

<b>Topic:</b>	Steep Slope Protection; Zoning; Wetlands & Watercourse Protection
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Cortlandt
<b>Year (adopted, written, etc.):</b>	2003
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Cortlandt Steep Slopes Ordinance
<b>Document Last Updated in Database:</b>	May 1, 2017

### ***Abstract***

This law recognizes the importance that the future development of land has on the Town of Cortlandt, and focuses on steep slopes in particular as they demand a higher degree of environmental sensitivity. Chapter 259 of the Town Code of Cortlandt establishes regulations which prevent improper disturbance or alteration of steep slopes. The purpose legislature was not to restrict general development in the town but to protect natural resources and preserve the visual and environmental character of the land.

### ***Resource***

Town of Cortlandt NY Steep Slopes  
Code of the Town of Cortlandt NY  
Chapter 259: Steep Slopes  
General Code

[http://www.e-codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=0244%2D259%2Ehtm&cn=855&n=\[1\]\[250\]\[855\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0244%2D259%2Ehtm&cn=855&n=[1][250][855])

[HISTORY: Adopted by the Town Board of the Town of Cortlandt 3-11-2003 by L.L. No. 3-2003. Amendments noted where applicable.]

#### **§ 259-1. Legislative intent.**

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 307, Zoning, which exclude environmentally sensitive lands from the acreage upon which lot count is based, are designed to provide for flexibility in 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 in some cases involving only moderately steep slopes (grades of between 15% and 30%), and in exceptional cases

involving grades of 30% or greater in which compelling circumstances have been clearly demonstrated, including that no other reasonable use of the site, lot or parcel is possible without disturbance to the steep slope area. The purpose of this chapter is to establish regulations which 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.

#### **§ 259-2. Findings.**

- A. Steep slopes and adjacent watercourses and wetlands 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 Cortlandt are environmentally sensitive land forms and valuable natural resources which 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, groundwater seeps, watercourses and other wetlands found on or immediately adjacent to steep slopes.
- 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 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, the silting of wetlands, alteration of drainage patterns, obstruction of drainage structures and intensification of flooding.
- D. The Town's experience with past development has shown that the inadequately controlled disturbance of certain steep slopes can lead to the failure of slopes and the mass movement of earth; rock- and landslides; damage to natural environment, man-made structures and personal safety; and the degradation of aesthetics.
- E. Steep slopes, including vegetation and rock cliffs, are an important environmental feature that contribute to the character and desirability of the Town of Cortlandt 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.

- F. 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 of development so as 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.
- G. 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 many provisions in Chapter 307, Zoning, and Chapter 265, Subdivision of Land, which enable the development of a variety of housing types to meet the needs of Town residents for affordable housing. These provisions allow the renting of rooms within homes and the development of accessory apartments, two-family and multifamily dwellings, boardinghouses and housing for senior citizens. The Town's 2002 Master Plan recommends additional measures to promote affordable housing, such as the development of new villages or hamlets and senior citizen complexes in which affordable housing would be required. Several moderately priced townhouse developments have been approved pursuant to § 281 of the New York State Town Law. Further, the Town's commitment to promoting affordable housing in suitable areas is demonstrated by the Town's endorsement of and cooperation with state and county funding agencies in the approval of below-market housing.
- H. 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 and the rights of present and future generations. Therefore, this chapter recognizes the rights of owners of property exhibiting 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 Cortlandt, does not result in a significant loss or degradation of steep slopes or loss of the visual and open space benefits which steep slopes have been found to provide.
- I. It is declared to be the intent of the Town of Cortlandt to preserve steep slopes to the greatest extent practicable and to regulate their use within the Town to protect the public interest by ensuring the maximization of benefit found to be provided by the preservation of steep slopes and by ensuring the minimization of detrimental effects through the practice of properly managed disturbance of steep slopes as set forth in

§ 259-4.

**§ 259-3. 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 thereof 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 cut into, dug, quarried, uncovered, removed, displaced or spread.

**FILL** — Any act by which earth, sand, gravel, rock or any other material is deposited, placed, replaced, dumped, transported or moved by person or persons to a new location.

**STEEP SLOPES** — Ground areas with a slope greater than 15% with a minimum area of 500 square feet which possesses one dimension of a minimum of 10 feet. Measurements shall be made along a horizontal plane.

**§ 259-4. Exempt and regulated activities.**

- A. Exempt activities. Any customary landscaping not involving regrading is allowed without the need for obtaining a permit, provided that any such activities conform to all other applicable laws and regulations of the Town of Cortlandt.
- B. Regulated activities. It shall be unlawful to create any disturbance or to cut any tree with a diameter greater than four inches when measured from 1 1/2 feet from ground level, on any steep slope, as defined by this section, other than an exempt activity, as defined herein, without a specific written permit as required by this section. It shall additionally be unlawful to create any steep slope, other than as part of an exempt activity, without such permit. Such 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.

**§ 259-5. 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 which requires the issuance of any other permit or approval by it pursuant to the local laws and ordinances of the Town of Cortlandt.
- 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 Cortlandt, including any application which also 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 Cortlandt, including any application which also requires the issuance of any permit or approval by the Zoning Board of Appeals or the Planning Board.
- D. The Director of Technical Services or the Deputy Director of Code Enforcement shall be the approval authority with respect to all other regulated activities.

