

# Code of the Town of Ossining, New York (Westchester County)

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## Chapter 167: STEEP SLOPE PROTECTION

[HISTORY: Adopted by the Town Board of the Town of Ossining 4-25-2000 by L.L. No. 2-2000. Editor's Note: This local law, adopted as Ch. 106, was renumbered as Ch. 167 to maintain the alphabetical organization of the Code. Amendments noted where applicable.]

### GENERAL REFERENCES

Building construction — See Ch. 63.  
Environmental quality review — See Ch. 85.  
Filling and grading — See Ch. 92.  
Freshwater wetlands, watercourses and water body protection — See Ch. 105.  
Streams and watercourses — See Ch. 169.  
Subdivision of land — See Ch. 176.  
Tree protection — See Ch. 183.  
Zoning — See Ch. 200.

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## ARTICLE I General Provisions

### § 167-1. Title; findings and policy.

- A. Title. This chapter shall be known as the "Steep Slopes Protection Law of the Town of Ossining." It is a chapter regulating the disturbance of steep slopes in the Town of Ossining.
- B. Findings and policy. The Town Board of the Town of Ossining finds and declares it to be the public policy of the town to regulate, preserve, protect and conserve its steep slopes so as to maintain and protect the natural terrain and its vegetative features, preserve wetlands, water bodies and watercourses, prevent flooding, protect important scenic views and vistas, preserve areas of wildlife habitat, provide safe building sites and protect the subject property and the adjoining property by preventing erosion, creep and sudden slope failure. In this connection, the Town Board finds as follows:
  - (1) Protection of steep slopes is a matter of concern to the entire town. Once a steep slope is disturbed, that disturbance is, for all practical purposes, irreversible. The establishment of regulatory and conservation practices to prevent disturbance of steep slopes is needed to protect the public health, safety and general welfare. Experience has demonstrated a need for effective protection of steep slopes, including careful review and regulation and the implementation of stringent mitigation measures where, in the opinion of the approval authority, no practicable alternative to such disturbance exists. However, in all cases where the approval authority determines that total avoidance of steep slopes is not practicable, such disturbance should constitute the minimum disturbance necessary to ensure the property owner a reasonable use of the property.
  - (2) The disturbance of steep slopes can aggravate erosion and sedimentation beyond rates experienced in natural geomorphological 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 and wetlands, alteration of drainage patterns, the gullyng of land, the obstruction of drainage structures, the intensification of flooding both on and off the subject site, the failure of slopes and the mass movement of earth and danger to the natural environment, man-made structures and the safety of persons.

- (3) Steep slopes, including vegetation and rock outcroppings located thereon, are important environmental features that contribute significantly to the visual impression one forms while traveling through the town. Overdevelopment of or improperly managed disturbance to these steep slopes is detrimental to the visual character of the town.
- (4) Regulation can allow the reasonable use of private property by encouraging flexible development design so as to avoid disturbance of steep slopes. Regulation can also permit environmentally sound disturbance of steep slopes conducted in accordance with acceptable engineering practices.
- (5) To minimize the potential adverse impacts of development on steep slopes, the approval authority should seek the preservation of such areas by the use of flexible site design, including the application of § 278 of the New York State Town Law, the establishment of conservation easements and other land preservation techniques.
- (6) These regulations are enacted with the intent of providing a reasonable balance between the rights of the individual property owners and the public interest in preserving the valuable functions of steep slopes.

## **§ 167-2. Definitions.**

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

**ANGLE OF REPOSE** — The maximum angles at which the exposed face of various soil and rock materials can deviate from the horizontal without incurring the likelihood of a slope failure.

**APPLICANT** — Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, excluding the Town of Ossining and its governmental agencies, who requests the approval authority to issue a permit, or to whom a permit has been granted under the provisions of this chapter. This chapter shall only serve as a guide to the Town of Ossining, and its governmental agencies.

**APPROVAL AUTHORITY** — The town agency(s) or public official(s) empowered to administer the permit procedures of this chapter.

**BUILDING INSPECTOR** — The Building Inspector of the Town of Ossining.

**DISTURBANCE** — The removal of vegetation, except as specifically permitted in § 167-5A(1) herein, or the filling, excavation, regrading or removal of soil, rock or retaining structures in areas of steep slope, whether by manual labor, machine or explosive. The condition of disturbance will be deemed to continue until the area of disturbance is revegetated and/or permanently stabilized.

