHEREAS, the United States Geological Survey Professional Paper 898, dated 1974, titled Slump Blocks in the Atlantic Highlands of New Jersey describes slump blocks and slumping, and discusses their potential as geological hazards and states in "Conclusions and Recommendations" as follows: "It seems evident that careful thought, planning, investigations, tests, and analyses should be undertaken before construction is begun in any areas on definite slump blocks, probable or possible slump blocks, along zones of weakness, or near the edges of the tops of any of the high, steep bluffs. Included in such precautionary measures should be avoidance of the removal of material from the

toes of possibly critical slopes, prevention of excessive water infiltration in the ground in critical areas, and avoidance of excessive loading on upper surfaces in these areas."

NOW THEREFORE BE IT ORDAINED by the Council of the Borough of Atlantic Highlands, County of Monmouth and State of New Jersey as follows:

Section 1. Purpose. It is the purpose of this Ordinance to protect the health, safety and welfare of people and property within the Borough of Atlantic Highlands from improper work, disturbance, or any other acts affecting steep slope and hillside areas in the Borough of Atlantic Highlands, and more particularly, but not without limitation, to reduce the peculiar hazards which exist in hillside areas by reason of erosion, siltation, flooding, soil slippage, surface water runoff, pollution of potable water supplies and of surface waters from non-point sources, and destruction of vegetation which stabilizes hillsides.

To this end, this Ordinance shall require a permit for, and engineering review and approval of, any work, disturbance or other action that might have a detrimental impact, as defined below, on hillside areas having a slope of 15% or greater.

Section 2. Definitions. For the purposes of this Ordinance the following definitions will apply unless a different meaning clearly appears from the context:

"Construction" means any work, disturbance, or other act associated with the creation, improvement, work on or for the benefit of any structure, permanent improvement, environmental control measure or action required to achieve the goal of this Ordinance.

"Detrimental impact" is erosion, slumping, runoff or other consequence likely to result in the destabilization or damage to a slope area.

"Impervious surface" means any natural or man-made surface which does not permit full infiltration of water and causes surface runoff.

"Lot" means a designated parcel, tract or area of land established by a plat or otherwise, as permitted by law and to be used, developed or built upon as a unit.

"Removal", with regard to trees, shrubs or other vegetation, includes any act likely to result in the death or permanent damage that might accelerate death. Normal pruning or other acts, except removal, to promote growth do not constitute removal.

"Slope area" means the areas of Atlantic Highlands covered by this Ordinance, including any structure, driveway, street, retaining wall or anything else built or placed upon, above or below the surface, and all trees, bushes or groundcover or any other vegetative life.

"Soil Disturbance" means to dig, excavate, remove, grade, level or otherwise alter or change the location or contour, or to fill or supply to a lot. This term shall not be construed to include spading, cultivating or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

"Soil" means any earth, topsoil, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence of organic matter.

"Structure" means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land and including, but not limited to, fences or walls, retaining walls, gates or gate posts, mobile dwellings, outdoor bins, platforms, decks, pools, porches, tanks of any kind, towers of any kind, including radio and television towers or satellite dishes or receivers of any kind. The word "structure" shall be construed as though followed by the words "or part thereof".

"Work or disturbance" includes, but is not limited to, any

construction, building, improvement or development, whether or not a building or other permit is required, the removal or destruction of trees, shrubs or other vegetation, soil disturbance, or any other act or action that may have a detrimental impact on slope areas.

Section 3. Areas covered. The areas of Atlantic Highlands covered by this Ordinance (referred to hereafter as "slope area") are Blocks 1 through 6 inclusive, Lots 1,2,3,4,5 in Block 7, Blocks 8 through 28 inclusive, Blocks 53, 54, 55, 56, 57, 58, 59, 60, 70, 71, 72, 73, 74, 75, 76, and 77, as described on the Tax Assessment Map of Atlantic Highlands, dated 1968 and amended 1988. Said Blocks and Lots are described as containing or adjoining slopes of 15% or greater on the "Slope Characteristics Map", dated October, 1964, prepared by Brown and Anthony - City Planners, and contained in the Atlantic Highlands Master Plan, dated 1964, and updated 1966, and/or are identified as containing or adjoining slump block areas in the "United States Geological Survey Professional Paper 898", dated 1974.

