

Topic:	Steep Slope Protection; Erosion & Sediment Control; Watershed Protection; Drinking Water Protection & Conservation Regulations
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Greenburgh
Year (adopted, written, etc.):	2003
Community Type - applicable to:	Suburban; Rural
Title:	Town of Greenburgh Protection of Steep Slopes Ordinance
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Abstract

The purpose of Chapter 245 of Greenburgh's Town Code is to prevent erosion and sedimentation, including loss of topsoil, and protection of the water quality. Through this chapter, the Town also seeks to minimize the development of hilltops and ridgelines wherever possible.

Resource

Town of Greenburgh NY Steep Slopes
Code of the Town of Greenburgh NY
Chapter 245: Steep Slopes, Protection of
General Code

[http://www.e-](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0237%2D245%2Ehtm&cn=201&n=[1][101][875][876][216][224][884][262][917][935][201])

[codes.generalcode.com/codebook_frameset.asp?t=tc&p=0237%2D245%2Ehtm&cn=201&n=\[1\]\[101\]\[875\]\[876\]\[216\]\[224\]\[884\]\[262\]\[917\]\[935\]\[201\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0237%2D245%2Ehtm&cn=201&n=[1][101][875][876][216][224][884][262][917][935][201])

[HISTORY: Adopted by the Town Board of the Town of Greenburgh 6-25-2003 by L.L. No. 8-2003. Amendments noted where applicable.]

§ 245-1. Title.

This chapter is entitled "Protection of Steep Slopes."

§ 245-2. Findings; legislative intent.

For the purpose of preventing erosion and sedimentation, including loss of topsoil, preventing habitat disturbance, water quality degradation, slope failure and flooding; minimizing stormwater runoff and flooding; providing stable and safe building sites; preventing landslides and soil instability; protecting the quantity and quality of the Town's

surface and groundwater resources; protecting important scenic views and vistas; preserving prominent land forms of scenic and ecological value; preserving rock outcrops and trees, areas of vegetation and wildlife habitat; encouraging flexible design and minimizing the area of land disturbance related to site development and, when disturbance is necessary, ensuring environmentally sound disturbance; and ensuring and protecting the Town's character and property values, it is the intent of this chapter to minimize disturbance on steep slopes and very steep slopes and to avoid disturbance and construction activities on excessive slopes. Further, it is the intent of this chapter to minimize the development of hilltops and ridgelines wherever possible. It is the intent of this chapter to ensure preservation wherever possible and careful review and regulation, including stringent mitigation measures, of disturbance of soil and vegetation on steep slopes where they have been disturbed. The proponent of any activity proposed for hilltops, ridgelines, or steep slopes shall demonstrate that the impacts on the functions and essential characteristics of such areas can be effectively minimized.

§ 245-3. Definitions.

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

APPROVAL AUTHORITY — The municipal or administrative board, public official or public employee empowered to grant or deny permits under this chapter, to require the posting of bonds as necessary and to revoke or suspend a permit where lack of compliance to the permit is established.

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

DISTURBANCE — Removal of vegetation, excavation or fill or any combination thereof, including the conditions resulting from any excavation or fill.

EMERGENCY — A condition creating imminent danger to public safety.

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

EXCESSIVELY STEEP SLOPE — See "slope."

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

HILLTOP — A roughly circular area defined by a radius of 75 feet from the highest point of a hill or rise of land.

RIDGELINE — An area 75 feet downslope to either side of the center line of ridge.

ROCK OUTCROP — Portion of bedrock visible above the surface of topsoil, including ledges and cliffs.

SLOPE — Any area, whether or not located on a single lot, having a topographical gradient of 15% (the ratio of vertical distance to horizontal distance) or more and with a minimum area of 500 square feet, one dimension of which is a minimum of 10 feet. For purposes of this definition, area measurements must be made along a horizontal plane from within the boundaries of a lot.

- A. STEEP SLOPE — Slope with a topographical gradient equal to or greater than 15% but less than 25%.
- B. VERY STEEP SLOPE — Slope with a topographical gradient equal to or greater than 25% but less than 35%.
- C. EXCESSIVELY STEEP SLOPE — Slope with a topographical gradient equal to or greater than 35%.