**DISTURBED AREA** — Any steep slope area for which a disturbance is proposed or is ongoing.

**ENVIRONMENTAL ADVISORY COMMITTEE** — The Environmental Advisory Committee of the Town of Ossining.

**GRADING** — Adjusting the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.

**MATERIAL** — All liquid, solid or gaseous substances.

**PERSON** — Any person, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including public agencies and municipal corporations.

**PLANNING BOARD** — The Planning Board of the Town of Ossining.

**PROJECT** — Any proposed or ongoing action that may result in direct or indirect physical impact on a steep slope, including, but not limited to, any regulated activity.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT** — The law, pursuant to Article 8 of the New York

Environmental Conservation Law, providing for the environmental review of actions.

**STEEP SLOPE** — Any geographical area, whether on a single lot or not, having a topographical gradient of 15% or greater (ratio of vertical distance to horizontal distance), with a minimum horizontal dimension of 10 feet, and a minimum area as defined below, whether man-made or natural, and whether created by a retaining structure or not.

- A. Steep slopes are further categorized as:
- (1) **MODERATELY STEEP SLOPE** -- A slope equal to or greater than 15% but less than 25% and covering a minimum horizontal area of 3/10 of an acre (13,068 square feet).
  - (2) **VERY STEEP SLOPE** -- A slope equal to or greater than 25% but less than 35% and covering a minimum horizontal area of 2/10 of an acre (8,712 square feet).
  - (3) **EXTREMELY STEEP SLOPE** -- A slope equal to or greater than 35% and covering a minimum horizontal area of 1/10 of an acre (4,356 square feet).
- B. The most steeply sloped area that meets the minimum area threshold, as specified above, shall determine approval authority jurisdiction and review procedures.
- C. If the areas within each of the three categories of steep slope are individually less than the minimum areas defined above, then to determine if the disturbance of such steep slopes shall nevertheless be subject to the provisions of this chapter, the following steps shall be taken:
- (1) Area calculation.
    - (a) The area within each category of steep slope shall be adjusted as follows:
      - [1] The area of moderately steep slope shall be multiplied by a weighting factor of 1.0.
      - [2] The area of very steep slope shall be multiplied by a weighting factor of 1.5.
      - [3] The area of extremely steep slope shall be multiplied by a weighting factor of 3.0.
    - (b) The areas determined under Subsection C(1)(a)[1], [2] and [3] above shall be aggregated.
  - (2) A steep slope area shall be regulated pursuant to the provisions of this chapter if the total of all such steeply sloped areas, as adjusted above, exceeds a sum of 3/10 of an acre (13,068 square feet). The single slope category that has the largest area after the application of the relevant weighting factor shall determine approval authority jurisdiction and review procedures. All area measurements of square feet shall be to the nearest whole number.
  - (3) An example of the calculations mandated by this Subsection C follows: The moderately steep slope area is 5,000 square feet, the very steep slope area is 3,000 square feet and the extremely steep slope area is 2,000 square feet. After adjustment by reason of the weighting factors, the moderate steep slope area remains 5,000 square feet, the very steep slope area is 4,500 square feet and the extremely steep slope area is 6,000 square feet. Since the aggregate of the adjusted areas exceeds 13,068 square feet, the proposed disturbance of the steep slope is subject to regulation by this chapter. The approval authority shall be the Planning Board, as the extremely steep slope area, as adjusted, has the largest single area.

**STEEP SLOPE PERMIT** — The written form of town approval granted by the approval authority and required by this chapter for the issuance of a work permit and the conduct of any steep slope regulated activity.

**STRUCTURE** — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including, but not limited to, buildings, tennis courts, swimming pools and decks.

**TOWN** — The unincorporated portion of the Town of Ossining.

TOWN BOARD — The Town Board of the Town of Ossining.

TOWN COUNSEL — The duly appointed counsel of the Town of Ossining.

WORK PERMIT — The written approval issued by the Building Inspector permitting the actual commencement and continuation of work within a regulated steep slope area, consistent with the conditions, terms and requirements of the steep slope permit issued by the approval authority.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the Town of Ossining.

