

Local Law ____ of 2006
Chapter * Steep Slopes**

§* - 1 Legislative intent**

- A. The way in which presently undeveloped acreage in the Town is developed is of critical importance to the public interest. The standards for lot count contained in Chapter 194 Zoning, which exclude environmentally sensitive lands from the acreage upon which lot count is based, encourage the siting of buildings and other facilities so that the disturbance or alteration of steep slope areas and other environmentally sensitive lands can be avoided. Nonetheless, the Town recognizes that disturbance or alteration of steep slope areas may be necessary. The purpose of this chapter is to prevent improper disturbance or alteration of steep slopes. The intent is not to restrict general development in the Town, but to guide land use proposals into areas where they best preserve and enhance these natural resources and preserve and protect the visual and environmental character of the land.

§* - 2 Findings**

- A. Steep slopes have been or are in jeopardy of being damaged or destroyed by unregulated filling, excavating, building, clearing and other such acts which are inconsistent with the natural condition or acceptable uses of steep slopes. Steep slopes in the Town of East Fishkill are environmentally sensitive landforms and valuable natural resources that are of benefit to the entire Town and the surrounding region. The environmental sensitivity of steep slopes often results from such features as rock outcrop, shallow soils over bedrock, bedrock fractures, and groundwater seeps.
- B. Protection of steep slopes is a matter of concern to the entire Town. The establishment of regulatory and conservational practices in this critical area is needed to protect the public health, safety and general welfare. Experience has demonstrated that effective protection of steep slopes requires preservation wherever possible. Experience has further demonstrated that where steep slopes have to be disturbed, careful review and regulation, including stringent mitigating measures, is required.
- C. The Town's experience with past development has shown that the improperly managed disturbance of steep slopes can aggravate erosion and sedimentation beyond rates experienced in natural geomorphologic processes. Erosion and sedimentation often include the loss of topsoil, a valuable natural resource, and can result in the disturbance of habitats, degradation of the quality of surface water, the silting of wetlands,

- alteration of drainage patterns, and obstruction of drainage structures and intensification of flooding.
- D. Steep slopes, including vegetation and rock cliffs, are an important environmental feature that contribute to the character and desirability of the Town of East Fishkill and help contribute to and maintain the value of residential property in the Town. Overdevelopment or improperly managed disturbance are detrimental to the character and desirability of the Town and can result in public and private expenditures for corrective measures; negative effects on property values; and unnecessary and unwarranted increases in the costs of providing and maintaining public services and facilities, such as streets, water, sewers, emergency services, sanitation services, parks, and recreation.
- E. Regulation of development on steep slopes is consistent with the legitimate interests of landowners to make reasonable use of their land. Regulation can prohibit the degradation of steep slopes and allow reasonable use of private property by encouraging flexible design to avoid disturbance of steep slopes. Regulation can also permit environmentally sound disturbance of steep slopes conducted in accordance with acceptable management and engineering practices to permit reasonable use of private property.
- F. Regulation of development on steep slopes will not preclude the Town from continuing to meet its social, economic and other essential responsibilities, particularly its responsibility to provide affordable housing. In order to ensure the availability of affordable housing, the Town has adopted provisions in Chapter 194 Zoning, and Chapter 163 Subdivision of Land, which enable the development of a variety of housing types to meet the needs of Town residents for affordable housing. Additionally, the Town Board will be considering further Zoning Amendments as recommended by its Work Force Housing Task Force.
- G. These regulations are enacted with the intent of providing a reasonable balance between the rights of the individual property owner to the fair use of his property. Therefore, this chapter recognizes the rights of owners of property containing steep slopes to use their property for reasonable purposes consistent with other regulations and controls, provided that such use, in the judgment of the appropriate agencies or officials of the Town of East Fishkill, does not result in a significant loss or degradation of steep slopes or loss of the visual and open space benefits of steep slopes.
- H. It is declared to be the intent of the Town of East Fishkill to preserve steep slopes within the Town to the greatest extent practicable and to regulate their use within the Town to protect the public interest by ensuring the greatest benefit found to enjoy and benefit from preservation of wetlands,

water bodies and watercourses to be provided by the preservation of steep slopes and by ensuring the least detrimental effects through the practice of properly managed disturbance of steep slopes as set forth in Section 4.

§* - 3 Definitions**

As used in this chapter, the following terms shall have the meanings indicated:

CUSTOMARY LANDSCAPING - Land maintenance involving tree trimming and pruning, the removal of dead and diseased vegetation, lawn and garden care and the planting of decorative trees, shrubs and plants.