STEEP SLOPE — See "slope."

VERY STEEP SLOPE — See "slope."

§ 245-4. Permit required for slope disturbance.

Disturbance of any slope without a permit is unlawful.

§ 245-5. Slope clearance form; initial review; approval authority.

- A. Slope clearance form. Every application for any approval issued by the Building Department, Department of Public Works, Antenna Review Board, Town Board, Planning Board, or Zoning Board of Appeals must include a completed slope clearance form.
 - (1) The form contents request information from the applicant so that, if completed in an accurate and responsive fashion, the Town Engineer can properly determine:
 - (a) The type of the approval involved in the application; and
 - (b) The existence of any slope on the parcel that is the subject of the application; and
 - (c) The nature and extent of the disturbance of any slope.

- (2) The Town Engineer may require additional information in order to make any determinations required to fulfill the intent of this chapter.

B. Clearance form review and approval authority.

- (1) Upon determination that the clearance form and any supplemental information is adequate, the Town Engineer shall determine that the application is exempt under this chapter; in this case, the Town Engineer will forward a notice to the appropriate Town agency advising it that no further consideration of the application is required under this chapter.
- (2) The following applications will be reviewed under § 245-8 when the Town Engineer determines that the application involves the following:
 - (a) Any very steep slope, or any excessively steep slope; or
 - (b) An approval by the Town Board or by the Planning Board for any slope regulated under this chapter; or
 - (c) An action that would be classified as a Type I action either under the rules and regulations promulgated pursuant to Article 8 of the Environmental Conservation Law or under local law; or
 - (d) Property located in a critical environmental area.
- (3) The following applications will be reviewed under § 245-6 when the Town Engineer determines that the application involves the following:
 - (a) Any steep slope as part of an application requiring the approval of any Town agency, authority or board other than the Town Board or Planning Board.

§ 245-6. Town Engineer slope permit.

If the slope clearance form discloses that the application involves an approval by the Building Department, Department of Public Works or Antenna Review Board, the Town Engineer will notify the applicant that a Town Engineer slope permit application must be filed with the Town Engineer's office.

- A. Town Engineer slope permit contents. A Town Engineer slope permit application must be made in writing on forms prescribed by the Town Engineer and contain the following information:

- (1) Name and post office address of the owner and applicant;
- (2) Street address and tax map designation of property covered by the application;
- (3) Statement of authority from the owner for any agent making application;
- (4) Listing of names and addresses of property owners of record, along with the address and tax map identification of properties adjacent to and directly across the street from the property that is the subject of this application;
- (5) Statement of proposed work and purpose thereof, and an explanation why the proposed activity cannot be located at another site;
- (6) Three copies of complete plans, certified by an engineer, land surveyor or landscape architect licensed in the State of New York, drawn to a scale of not less than one inch equals 50 feet;
- (7) Location of proposed construction or area of disturbance and its relationship to any property line, easement, building, structure, road, wall, fence, sewage disposal system, well, wetland feature or tree exceeding six inches in diameter measured at a height of four feet from the ground;
- (8) Estimated material quantities of excavation or fill and number/species and size of trees to be removed;
- (9) Location and size of areas of soils by soil types in the area of proposed disturbance and to a distance of 100 feet surrounding the area of disturbance;
- (10) Existing and proposed contours (National Geodetic Vertical Datum) 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) Erosion and sedimentation control plan, including installation details of proposed control measures, directive construction notations and a schedule for the installation and maintenance of proposed control measures;

- (14) Other details, including specific reports by qualified professionals on soils, geology and hydrology, and borings or test pits, as may be determined to be necessary by the Town Engineer;
- (15) A list of all applicable county, state or federal permits required for such work or improvements;
- (16) A completed long-form environmental assessment form;
- (17) An affidavit stating the applicant has mailed or caused to be mailed to the property owners set forth in § 245-6A(4) by U.S. Postal Service certified mail, return receipt requested, the notice contained in § 245-6B, along with true copies of the certified mail receipts; and
- (18) An application fee in the amount set forth in a fee schedule established under Chapter 230.