### **§ 167-3. Rules for establishing steep slope areas.**

The applicant shall be responsible for having the boundaries of the steep slope determined by field investigation, flagging and subsequent survey by a licensed land surveyor. The approval authority may also consult, at the expense of the applicant, and/or may also require the applicant to consult with a landscape architect, architect, professional engineer, soils scientist or other experts and professionals as deemed necessary to make this determination. The town shall maintain at the office of the Planning Board a map showing a general description of steep slope areas, which shall be available to the public. The existence of said map shall be for guidance to applicants, who shall in all cases have the obligation of determining if their property contains a steep slope.

### **§ 167-4. Applicability.**

The provisions of this chapter shall apply to all lands defined and/or designated as steep slope areas.

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## **ARTICLE II Regulated Activities and Review Standards**

### **§ 167-5. Allowable and regulated activities.**

- A. Allowable activities. The following activities within a steep slope area shall be allowed without a permit:
- (1) Normal ground maintenance which does not require disturbance of existing terrain, including mowing, trimming of vegetation and removal of dead or diseased vegetation, provided that such activity does not involve regrading, and further provided that such activity conforms with all other applicable laws and regulations, including but not limited to the Tree Protection Law of the Town of Ossining (Chapter 183).
  - (2) The disturbance to steep slopes under temporary emergency conditions, as determined by the Building Inspector, where such disturbance is necessary to protect persons or property from present and imminent danger.
  - (3) Repair of existing walkways and walls.
  - (4) Installation of a standard-size mailbox.
  - (5) Public health activities and emergency uses pursuant to orders of the Westchester County Department of Health and/or the New York State Department of Health.
- B. Regulated activities. It shall be unlawful to create a new steep slope area or to create any disturbance, other than an allowable activity as defined in § 106-5A hereof, on any existing or proposed steep slope in the absence of a steep slope permit issued by the approval authority and a work permit issued by the Building Inspector.

### **§ 167-6. Review standards.**

- A. Consideration. In granting, denying or conditioning any permit, the approval authority shall consider all relevant facts and circumstances, including, but not limited to, the following:
- (1) The environmental impact of the proposed action.
  - (2) The alternatives to the proposed action, including avoidance of the disturbance of the steep slope area and the availability of preferable alternative locations on the subject parcel or on any other adjacent parcel under the control of the applicant.
  - (3) The suitability or unsuitability of the proposed activity to the area for which it is proposed.
  - (4) The effect of the proposed activity with reference to the protection of steep slopes.
  - (5) The availability of technical improvements, safeguards or other mitigation measures that could feasibly be added to the proposal.
- B. Conditions. During its review of the application, the approving authority shall establish conditions of approval deemed necessary by the approval authority to satisfy the goals, objectives and review standards set forth in §§ 167-1 and 167-6 of this chapter, including but not limited to the following:
- (1) Lot layouts shall be designed so that sanitary sewage disposal systems entirely avoid all areas of steep slope and are in compliance with all standards and regulations of the Westchester County Health Department.
  - (2) The padding or terracing of building sites, including mounding of septic tile fields, shall be minimized to the maximum extent practicable.
  - (3) The alignment of roads and driveways shall follow the natural topography, minimize regrading and comply with design standards for maximum grades set forth in the Town Code.
  - (4) The natural elevations and vegetative cover of ridge lines shall be protected from disturbance to the maximum extent possible.
  - (5) All regrading shall blend in with the natural contours of the land.
  - (6) Cuts and fills shall be rounded off to eliminate sharp angles at the top, bottom and side of regraded slopes.
  - (7) The angle of cut and fill slopes shall not exceed the natural angle of repose of the soil or rock materials in the cut or fill, except where retaining walls or other structural stabilization is used; generally, for soils, cut and fill slopes should be not steeper than two horizontal to one vertical (50% slope).
  - (8) Fill slopes shall avoid all natural slopes of two horizontal to one vertical (50% slope) or steeper. The toe of the fill slope shall not be located within 12 feet horizontally of the top of an existing or proposed cut slope.
  - (9) Tops and bottoms of cut and fill slopes shall be set back from existing and proposed property lines a distance at least equal to the lesser of three feet plus 1/5 of the height of the cut or fill or 10 feet.
  - (10) Tops and bottoms of cut and fill slopes shall be set back from structures a distance that will ensure the safety of the structure in the event of the collapse of the cut or fill slopes; generally, such distance will be considered to be six feet plus 1/5 the height of the cut or fill but need not exceed 10 feet. Nevertheless, a structure may be built on a slope or at the toe of a slope if it is designed to retain the slope and to withstand the forces exerted on it by the retained slope.
  - (11) The use of explosives shall be avoided to the maximum extent practicable. Generally, disturbance of rock outcrops shall be by means of explosives only if manual labor and machines are not effective and only if rock blasting is conducted in accordance with the Town Code and all other applicable regulations by a person holding a current Class A or Class B certificate of competence from the New York State Department of Labor.
  - (12) Any disturbance of steep slopes shall be completed within one construction season, and

disturbed areas shall not be left bare and exposed during the winter and spring thaw periods.