DISTURBANCE - Excavation or fill or any combination which changes the existing ground surface by more than two (2) feet, or any removal of trees and/or vegetation and shall include the conditions resulting from any excavation or fill.

EXCAVATION - Any act by which earth, sand, gravel, rock or any other similar material is mechanically cut into, dug, quarried, uncovered, removed, displaced or spread.

FILL - Any act by which earth, sand, gravel, rock or any other similar material is mechanically deposited, placed, replaced, dumped, transported or moved to a new location.

STEEP SLOPES - Ground areas with greater than a 3:1 slope or 33.3% grade and that cover a minimum area of 5,000 (five thousand) square feet with one orthogonal dimension (i.e. either length or width) a minimum of 25 (twenty-five) feet. Measurements shall be made along a horizontal plane.

§* - 4 Exempt and regulated activities**

- A. Exempt activities shall be allowed without the need for obtaining a permit, provided that any such activities conform to the requirements of this chapter and to all other applicable laws and regulations of the Town of East Fishkill. Exempt activities are
1. Any customary landscaping not involving re-grading in excess of two feet.
 2. Tree removal under any Forestry Management Program.
 3. Agricultural uses within an Agricultural District.
 4. Maintenance of any preexisting use of land established before the adoption of this Local Law.

- B. Regulated activities. These prohibitions apply to all sites, lots, or parcels of land, or any portion of any such site, lot, or parcel, located in the Town, without exception.
1. It shall be unlawful to create any disturbance or to cut any tree with a diameter greater than four inches measured 4 1/2 feet above ground level, on any steep slope, as defined by this chapter, other than an exempt activity defined above, without a specific written permit as required by this chapter.
 2. It shall be unlawful to create any steep slope, other than as part of an exempt activity, without a specific written permit as required by this chapter.

§* - 5 Approval authority**

The approval authority with respect to applications hereunder shall be as follows:

- A. The Zoning Board of Appeals shall be the approval authority with respect to any application that requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of East Fishkill.
- B. The Planning Board shall be the approval authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of East Fishkill, including any application which incidentally requires the issuance of any permit or approval by the Zoning Board of Appeals.
- C. The Town Board shall be the approval authority with respect to any application which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of East Fishkill, including any application which incidentally requires the issuance of any permit or approval by the Zoning Board of Appeals or the Planning Board.
- D. The Building Inspector or Zoning Administrator shall be the approval authority with respect to all other regulated activities.

§* - 6 Standards for approval**

- A. General requirements. In denying, granting or granting with modifications any application for a permit as required by this section, the approval authority shall consider, and make specific findings, that address the

consistency of the proposed activity with the findings set forth in Section 2 of this chapter and each of the following standards:

1. Disturbance or alteration of trees and forests and topographical disturbances or alterations on steep slopes shall be in conformance with all provisions of this steep slopes ordinance as well as with all other applicable ordinances and regulations of the Town of East Fishkill, including, by way of example only, the requirements of Chapter 108 regarding flood damage control.
 2. The proposed activity will not result in creep, sudden slope failure, or additional erosion.
 3. The proposed activity will not adversely affect existing or proposed wells or sewage disposal systems.
 4. The proposed activity will not adversely affect any endangered or threatened species of flora or fauna.
 5. The proposed activity is in accordance with the principles and recommendations of the most recent Master Plan of the Town and the Greenway Compact Guidelines.
 6. The natural elevations and vegetative cover of ridgelines shall be disturbed only if the crest of a ridge and the tree line at the ridge remain uninterrupted. This may be accomplished either by positioning buildings and areas of disturbance below a ridgeline or by positioning buildings and areas of disturbance at a ridgeline so that the elevation of the roofline of the building is no greater than the elevation of the natural tree line. However, under no circumstances shall more than 100 feet along the ridgeline, to a width of 100 feet generally centered on the ridgeline, be disturbed.
 7. The proposed activity constitutes the minimum disturbance necessary to allow the property owner a reasonable use of the property.
- B. Disturbance or alteration of areas with steep slopes shall additionally be in conformance with the following planning, design and layout provisions:
1. The planning, design and development of buildings shall provide the maximum in structural safety, slope stability and human enjoyment while adapting the affected site to, and taking advantage of, the best use of the natural terrain and aesthetic character.