B. Notice.

- (1) The Town Engineer shall not review any permit application unless the applicant has established by affidavit that notification to those property owners set forth in § 245-6A(4) by U.S. Postal Service certified mail, return receipt requested, has been complied with. The notice shall, at a minimum, contain the following:
 - (a) The name and post office address of the owner and applicant;
 - (b) The street address and tax map designation of property covered by the application;
 - (c) That the proposal involves slope disturbance;
 - (d) That the applicant has applied for a Town Engineer slope permit from the Town of Greenburgh;
 - (e) That a Town Engineer slope permit must be issued before any slope disturbance can occur;
 - (f) The nature of the proposed work and purpose thereof, and an explanation why the proposal cannot be done without slope disturbance;

- (g) That the application is available for inspection at the office of the Town Engineer; and
 - (h) That the Town Engineer will accept and consider any comment in writing received within 30 days of mailing of the notice, as evidenced by the certified receipt, to the extent it addresses any matter relating to this chapter.
- (2) True copies of U.S. Postal Service receipts bearing a postmark and evidencing certified mailing shall be delivered to the Town Engineer by the applicant; and
 - (3) The U.S. Postal Service green cards evidencing delivery of the notices or any returned mail, delivered to the applicant, shall be delivered to the Town Engineer.
- C. Content waiver. With the exception of the requirements set forth in § 245-6A(4), (16), (17), and (18), the Town Engineer may waive any information requirement contained in § 245-6A, with respect to an application for a Town Engineer slope permit, so long as a fully informed determination, in writing, consistent with the intent of this chapter, and can be made without the information.
- D. Review standards. In evaluating the permit application, the Town Engineer shall ensure that:
- (1) The planning, design and development of buildings minimize flooding and 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 is kept to a minimum;
 - (3) Roads and driveways follow the natural topography to the greatest extent possible in order to minimize the potential for erosion, and they are consistent with other applicable regulations of the Town of Greenburgh and current engineering practices;
 - (4) Habitat is quantified and protected, no endangered species of flora or fauna are adversely impacted and any replanting shall be maintained by the applicant for two years and shall consist of indigenous vegetation that at a minimum replicates the original vegetation on the site, in kind;
 - (5) The natural elevations and vegetative cover of ridgelines are disturbed only if the crest of a ridge and the tree line at the ridge remain uninterrupted. This will 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 roof line of the building is no greater than the elevation of the natural tree line, so long as no more than 100 feet along the ridgeline, to a width of 100 feet generally centered on the ridgeline, is disturbed;

- (6) Any regrading blends in with the natural contours and undulations of the land;
- (7) Cuts and fills are rounded off to eliminate sharp angles at the top, bottom, and sides of regraded slopes;
- (8) The angle of cut and fill slopes does not exceed a slope of one vertical to two horizontal except where retaining walls, structural stabilization, or other methods acceptable to the Town Engineer are used;
- (9) Tops and bottoms of cut and fill slopes are set back from structures an adequate distance to ensure the safety of the structures in the event of the collapse of the cut or fill slopes. Generally, such distance is six feet plus 1/2 the height of the cut or fill;
- (10) Disturbance of rock outcrops is by means of explosive only if labor and machines are not effective and only if rock blasting is conducted in accordance with all applicable regulations of the Town of Greenburgh and the State of New York. **Editor's Note: See Ch. 140, Explosives and Blasting.** The rock shall be effectively stabilized;
- (11) Disturbance of slopes is 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 period from December 15 through April 15;
- (12) Disturbance of existing vegetative ground cover does 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, is applied to an area of disturbance within two days of establishing the final grade, and permanent stabilization is applied within 15 days of establishing the final grade;
- (14) Soil stabilization is 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 are 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 Department of Environmental Conservation "Guidelines for Urban Erosion and Sediment Control," as amended, or its equivalent satisfactory to the Planning Board;
- (16) All proposed disturbance of slopes is 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 slopes for development and application of all mitigating measures, and as deemed necessary by the Town Engineer;
- (17) Topsoil is removed 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;
- (18) Topsoil stockpiling is not permitted on slopes of greater than 10%;
- (19) Fill material is no less granular than the soil upon which it is placed, and no organic material or rock with a size that will not allow appropriate compaction or cover by topsoil can be used as fill material;
- (20) Compaction of fill materials in fill areas is such to ensure support of proposed structures and stabilization for intended uses;
- (21) Structures are designed to fit into the hillside rather than altering the hillside to fit the structure, employing methods such as reduced footprint design, step-down structures, stilt houses, and minimization of grading outside the building footprint;
- (22) Development is sited on that portion of the site least likely to impact the natural landforms, geological features, and vegetation;
- (23) The applicant has provided landscaping plans for after-development;
- (24) The development conforms with the requirements set forth in § 285-39E;
- (25) The construction equipment has adequate access as not to disturb anything outside the approved construction envelope; and