- (13) The disturbance of existing vegetative ground cover shall not take place more than seven days prior to commencing grading and construction.
  - (14) Permanent vegetative cover, as specified in the Westchester County Best Management Practices Manual for Erosion and Sediment Control (1991), as may be amended, shall be planted within three days after completion of grading. Where final grading and permanent planting cannot be established within a short period of time, temporary seeding or mulching shall be applied. Upon good cause shown and based upon consideration of the time of year, slopes, soils and environmental sensitivity of the area involved, the Building Inspector may modify these specified time periods.
  - (15) Measures for the control of erosion and sedimentation shall be undertaken in accordance with the Westchester County Best Management Practices Manual for Erosion and Sediment Control (1991), as may be amended, and in accordance with the most recent version of the Soil and Water Conservation Society's publication entitled "New York Guidelines for Erosion and Sediment Control," or their equivalents as may be deemed satisfactory to the approval authority.
  - (16) Topsoil that will be stripped from all areas of disturbance shall be stockpiled in a manner so as to minimize erosion and sedimentation and shall be replaced on the site at the time of final grading.
  - (17) Fill material shall be composed only of nonorganic material, including rock with a diameter that will allow for appropriate compaction and cover by topsoil. No voids are to be created or left remaining in the fill material that will allow further settlement of the fill or habitat for rodents, vermin or other unwanted species.
  - (18) Compaction of fill materials in fill areas shall be such that it ensures support of proposed structures and stabilization for intended uses.
- C. Determinations. In granting a steep slope permit under this chapter, the approval authority shall determine the following:
- (1) That the proposed activity and the manner in which it is to be accomplished are in accordance with the findings and policy set forth in § 167-1 of this chapter.
  - (2) That the proposed activity and the manner in which it is to be accomplished can be completed without increasing the possibility of creep or sudden slope failure and will minimize erosion to the maximum extent practicable.
  - (3) That the proposed activity and the manner in which it is to be accomplished will not adversely affect the preservation and protection of existing wetlands, water bodies, watercourses and floodplains.
  - (4) That the proposed activity and the manner in which it is to be accomplished can be completed in such a way so as not to adversely affect existing, proposed or future wells or sewage disposal systems or any threatened or endangered species of flora or fauna.
  - (5) That the proposed regulated activity is compatible with the public health and welfare.
  - (6) That the proposed regulated activity cannot practicably be relocated on the site so as to eliminate or reduce the disturbance of the steep slope area.
- D. Burden of proof. The applicant shall have the burden of proof to demonstrate compliance with this chapter.

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## **ARTICLE III Application Procedures**

### **§ 167-7. Approval authority.**

The approval authority for all applications for steep slope permits shall be as follows:

- A. For any application that involves a disturbance in an area of very steep slope or extremely steep slope, the Planning Board shall be the approval authority for the steep slope permit.
- B. Where the Planning Board is processing a site plan or subdivision, it shall also be the approval authority for any steep slope permit required in connection with such application.
- C. Except as noted above in § 167-7A and B, the Building Inspector shall be the approval authority for all steep slope permit applications.