**§ 259-6. Standards for approval.**

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 addressing, the consistency of the proposed activity with the findings set forth in § 259-2 of this chapter and each of the following standards:

- A. Disturbance or alterations 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 Cortlandt, including, by way of example only, the requirements of Chapter 175 regarding flood damage control, Chapter 283 regarding trees, and Chapter 301 regarding diversion of watercourses.
- B. Activities within wetlands shall be in conformance with Chapter 179, Freshwater Wetlands, Water Bodies and Watercourses, and, whether within or outside of wetlands, will not adversely affect any wetlands, water bodies, or watercourses.
- C. The proposed activity will not result in creep, sudden slope failure, or additional erosion.
- D. The proposed activity will not adversely affect existing or proposed wells or sewage disposal systems.

- E. The proposed activity will not adversely affect any endangered or threatened species of flora or fauna.
- F. The proposed activity is in accordance with the principles and recommendations of the most recent Master Plan of the Town.
- G. The proposed activity constitutes the minimum disturbance necessary to allow the property owner a reasonable use of the property.
- H. Disturbance or alteration of areas with steep slopes shall additionally be in conformance with the following 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 Cortlandt 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) 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.
  - (6) Any regrading shall blend in with the natural contours and undulations of the land.
  - (7) Cuts and fills shall be rounded off to eliminate sharp angles at the top, bottom and sides of regraded slopes. Visible construction cuts and permanent scarring

should be minimized.

- (8) The angle of cut and fill slopes shall not exceed a slope of one vertical to two horizontal except where retaining walls, structural stabilization or other methods acceptable to the Director of Technical Services are used.
- (9) 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 shall be considered to be six feet plus 1/2 the height of the cut or fill. Nevertheless, a structure built on a slope or at the toe of a slope is permitted if it is properly designed to retain the slope and withstand the forces exerted on it by the retained slope.
- (10) Disturbance of rock outcrops shall be by means of explosive 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 Cortlandt, County of Westchester, and the State of New York.
- (11) 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).
- (12) Disturbance of existing vegetative ground cover shall not take place more than 15 days prior to grading and construction.
- (13) 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.
- (14) Soil stabilization must be applied within two days of disturbance if the final grade is not expected to be established within 60 days.
- (15) Measures for the control of erosion and sedimentation shall be undertaken consistent with the Westchester County Soil and Water Conservation District's Best Management Practices Manual for Erosion and Sediment Control and New York State Guidelines for Urban Erosion and Sediment Control, as amended, or their equivalents satisfactory to the approval authority.

- (16) All proposed disturbance of steep slopes shall be undertaken with consideration of the soils limitations characteristics contained in the Identification Legend, Westchester County Soils Survey, 1989, as prepared by the Westchester 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.
- (17) 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 of greater than 10%.
- (18) 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 granular than the soil upon which it is placed and shall drain readily.
- (19) Compaction of fill materials in fill areas shall be such to ensure support of proposed structures and stabilization for intended uses.

I. 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 § 259-2 and that each of the standards for approval set forth in Subsections A through G 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 30% 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 30% or greater.

**§ 259-7. 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 it 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:
  - (a) 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.
  - (b) The estimated material quantities of excavation/fill.
  - (c) The location and size of areas of soils by soils types in the area of proposed disturbance and to a distance of 100 feet.
  - (d) The existing and proposed contours [National Geodetic Vertical Datum (NGVD)] at two-foot intervals in the area of proposed disturbance and to a distance of 100 feet beyond.
  - (e) Cross sections of steep slope areas.
  - (f) Retaining walls or like constructions, with details of construction.
  - (g) The erosion and sedimentation control plan.
  - (h) 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.

- (i) A list of all applicable county, state or federal permits which are required for such work or improvements.
  - (j) 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 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 comply with the specified time period shall be interpreted by the approval authority as indicating 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 those 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 Director of Technical Services or the Deputy Director of Code Enforcement, 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 Cortlandt.
- E. Action by the approval authority. In approving any application, the approval authority may shall 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 therefor.

(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.

F. Appeal. Any party aggrieved by a decision of the Director of Technical Services or the Deputy Director of Code Enforcement to approve, approve with conditions or disapprove an application may appeal the decision to the Zoning Board of Appeals.

#### **§ 259-8. Duration of permit.**

- 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.
- B. 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.
- C. A permit may be renewed by the approval authority for a period of up two years.
- D. 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.

#### **§ 259-9. Security.**

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 Cortlandt compliance with the conditions and limitations set forth in the permit.

#### **§ 259-10. Inspection and monitoring.**

- A. The Environmental Monitor of the Town of Cortlandt 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 § 259-11A through D. Failure of the Environmental Monitor to carry out such inspections shall not in any way relieve the applicant or its surety of its responsibilities.

- B. The approval authority may require that the applicant submit for review and approval by the Environmental Monitor of the Town of Cortlandt 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 Environmental Monitor upon reaching stages of the activity as may be required in the permit. No activity requiring inspection shall be approved absent such notification.
- C. The approval authority may require that the activities undertaken pursuant to a permit be supervised by an appropriate licensed professional.

**§ 259-11. Penalties for offenses.**

- A. Any person who violates, disobeys or disregards any provision of this chapter shall be liable to the people of the Town of Cortlandt 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.
- B. In addition to the above civil fine, any person who violates any provision of this chapter shall be guilty of a violation 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 offense, 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 day's continuance thereof shall be deemed a separate and distinct offense.
- C. In addition to the above civil and criminal penalties, the Town Board and Deputy Director of Code Enforcement, 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.
- D. The Deputy Director of Code Enforcement 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.