(26) At the discretion of the Town Engineer, a construction safety plan may be required and shall be reviewed and approved by the Traffic Safety Officer of the Town of Greenburgh.

E. Issuance of permit. Upon review of a completed application, the Town Engineer may issue a permit upon finding that the application meets with the review standards set forth in § 245-6D and further finds that the proposed activity:

- (1) Is in accordance with the legislative findings of this chapter;
- (2) Is consistent with the provisions of § 285-39E;
- (3) Will not result in creep, sudden slope failure, rock failure or additional erosion;
- (4) Has no reasonably feasible on-site alternative, after consideration of reduction in density, change in use, revision of road or lot layout, revision in the location of buildings, structures, driveways, other site construction or land-altering activities, or related site planning considerations that could otherwise reasonably accomplish the applicant's objectives.
- (5) Has no reasonably feasible alternative on another site or site location that is not affected by a slope;
- (6) Will preserve and protect existing wetlands, watercourses, and adjacent areas, as defined in Chapter 280;
- (7) Will not adversely affect existing or proposed wells or sewage disposal systems;
- (8) Is the best alternative, after consideration of an area not presently owned by the applicant that could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity, if it is otherwise a practicable alternative;
- (9) Will not adversely affect any endangered species of flora or fauna;
- (10) Is compatible with the public health and welfare; and
- (11) Will not allow for work to be done in anticipation of construction, including excavation and tree removal.

F. Denial of permit. The Town Engineer must deny a permit if:

(1) The applicant has not demonstrated that all reasonable alternatives have been explored; and that

(a) Reasonable alternatives exist that could avoid or reduce potential losses or impacts to the slope area; or

(b) Any unavoidable losses or impacts to slope areas have not been minimized to the maximum extent practicable.

(2) The proposed activity may threaten public health, safety or welfare, cause fraud, nuisances, impair public rights to the enjoyment and use of public lands and waters, threaten a special concern, rare or endangered plant or animal species, violate pollution control standards, or violate any other Town, state, or federal regulations or laws.

G. Permit conditions. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions as the Town Engineer deems necessary to comply with the provisions of this chapter may be attached to the permit.

(1) Every permit must be in writing and contain the following conditions:

(a) Work conducted under a permit must be open to inspection at any time, including weekends and holidays, by the Town Engineer, or any designated representative;

(b) The permit will expire on a specified date and, unless otherwise indicated, the permit will be valid for one year. For additional provisions relating to the term of a permit, see § 245-6G(3).

(c) The permit holder shall notify the Town Engineer, in writing, of the date on which the regulated activity is to begin, at least five days in advance of such date.

(d) The applicant shall maintain a copy of the written permit with conditions and the approved plans on site while the regulated activities authorized by the permit are being undertaken.

(e) The applicant shall stake and appropriately mark the boundaries of the regulated activity and slope area so as to be clearly visible to those at the project site.