Section 4. Permit Required. 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:

(a) contains no slopes greater than 10%, nor any slope greater than 15% within 100 feet, and the work or disturbance is:

- (1) Soil disturbance of 5 cubic yards or less,
- (2) Change in impervious ground cover of 200 square feet or less,
- (3) Removal of 5 trees or less, having a circumference of up to 20 inches each, measured at 4 feet above the ground,
- (4) Removal or disturbance of vegetation covering 200 square feet or less.

(b) contains no slopes greater than 15%, nor any slope

greater than 20% within 100 feet; and the work or disturbance is:

- (1) Soil disturbance of 3 cubic yards or less,
- (2) Change in impervious ground cover of 100 square feet or less,
- (3) Removal of 3 trees or less, having a circumference of up to 20 inches each, measured at 4 feet above the ground,
- (4) Removal or disturbance of vegetation covering 100 square feet or less.

(c) contains slopes greater than 15%,

- (1) Soil disturbance of 1 cubic yard or less,
- (2) Change in impervious ground cover of 25 square feet or less,
- (3) Removal of 1 tree, having a circumference of up to 20 inches measured at 4 feet above the ground,
- (4) Removal or disturbance of vegetation covering 25 square feet or less.

(d) All items described in (a), (b) and (c) above, represent a cumulative total per lot, per calendar year.

Where site plan or subdivision approval is also required the slope area permit review will be performed along with that approval process, and applicant will submit copies of all required information to the Planning or Zoning Board as applicable. Although neither Board can grant or deny a slope area permit (except for an appeal under section 12), each Board shall consider all plans submitted under this ordinance in any application for site plan or subdivision approval affecting a slope area.

sect 4.1 INSPECTION FOR TREE TRIMMING

Section 5. Application for Permit. An application for a slope area permit shall be made to the Atlantic Highlands Construction Official. The Application shall include at least:

(11) The area and density of woodlands and forests, within the construction site and on contiguous lands for a distance of 200 feet, or such other distance as deemed appropriate by the Municipal Engineer. All significant tree specimens 4 inches or greater in diameter, measured at 4 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.

(12) The extent of impervious surface to be constructed.

(13) Location of construction access roads.

(14) 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.

(15) Extent of on site erosion sediment control measures, during and after construction and until any affected area is stabilized.

(16) Any other information as is reasonably necessary to make an informed decision.

Section 6. Application Review and Standards of Approval.

(a) The Municipal 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. The engineer's inspection shall be made as soon as possible considering the extent of the work necessary to evaluate the application.

(b) The Municipal Engineer shall thereafter approve only those applications where the proposed work or disturbance will:

(1) Have no detrimental impacts.

(a) Property description, by Tax Map Block and lot, and by Street address if available.

(b) Sketch of location of proposed work or disturbance. An informal sketch may be acceptable.

(c) Statement of proposed work or disturbance.

(d) Any other additional information as is reasonably necessary to make an informed decision, including, but not limited to, the items listed below and in Section 8.

(e) Where site plan or subdivision approval is required, the following exhibits shall also be submitted:

(1) Topographic map showing existing contours at two-foot intervals.

(2) Areas clearly identified showing the following slopes as measured between 10 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%.

(3) Calculation, in square footage and acres, of amount of area in the various slope categories listed above.

(4) Extent and erosion potential of exposed soils.

(5) Length, steepness and surface roughness of exposed slopes.

(6) Resistance of soil to compaction and stability of soil aggregates.

(7) High-water table, water infiltration capacity and capacity of soil profile.

(8) Chemical, physical and biological nature of subsurface soils.

(9) Type and location of construction activity, including the amount of site grading, and depth of such grading.