**§ 167-8. Procedures for applications to Building Inspector.**

- A. Application contents. Five copies of the application and an application review fee, as determined by the Town Board, shall be submitted to the Building Inspector and Building and Planning Department. The application shall contain the following information:
  - (1) Name and address of owner and applicant.
  - (2) Street address and Tax Map designation of property to which the application pertains.
  - (3) Statement of consent from the owner for any agent making application.
  - (4) A written narrative explaining the nature of the proposal, including the proposed work and purpose thereof, any future development proposals for the property and whether alternative locations exist for the proposed activity.
  - (5) A site plan, which shall be drawn at a scale no less detailed than one inch equals 50 feet and prepared by a landscape architect, architect, professional engineer or other qualified person and showing the following information for all areas on the subject site that contain steep slopes:
    - (a) The location of proposed structures, septic systems, wells and driveways.
    - (b) The location of the proposed area of disturbance and its relation to neighboring properties, together with structures, roads and affected wetlands as defined in Chapter 105, Freshwater Wetlands, of the Town Code, if any, within 50 feet of the boundaries of the disturbed area.
    - (c) The existing topography in the proposed area of disturbance at a contour interval of not more than two feet. Contours shall be shown for a distance of 50 feet or greater beyond the limits of the proposed area of disturbance. The contour map shall be prepared, signed and sealed by a professional land surveyor licensed to practice in New York State. The elevations and contours on said map shall be in United States Geological Survey (USGS) datum, latest revision.
    - (d) The location and size of areas of extremely steep slope, very steep slope and moderately steep slope, under existing and proposed conditions, in the area of proposed disturbance and within a distance of 50 feet thereof.
    - (e) The proposed final contours of the disturbed area at a maximum contour interval of two feet and proposed surface materials or treatment.
    - (f) An erosion and sedimentation control plan.
    - (g) The details of any surface or subsurface drainage system proposed to be installed, including special erosion-control measures designed to provide for proper surface or subsurface drainage, both during the performance of the work and after its completion.
  - (6) A list of all applicable town, county, state and federal permits that are required for such work or improvement.
  - (7) Payment of all applicable fees.

- B. Additional information. The following information and materials shall be supplied if requested by the Building Inspector:
- (1) A site plan or site plans drawn at a scale of not less than one inch equals 50 feet, prepared by a landscape architect, architect, professional engineer or other qualified person, showing:
    - (a) Cross sections of all disturbed steep slope areas.
    - (b) Existing soils within 50 feet of the proposed disturbed area, taken from field investigations by a soils scientist and classified into hydrologic soil groups. The depth to bedrock and depth to water table, K-factor and soil and rock strata in all areas of disturbance shall be identified.
    - (c) A cut/fill map delineating proposed areas of disturbance at affected depths in increments of zero to three feet, three to six feet, six to 10 feet and 10 feet and over and the estimated material quantities of cut/fill.
    - (d) A slope map showing existing and proposed slopes within the disturbed area for each of the soil types described in Subsection B(1)(b) above.
    - (e) Other information, including specific reports by qualified professionals on soils, geology and hydrology, as may be determined to be necessary by the Building Inspector.
  - (2) A plan with the existing topography of the watershed tributary to the disturbed area presented at a scale of not more than one inch equals 100 feet. This map shall show existing and, if required by the Building Inspector, proposed controls and diversions of upland water.
- C. Referrals. The Building Inspector, upon receipt of an application meeting the requirements of this section, shall refer the application to the Environmental Advisory Committee for its review and report. The Environmental Advisory Committee shall render a report to the Building Inspector within 10 days of the referral date, unless the applicant consents to an extension. The Building Inspector shall have no obligation to consider the Environmental Advisory Committee's report, unless said report is rendered within the time frame specified herein.
- D. Initial review of application by Building Inspector.
- (1) The Building Inspector shall review the application for the purpose of determining whether the application is eligible for processing under the provisions of this chapter, and, if so, the Building Inspector shall process the application within 21 days of receipt of a complete application in accordance with the provisions of this chapter.
  - (2) If the Building Inspector determines that the application is not eligible for processing under the provisions of this chapter, he/she shall provide written notice of such decision to the applicant within 21 days of receipt of a complete application.
  - (3) If the Building Inspector determines that the granting of a permit would be appropriate in light of the standards set forth in § 167-6, the Building Inspector shall grant the permit within 21 days of receipt of a complete application. Notwithstanding the foregoing, the Building Inspector, in his/her sole discretion, may forward any application for a permit to the Planning Board for processing in accordance with the provisions of § 167-9 below.
  - (4) If the Building Inspector determines that the granting of a permit would be inappropriate in light of the standards set forth in § 167-6, the Building Inspector shall neither approve nor deny the application, but rather shall notify the applicant within 21 days of receipt of a complete application and shall forward the application to the Planning Board for processing in accordance with the procedures set forth in § 167-9 below.

#### **§ 167-9. Procedures for applications to Planning Board.**

- A. Application contents. Ten copies of the application and an application review fee, as determined by the Town Board, shall be submitted to the Building Inspector and the Building and Planning

Department. The application shall contain the following information:

- (1) The information specified in § 167-8A above.
- (2) An explanation as to why the proposed activity cannot be located at another site.
- (3) A list of names of the owners of record of lands adjacent to the steep slope area in which the project is proposed to be undertaken.