- (f) Mitigation measures must be enumerated as conditions of the written permit.
 - (g) An appropriate bond or letter of credit shall be required in accordance with Subsection H (below).
- (2) The Town Engineer shall set forth in writing all conditions attached to any permit and maintain this record along with all other documents relating to the permit application. These conditions may include, but are not limited to:
- (a) Limitations on lot size for any activity;
 - (b) Limitations on the total portion of any site that may be cleared, regraded, filled, drained, excavated or otherwise modified;
 - (c) Modification of waste disposal and water supply facilities;
 - (d) Imposition of operation controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitation of vegetation removal;
 - (e) Dedication of easements and development restriction areas to protect slope areas;
 - (f) Erosion control measures;
 - (g) Setbacks for structures, fill, excavation, deposit of spoil, and other activities from the slope or slopes;
 - (h) Modifications in project design to ensure continued ground and surface water supply to the slope area; and
 - (i) Replanting of slope area vegetation.
- (3) All permits will expire on completion of the acts specified. A one-hundred-eighty-day extension of an original permit may be granted upon written request to the Town Engineer by the original permit holder or authorized representative at least 90 days prior to the expiration date of the original permit. The request for extension of a permit, or other approval, as the case may be, must follow the same form and procedure as the original application. If the approval authority is the Planning Board, it need not hold a hearing if the scope of work, magnitude of site

disturbance, extent of mitigation or original intent of the permit is not altered or extended in any significant way.

- H. Letters of credit. The Town Engineer may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant post a bond or provide a letter of credit in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond or letter of credit must be consistent with the purposes of this chapter. The bond or letter of credit must remain in effect until the Town Engineer or a designated agent certifies that the work has been completed in compliance with the terms of the permit and that it is structurally sound and the bond and/or letter of credit is released by the Town Engineer or a substitute bond is provided. In the event of a breach of any condition of any such bond or letter of credit, the Town Engineer may institute an action in the courts and prosecute the same to judgment and execution. The Town Engineer must set forth in writing the findings and reasons for imposing a bond or letter of credit and maintain this record along with all other documents relating to the permit application.
- I. Suspension or revocation of permit. The Town Engineer may suspend or revoke a permit and issue a stop-work order upon a finding that the applicant has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, has failed to undertake the project in the manner set forth in the approved application or has provided information, in whole or in part, which subsequently proves to be false, deceptive, incomplete or inaccurate. The Town Engineer must set forth in writing the findings and reasons for revoking or suspending a permit pursuant to this section and maintain this record along with all other documents relating to the permit application.

§ 245-7. Appeal from Town Engineer permit determination.

- A. Permit determination. If the application is denied, the Town Engineer will send written notice advising the applicant of the denial, and the right of appeal.
- B. Filing of appeal. The applicant or any aggrieved person may file, within 30 days of the date of the Town Engineer's determination, an appeal with the Zoning Board of Appeals. The appeal must be in writing and state the grounds upon which the appellant believes the appeal should be granted.
- C. Review of appeal. Upon receipt of a timely filed appeal, the Secretary to the Zoning Board of Appeals will request a copy of the underlying permit application. The Secretary will review these records and the appeal. Should the Zoning Board of Appeals require additional information from the applicant to adequately consider the appeal, a notice

will be sent to the applicant. Within 45 days of the receipt of the additional information, a hearing before the Zoning Board of Appeals will be held.

D. Notice of hearing.

(1) Notice. The Zoning Board of Appeals shall not consider any appeal unless the appellant has established by affidavit that notification to those property owners set forth in § 245-8B(2)(a)[1], by U.S. Postal Service certified mail, return receipt requested, has been complied with. The notices, at a minimum, shall contain the following:

- (a) Name and post office address of the owner and applicant and the street address and tax map designation of property covered by the applicant;
- (b) The appellant is appealing a decision of the Town Engineer relating to a Town Engineer slope permit;
- (c) The nature of the proposed work and purpose thereof, and an explanation why the proposed work cannot be done without slope disturbance;
- (d) The application is available for inspection at the office of the Secretary to the Zoning Board of Appeals;
- (e) The fact that a hearing will be held on the application, the date, the time and place of the hearing, and that individuals will be given opportunity to be heard; and
- (f) The Secretary to the Zoning Board of Appeals will accept and consider any written comment to the extent it addresses any matter relating to this chapter received prior to the hearings.