(10) The time period of exposure of erodible soils during construction.

(2) 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 Municipal Engineer, and the project or site plan complies with all other provisions of the Borough Ordinances and Floodplain Ordinance .

(3) Minimize stream turbidity and changes in flow.

(4) Protect environmentally vulnerable areas.

(5) Stabilize exposed soils both during and after construction and development.

(6) Prevent soil slippage.

(7) Minimize number and extent of cuts to prevent groundwater discharge areas to underlying soils.

(8) Preserve the maximum number of trees and other vegetation on the site and avoid disturbance of the critical hillside, slope and forest areas.

(c) The Municipal Engineer may impose such conditions upon any approval as said Engineer deems necessary to achieve the purposes of this Ordinance. All permanent improvements necessary to achieve the purposes of this Ordinance shall be bonded in the same manner as set forth in the Subdivision Ordinance and Site Plan Ordinance, except that a maintenance bond shall continue for 2 years after complete stabilization.

(d) Any approval may be subject to the condition that, for safety reasons, the applicant provide and adhere 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.

(e) 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 Municipal 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 of 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.

Section 7. Lot size, development density, lot coverage and disturbance. To meet the purposes, goals and standards set forth in this Ordinance, in areas of slopes greater than 15% the applicable provisions of the Zoning Ordinance relating to minimum lot sizes and density of development, and maximum percentage of lot coverage shall be modified, and limitations of maximum impervious surfaces and maximum lot disturbance shall be added.

(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.

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

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 1, and prior to this Ordinance the lot dimensions met or exceeded the minimum lot size for its zone, than the total density allowed shall be 1.

(b) 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.

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

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.

(c) 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.

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

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

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

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

Section 8. Environmental Appraisal and Applicability.

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

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

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

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

Section 9. Review and Inspections Fees. The initial application filing fee shall be \$25.00 plus a review fee, estimated to be the hourly rate for one hour, as set by ordinance, of the Municipal Engineer. If the review by the Municipal Engineer is not completed in one hour, then the applicant shall be given an estimate of the review cost before proceeding further. The applicant shall deposit with the Borough Clerk an amount equal to the estimated review fee, as determined by the Municipal Engineer. If additional review fees are required, applicant shall deposit with the Borough Clerk an amount equal to the new estimated review fee.

Inspections shall be required before, during stabilization

and upon completion of the work or disturbance, during and for 2 years after complete stabilization, or for any other reasonable time, as determined by the Municipal Engineer, to insure the purposes of this Ordinance are met. No permit will be issued until a deposit is placed with the Borough Clerk equal to the estimated inspection fee, as determined by the Municipal Engineer. If additional inspection fees are required, applicant shall deposit with the Borough Clerk an amount equal to the new estimated inspection fee before any work can continue. The inspection fee deposit account shall remain for 2 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 Borough Clerk will keep the Municipal Engineer aware of account balances as necessary.

The Municipal Engineer may retain any outside consulting services or assistance necessary, as determined by the Municipal Engineer, to review and inspect items covered by this Ordinance, at the expense of the applicant.

Section 10. 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 or by any official or employee 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.

Section 11. Penalties. Any person or persons, firm or corporation violating any of the provisions of this Ordinance shall upon conviction thereof be subject to a fine not to exceed \$1,000.00 or imprisonment for a period not to exceed 90 days, or both, at the discretion of the Judge imposing the same. Each and every day that said violation continues shall, constitute a

separate and specific violation. In addition, the Court may order any person convicted of violating this Ordinance to pay the Borough all costs for, and associated with necessary stabilization or corrective measures, as determined by the Municipal Engineer.

Section 12. Appeal. The Zoning Board of Adjustment 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 section 9) or refusal made by the Municipal Engineer based on or made in the enforcement of this Ordinance.

Section 13. Repealer. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed.

Section 14. Validity. If any part of this Ordinance is found not valid, the remainder of this Ordinance shall remain in effect.

Section 15. Effective date. This ordinance shall take effect immediately upon final passage and publication according to law.