B. Additional information. Additional information may be requested by the Planning Board, including any of the following:

- (1) Complete plans and estimates for the proposed site improvements, which shall be certified by a professional engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn at a scale no less detailed than one inch equals 50 feet and showing the following:
  - (a) A description of the vegetative cover of the regulated area.
  - (b) A description of the soil types on site.
  - (c) Location of the construction area and the area proposed to be disturbed and their relation to property lines, roads, buildings and watercourses within 250 feet thereof.
  - (d) The exact locations, specifications and amount of all proposed draining, filling, grading, dredging and vegetation removal or displacement and the procedures to be used to do the work.
  - (e) Location of all wells and depths thereof and all sewage disposal systems.
  - (f) Existing and adjusted contours at two-foot intervals in the proposed disturbed area and to a distance of 50 feet beyond; and elevations of the site and adjacent lands within 200 feet of the proposed work site at contour intervals of no greater than 10 feet.
  - (g) A completed full environmental assessment form in accordance with the New York State Environmental Quality Review Act.
- (2) Any additional information as needed. Such additional information may include, but is not limited to, the study of flood, erosion or other hazards at the site; the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to evaluate the proposed use in terms of the goals and standards hereof.

C. Referrals. The Planning Board, upon receipt of an application meeting the requirements of this section, shall refer the application to the Environmental Advisory Committee for its review and report. The Environmental Advisory Committee shall render a report to the Planning Board within 30 days of the referral date or within such other period as may be specified by the Planning Board. The Planning Board shall have no obligation to consider the Environmental Advisory Committee's report, unless said report is rendered within the time frame specified herein.

#### **§ 167-10. Fees.**

- A. An application fee and inspection fee in amounts set forth in a fee schedule established from time to time by the Town Board shall be submitted with the application.
- B. In addition to the fees required in Subsection A of this section, the Planning Board shall adjust the fees sufficiently to reimburse the town for the cost of professional consultation fees and other expenditures attributable to the proposal. The Planning Board may establish an escrow account funded by the applicant prior to the Board authorizing the performance of consulting services regarding the proposal.

#### **§ 167-11. Approval procedures; public hearing.**

- A. It is the intent of this chapter to incorporate the consideration of steep slope protection into the town's existing land use and development approval procedures in conjunction with the procedures of the New York State Environmental Quality Review Act. To the maximum extent possible, the review, hearings and decisions upon any application processed under this chapter will run concurrently with similar procedures that the approval authority may undertake in connection with other applications that are directly related.
- B. A preliminary informal consultation with the approval authority may be requested by the applicant so as to present his preliminary proposal and receive comments on such proposal.
- C. In the case of permits sought in conjunction with subdivision approval, the Planning Board shall hold a public hearing on the requested permit concurrently with the public hearing on preliminary subdivision plat approval. Public notice and notice to interested parties of the steep slope permit hearing shall be provided along with the notice required by the Town Code for the hearing on preliminary subdivision plat approval. The Planning Board shall issue a final written decision on the steep slope permit as part of the decision on final subdivision plat approval. Editor's Note: See Ch. 176, Subdivision of Land.
- D. In the case of permits sought in conjunction with site plan approval, the Planning Board shall hold a public hearing on the requested permit concurrently with the public hearing on site plan approval. Public notice and notice to interested parties of the steep slope permit hearing shall be provided along with the notice required by the Town Code for the public hearing on site plan approval. The Planning Board shall issue a final written decision on the steep slope permit as part of the decision on site plan approval. Editor's Note: See § 200-50, Approval of site plans.
- E. In the case of all other permits, the Planning Board shall hold a steep slope permit public hearing within 30 days of its finding that the application is complete. Public notice and notice to interested parties of the steep slope permit hearing shall be provided in the manner required by the Town Code for the public hearing on site plan approval. Editor's Note: See § 200-50, Approval of site plans. All application materials, maps and documents relating thereto shall be open for public inspection at the Building and Planning Department. Within 30 days of the close of the public hearing, the Planning Board shall render a written decision on the application. Nothing in this section is to be construed as authorization for a default approval in the event that these periods are exceeded.
- F. Any approval, conditional approval or denial of a steep slope permit shall be in writing. In the case of a denial or conditional approval, such written decision will state the reasons for the denial and/or the conditions of approval.