2. The terracing of building sites, including the mounding of septic tile fields, shall be kept to an absolute minimum.
3. Roads and driveways shall follow the natural topography to the greatest extent possible in order to minimize the potential for erosion and shall be consistent with all other applicable ordinances and regulations of the Town of East Fishkill and current engineering practices.
4. Replanting shall consist of indigenous vegetation and shall replicate the original vegetation on the site as much as possible.
5. Any regrading shall blend in with the natural contours and undulations of the land.
6. Cuts and fills shall be rounded off to eliminate sharp angles at the top, bottom and sides of re-graded slopes. Visible construction cuts and permanent scarring should be minimized.
7. All proposed disturbance of steep slopes shall be undertaken with consideration of the soils limitations characteristics contained in the Dutchess County Soils Survey, as prepared by the Dutchess County Soil and Water Conservation District, in terms of recognition of limitation of soils on steep slopes for development and application of all mitigating measures and as deemed necessary by the approval authority.
8. The surface of earthen cut slopes, earthen fill slopes or rock fill slopes shall not exceed a slope of two horizontal units to one vertical unit, except where retaining walls, structural stabilization or other methods acceptable to the Town Engineer are used. The surface of rock cut slopes shall be to a stable grade, which will vary with the type of rock encountered but may be steeper than 2H : 1V as limited for earthen cut slopes.
9. Structures shall be set back from the tops and bottoms of cut and fill slopes a distance that will ensure the safety of the structure in the event of the collapse of the cut or fill slope. Generally, such distance shall be considered to be six feet plus 1/2 the height of the cut or fill.
 - a. A structure built at the toe of an earthen or broken rock constructed slope where the slope is greater than the allowable 2H : 1V may be permitted if it is properly designed to retain the slope and withstand the forces exerted on it by the retained slope.

- b. A structure built at the top of an earthen or broken rock constructed slope where the slope is greater than the allowable 2H : 1V may be permitted if the slope is held in place by a retaining wall designed by a New York State licensed professional engineer.

§* - 7 Burden of proof**

1. The presumption in all cases shall be that no disturbance or alteration of any steep slope shall be approved by the approval authority. The applicant shall in all cases have the burden of proof of demonstrating, by clear and convincing evidence, that the proposed activity is fully consistent with each of the findings set forth in Section 2 and that each of the standards for approval set forth in Section 6 above has been fully and completely met.
2. With respect to applications involving proposed disturbance or alteration of any steep slope with a grade of 33% or greater, the applicant shall have the additional burden of demonstrating, again by clear and convincing evidence, that the applicant's circumstances are compelling and exceptional, including, at a minimum, demonstrating by clear and convincing evidence that no reasonable use of the site, lot, or parcel is possible without disturbance to a steep slope area having a grade of 33% or greater.

§* - 8 Permit procedures**

- A. Application for permit. An application for a permit to disturb or alter a steep slope shall be filed with the approval authority and shall contain the following information and such other information as required by the approval authority except when waived by it as not pertinent or necessary for the proposed disturbance:
 1. The name and post office address of the owner and applicant.
 2. The street address and Tax Map designation of property covered by the application.
 3. A statement of authority from the owner for any agent making application.
 4. A listing of property owners adjacent to, across streets or rights-of-way from and downstream within 500 feet of the property and any

additional property owners deemed appropriate by the approval authority.

5. A statement of the proposed work and purpose thereof.
6. Copies, in such reasonable number as determined by the approval authority, of plans for the proposed regulated activities drawn to a scale of not less than one inch equals 50 feet (unless otherwise specified by the approval authority). Such plans shall be sealed and show the following:
 7. The location of the proposed construction or area of disturbance and its relationship to property lines, easements, buildings, roads, walls, sewage disposal systems, wells and wetlands within 100 feet of the proposed construction or area of disturbance for adjacent properties at the same elevation and within 500 feet for properties significantly lower.
 8. The estimated material quantities of excavation/fill.
 9. The location and size of areas of soils by soils types in the area of proposed disturbance and to a distance of 100 feet.
 10. The existing and proposed contours [1929 National Geodetic Vertical Datum (NGVD) is preferred, and is mandatory if a floodplain is involved; 1988 NAVD is otherwise acceptable] at two-foot intervals in the area of proposed disturbance and to a distance of 100 feet beyond.
 11. Cross sections of steep slope areas.
 12. Retaining walls or like constructions, with details of construction.
 13. The erosion and sedimentation control plan.
 14. Other details, including specific reports by qualified professionals on soils, geology and hydrology, and borings and/or test pits, as may be determined to be necessary by the approval authority.
 15. A list of all applicable county, state or federal permits which are required for such work or improvements.
 16. An application fee in the amount set forth in a fee schedule established by the Town Board.

- B. Referral. The approval authority shall refer any application submitted to it pursuant to this chapter to the Conservation Advisory Council (CAC) for review and report. The Conservation Advisory Council shall report back to the approval authority within 30 days of the date of referral or within such greater period as may be specified by the approval authority (at the time of referral). Failure to reply within the specified time period shall be interpreted by the approval authority as indicating that the CAC has no objection to the application.
- C. Notice. Upon receipt of a completed application under this chapter, the approval authority shall cause notice of receipt of the same to be sent to adjoining property owners and property owners across the street or right-of-way adjoining the involved property. Such property owners shall have 20 days from said day of notice to submit written comment to the approval authority with regard to said application. The approval authority may waive this notice procedure if it has received responses from the adjoining property owners prior to action by it. In cases where the approval authority is the Building Inspector or Zoning Administrator, the approval authority shall additionally cause such notice to be posted at one or more locations along the street or streets abutting the property.
- D. Public hearing. A public hearing shall be held by the approval authority on the application made hereunder at such times, under such circumstances and upon such notice as may be required for the granting of the other permit or approval required of such approval authority pursuant to the local laws and ordinances of the Town of East Fishkill. No Public Hearing is required for permits issued solely by the Building Inspector or Zoning Administrator.
- E. Action by the approval authority. In approving any application, the approval authority may impose such conditions or limitations as it determines necessary to ensure compliance with the intent, purposes and standards of this chapter.
1. On applications for which no public hearing is required, a determination shall be made to approve, approve with modifications or disapprove the application within 60 days of receipt of a completed application therefore.
 2. On applications for which a public hearing is required, a determination shall be made to approve, approve with modifications or disapprove the issuance of such permit simultaneously with the determination by the approval authority of the other permit or approval for which application was made.

3. The approval authority may require that the activities undertaken pursuant to a permit be supervised by an appropriate licensed professional as specified by the approval authority in its permit.
- F. Appeal. Any party aggrieved by a decision of the Building Inspector or Zoning Administrator to approve with conditions or disapprove an application may appeal the decision to the Zoning Board of Appeals.

§* - 9 Duration of permit**

- A. A permit shall expire on completion of the activities specified and shall be valid for a period of two years from the date of approval or for the period of any other permit issued by the approval authority.
- B. A permit may be renewed by the approval authority for a period of up two years.

§* - 10 Security**

- A. In granting a permit, the approval authority shall require a security in an amount and with surety and conditions satisfactory to it securing to the Town of East Fishkill compliance with the conditions and limitations set forth in the permit.

§* - 11 Construction, inspection and monitoring**

- A. Disturbance or alteration of areas with steep slopes shall additionally be in conformance with the following construction requirements:
 1. Disturbance of rock outcrops shall be by means of explosives only if labor and machines are not effective and only if rock blasting is conducted in accordance with all applicable laws and regulations of the Town of East Fishkill, County of Dutchess, and the State of New York.
 2. Disturbance of steep slopes shall be undertaken in workable units in which the disturbance can be completed and stabilized in one construction season so that areas are not left bare and exposed during the winter and spring thaw periods (December 15 through April 15).
 3. Disturbance of existing vegetative ground cover shall not take place more than 15 days prior to grading and construction.

4. Temporary soil stabilization, including, if appropriate, temporary stabilization measures such as netting or mulching to secure soil during the grow-in period, must be applied to an area of disturbance within two days of establishing the final grade, and permanent stabilization must be applied within 15 days of establishing the final grade.
 5. Soil stabilization must be applied within two days of disturbance if the final grade is not expected to be established within 60 days.
 6. Measures for the control of erosion and sedimentation shall be undertaken consistent with the New York State Guidelines for Urban Erosion and Sediment Control, as amended, or their equivalents, satisfactory to the approval authority.
 7. Topsoil shall be stripped from all areas of disturbance, stockpiled and stabilized in a manner to minimize erosion and sedimentation and replaced elsewhere on the site at the time of final grading. Stockpiling shall not be permitted on slopes greater than 10% grade.
 8. No organic material or rock with a size that will not allow appropriate compaction, or cover by topsoil, shall be used as fill material. Fill material shall be no less permeable than the soil upon which it is placed and shall drain readily.
 9. Compaction of fill materials shall be sufficient to ensure stable support of proposed structures and other intended uses.
- B. Inspection and monitoring
1. The Building Inspector or Zoning Administrator of the Town of East Fishkill shall inspect on behalf of the approval authority, activities undertaken pursuant to a permit so as to ensure satisfactory completion. If upon inspection it is found that any of the activities have not been undertaken in accordance with the permit, the applicant shall be responsible for completing those activities according to the permit (in addition to being subject to the sanctions set forth in Section 12. Failure of the Building Inspector or Zoning Administrator to carry out such inspections shall not in any way relieve the applicant or its surety of its responsibilities.
 2. The approval authority may require that the applicant submit for review and approval by the Building Inspector or Zoning Administrator of the Town of East Fishkill a detailed monitoring