**§ 167-12. Permits; performance guaranty.**

- A. Steep slope permits issued pursuant to this chapter shall contain conditions including the following:
  - (1) The permit shall expire on a specified date.
  - (2) The permit holder shall notify the Building Inspector and the Building and Planning Department of the date on which the work is to begin, at least five days in advance of such date.
  - (3) The approval authority's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- B. Conditions may include, but shall not be limited to, the following:
  - (1) Limitation on the total portion of any lot or the portion of the steep slope on the lot that may be disturbed.
  - (2) Setbacks for structures, fill and other activities from the steep slope.
- C. Performance guaranty; maintenance guaranty.
  - (1) The approval authority shall require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant shall post with the approval authority a performance guaranty or bond in an amount recommended by the Building Inspector or the

Town Consulting Engineer, and with surety and conditions approved by the Town Counsel, sufficient to secure compliance with the permitted work, and with the conditions and limitations set forth in the permit. The particular amount and the conditions of the performance guaranty shall be consistent with the purposes of this chapter. The performance guaranty shall remain in effect until the approval authority or its designated agent certifies in writing that the work has been completed in compliance with the terms of the permit and the performance guaranty is released by the approval authority, or until a substitute performance guaranty is provided. In the event of a breach of any condition of any permit, the approval authority may obtain and make appropriate use of the proceeds of the performance guaranty.

- (2) The performance guaranty shall be converted into a maintenance guaranty upon completion of the work. The amount of the maintenance guaranty shall be 25% of the amount of the performance guaranty. The maintenance guaranty shall remain in effect for a period of one year from the date of acceptance by the Town Board. The date of acceptance of the maintenance guaranty shall be the same as the date of release of the performance guaranty.

D. Expiration of permit; extensions.

- (1) All permits shall expire on completion of the acts specified therein and, unless otherwise indicated, shall be valid for a period of one year from the date of issue, provided that no permit granted pursuant to this chapter shall be valid for greater than a period of three years from the date of issue. The approval authority may extend the time in which the acts specified in the permit must be completed if, in its opinion, such extension is warranted by the particular circumstances involved, provided that in the case of a permit where no work on the steep slope(s) has been accomplished, extensions shall not exceed two additional periods of 90 days each, in which case, should a permittee fail to complete the acts specified in the permit prior to the expiration of the second ninety-day extension, at the discretion of the approval authority, the original permit may become null and void, and an application would then need to be made for a new permit. The request for a new permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a public hearing if the original intent of the permit is not altered or extended in any significant way.
- (2) In the case of a permit where the work on the steep slope(s) is partially completed, the number and length of extensions shall be at the sole discretion of the approval authority.
- (3) A request for an extension of an original permit shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit and each extension.

**§ 167-13. Work permit; completion of work; revisions.**

- A. Permits, including all of their conditions, shall be binding on successors and assignees of the applicant. Upon receipt of a steep slope permit, the applicant may obtain a work permit from the Building Inspector to commence the actual work within the steep slope area. The work permit will be valid for a period of one year or until expiration of the steep slope permit, whichever occurs first.
- B. Following completion of the work, the applicant shall submit a certification by a landscape architect, architect or professional engineer that the completed work meets the requirements of the steep slope permit. The Building Inspector will verify that the work has been completed in accordance with such permit. Submission of an as-built survey may be required by the approval authority.
- C. The Building Inspector shall not issue a certificate of occupancy or certificate of use until the Building Inspector has verified that all work has been completed in accordance with the steep slope permit.
- D. Any proposed revision to work covered by a steep slope permit shall be reviewed by the Building Inspector. Where the Building Inspector determines that a substantial revision is proposed, the submission of a new application to the approval authority shall be required.

## **§ 167-14. Appeals.**

Any final determination, decision or order of the Building Inspector or Planning Board may be appealed by means of the procedure specified for zoning matters in Chapter 200, Zoning, of the Ossining Town Code.