program, including but not necessarily limited to, written status reports at specified intervals documenting activities undertaken pursuant to a permit. Where such a monitoring program has been required, the applicant shall notify the approval authority and the Building Inspector or Zoning Administrator upon reaching stages of the activity as may be required in the permit. No activity requiring inspection shall be approved absent such notification.

3. The approval authority may require as a condition of approval the applicant to establish an Escrow Account so that the Town may appoint an environmental monitor to monitor the work under any permit granted herein.

§* - 12 Applicability**

- A. This chapter shall not apply to any complete application heretofore made to the Zoning Board, the Planning Board, the Town Board, the Building Inspector or the Zoning Administrator for any permit or approval for which a permit would also be required hereunder. The term "complete application" shall mean either the issuance of a negative declaration under SEQRA (or the adoption of a determination of significance and the submission of a complete deis within nine (9) months from the effective date hereof).
- B. Where this chapter is less or more protective of the environment than the regulatory program of the United States Army Corps of Engineers, the Environmental Conservation Law of the State of New York, the New York City Department of Environmental Protection, or any law or ordinance of the County of Dutchess or the Town of East Fishkill, the law or ordinance that is more protective of the environment shall prevail.
- C. Grandfathered projects: Any revisions to this chapter shall not apply to any land use, improvement or development physically completed prior to the effective date of this Chapter. This chapter shall not apply to any project for which approval has been granted and work is commenced within one (1) year of final approval.
- D. Current projects: Any regulated activity which has received an approval or is otherwise allowed to legally continue prior to the effective date of this chapter, but which is not in conformity with the provisions of this chapter, may be continued subject to the following:
 1. Such activity shall continue to be governed by the laws of the Town of East Fishkill in effect at the time of approval.

2. Such activity shall not be expanded, changed or enlarged in any way that increases its size or impact without compliance with this chapter.
 3. If such activity is discontinued for twelve (12) consecutive months, any resumption of the activity shall conform to this chapter.
- E. This Local Law will not apply to any Application which has received preliminary approval upon the effective date of this Law nor will this Local Law apply to any application for which a determination of significance has been adopted as of the effective date of this Law and, in addition, for which a DEIS has heretofore been submitted to the lead agency conducting environmental review or for which a DEIS will be submitted within nine months from the effective date of this Law.

§* - 13 Penalties for offenses**

- A. Activities specified by the permit shall be undertaken pursuant to any conditions of the permit and shall be completed according to any schedule set forth in the permit. The approval authority may revoke or suspend a permit if it finds that the applicant has not complied with any of the conditions or limitations set forth in the permit.
- B. The Building Inspector or Zoning Administrator shall have the power to direct a violator to cease violation of this chapter and, with the consultation of the approval authority, satisfactorily restore the affected area within a specified period of time. The exercise of such power may be with or without the imposition of a fine.
- C. Any person who violates, disobeys or disregards any provision of this chapter shall be liable to the people of the Town of East Fishkill for a civil penalty not to exceed \$3,000 for every such violation. Each week's continuation of a condition violating this chapter shall be deemed a separate violation. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each week's continuance thereof shall be deemed a separate and distinct offense.
- D. In addition to the above civil fine, any person who is found guilty of violating any provision of this chapter shall be, pursuant to the Penal Law, punishable by a fine of not less than \$500 nor more than \$1,000. For a second and each subsequent conviction, the violator shall be guilty of a misdemeanor, punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment up to 15 days, or both. Each offense shall be a separate and distinct offense, and, in the case of a continuing

offense, each week's continuance thereof shall be deemed a separate and distinct offense.

- E. In addition to the above civil and criminal penalties, the Town Board and Building Inspector or Zoning Administrator, with the advice and consent of the Town Attorney, shall have the right to seek equitable relief to restrain and/or remedy any violation of any provisions of this chapter.