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## **ARTICLE IV Enforcement**

### **§ 167-15. Inspections; violations and fines.**

- A. Inspection. Any site for which an application has been submitted shall be subject to inspection at any reasonable time, including weekends and holidays, by the approval authority or its designated representatives. Notice will be provided to applicants of any site inspection that is to be performed on a weekend, a legal holiday or between the hours of 6:30 p.m. and 8:00 a.m.
- B. Administrative sanctions.
- (1) Damages. Any person who undertakes any activity regulated by this chapter without a permit issued hereunder, or who violates, disobeys or disregards any provision of this chapter, shall be liable to the town for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the town at the request and in the name of the approval authority in any court of competent jurisdiction.
  - (2) Restitution. The Planning Board shall have the authority to direct the violator to restore the steep slope area to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designate. Further, the Planning Board shall have the authority to require an adequate performance guaranty in a form and amount deemed necessary by the Planning Board to insure the restoration of the affected steep slope area.
  - (3) Stop-work order; revocation of permit. In the event that any person holding a permit issued pursuant to this chapter violates the terms of the permit, fails to comply with any of the conditions or limitations set forth in the permit, exceeds the scope of the activity as set forth in the application or operates so as to be materially detrimental to the public welfare or injurious to a steep slope area, the approval authority may suspend or revoke the permit, as follows:
    - (a) Suspension of a permit shall be by a written stop-work order issued by the Building Inspector and delivered to the permittee or his agent or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited and shall state the conditions under which work may be resumed. A stop-work order shall have the effect of suspending all authorizations and permits granted by the town or any agency thereof. The stop-work order shall remain in effect until the approval authority is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the Planning Board as provided in Subsection B(3)(b) immediately below.
    - (b) No steep slope permit shall be permanently suspended or revoked until a public hearing is held by the Planning Board. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state the grounds for complaint or reasons for suspension or revocation and the time and place of the hearing to be held. Such notice shall be served on the permittee at least one week prior to the date set for the public hearing unless the stop-work order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Planning Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion of the hearing, the Planning Board shall determine whether the permit shall be reinstated, suspended or revoked.

- C. Fines. Any person convicted of having violated or disobeyed any provision hereof, any order of the approval authority or any condition duly imposed by the approval authority in a permit granted pursuant to this chapter, for the first offense shall be punishable by a fine of not less than \$1,000 per day of offense. Each subsequent offense shall be punishable by a fine of not less than \$2,000 per day. Each consecutive day of the violation shall be considered a separate offense.

**§ 167-16. Injunctive relief.**

The town is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions hereof and/or to compel the restoration of the affected steep slope area to its condition prior to the violation of the provisions of this chapter.

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**ARTICLE V Miscellaneous**

**§ 167-17. Preexisting approvals and permits.**

- A. The provisions of this chapter shall not apply to any land use, improvement or development for which a valid, existing final approval shall have been obtained prior to the effective date of this chapter from the authority or authorities of the Town of Ossining having jurisdiction over such land use. As used in this section, the term "final approval" shall mean:
- (1) In the case of the subdivision of land: approval of a final plat as the term is defined in § 276 of the Town Law.
  - (2) In the case of a site plan, special permit or conditional use permit not involving the subdivision of land: approval by the appropriate board.
  - (3) In those cases not covered by Subsection A or B immediately above:
    - (a) The issuance of a building permit for the commencement of the use, improvement or development for which such permit was issued.
    - (b) For those uses, improvements and developments for which the Town of Ossining does not require such permits: the actual commencement of the use, improvement or development of the land.
- B. Any land use, improvement, subdivision, site plan, special permit, conditional use permit or other action under review by the Building Inspector, Planning Board or other board that has not received its final approval as of the date of the adoption of this chapter by the Town Board, or where such final approval has expired, shall be subject to the conditions and requirements of this chapter.

**§ 167-18. Indemnification; notice; conflicts; severability; when effective.**

In order to carry out the purposes and provisions hereof, and in addition to the powers specified elsewhere in this chapter, the following general provisions shall apply:

- A. Indemnification. The applicant and property owner shall indemnify and hold the town, its officers, employees and agents harmless against any damage or injury which may arise out of the application process.
- B. Notice provisions. The deed, contract of sale and final plat of any land subdivided subsequent to the enactment hereof shall describe all steep slope areas on said land which are regulated by this chapter and shall include a note on the deed, contract and final plat, respectively, that any construction within these areas requires a permit.

- C. Conflicts. Wherever this chapter is inconsistent with any other law of the Town of Ossining, whichever law imposes the more stringent restriction shall prevail.
- D. Severability. The provisions and sections of this chapter shall be deemed to be severable, and the invalidity of any portion of this chapter by a court of competent jurisdiction shall not affect the validity of the remainder of this chapter.
- E. When effective. This chapter shall become effective immediately upon publishing and posting as required by law.