(2) Notice of the time, date, and place of the public hearing, and the information set forth in § 245-6B, shall be published in the official newspaper of the Town no less than 14 days prior to the date of the hearing.

E. Hearing and determination. The Zoning Board of Appeals shall hold a hearing. To evaluate the merits of the application, the Zoning Board of Appeals must employ the standards set forth in §§ 245-6D and 245-6E. The Zoning Board of Appeals' granting of any proposal to disturb any slope must comply with the conditions set forth in § 245-6G. The Zoning Board of Appeals may impose conditions set forth in § 245-6H. In applying those provisions, the Zoning Board of Appeals will substitute the term "Zoning

Board of Appeals" for the term "Town Engineer."

§ 245-8. Review of slope disturbances for sites containing very steep and excessively steep slopes.

A. Planning Board review. The Planning Board is the approval authority for all applications specified in § 245-5B(2).

B. Procedure.

(1) Referral from Town Engineer. Upon the Town Engineer's determination that the Planning Board is the approval authority for an application, the application will be forwarded to the Planning Board for its consideration consistent with this chapter.

(2) Record. The Planning Board record must consist of a slope clearance form and the application requirements for a Town Engineer slope permit, as set forth in § 245-6A, except that:

(a) The following provisions shall be substituted for § 245-6A(4):

[1] Listing of names and addresses of property owners of record, along with the address and tax map identification of properties within 500 feet of the property that is subject of this application; and

(b) The term "Planning Board" shall be substituted for the term "Town Engineer" contained in § 245-6A(14).

(3) Notice. The Planning Board shall not review any permit application unless the applicant has established by affidavit that notification to those property owners set forth in Subsection B(2), above by U.S. Postal Service certified mail, return receipt requested, has been complied with. The notices, at a minimum, shall contain the following:

(a) Name and post office address of the owner and applicant and the street address and tax map designation of property covered by the applicant;

(b) The applicant has applied for site plan or subdivision approval, as the case may be;

(c) That the approval involves slope disturbance;

- (d) The nature of the proposed work and purpose thereof, and an explanation why the proposed cannot be done without slope disturbance;
 - (e) The application is available for inspection at the office of the Planning Department;
 - (f) The fact that a hearing will be held on the application, the date, the time and place of the hearing, and that individuals will be given opportunity to be heard;
 - (g) The Planning Department will accept and consider any written comment to the extent it addresses any matter relating to this chapter received prior to the hearings; and
 - (h) Five copies of the U.S. Postal Service receipts bearing a postmark and evidencing certified mailing.
- (4) Notice of the time, date, and place of the public hearing, and the information set forth in § 245-6B, shall be published in the official newspaper of the Town no less than 14 days prior to the date of the hearing.
- (5) Public hearing. The Planning Board shall conduct a hearing. The hearing under this chapter may be conducted concurrently with other hearings for the application.
- (6) Burden of proof. At the hearing the applicant has the burden of proof and has the burden of demonstrating that the proposed activity will be in accord with the findings and legislative intent of this chapter.
- (7) Determination. In evaluating the slope disturbance application, the Planning Board must employ the standards set forth in §§ 245-6D and 245-6E. The Planning Board's granting of any proposal to disturb any slope must comply with the conditions set forth in § 245-6G. The Planning Board may impose conditions set forth in § 245-6H. In applying those provisions, the Planning Board must substitute the term "Planning Board" for the term "Town Engineer."
- (8) Suspension or revocation of permit or slope disturbance authorization. The Planning Board may suspend or revoke a permit and direct the Town Engineer to issue a stop-work order if it finds that the applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted in the permit, has failed to undertake the project in the manner set forth in the approved application or has provided information, in whole or in part, which subsequently proves to be false, deceptive, incomplete or inaccurate. The Planning

Board shall set forth in writing its findings and reasons for revoking or suspending a permit pursuant to this section and maintain these records in a file available for public inspection.

C. Completion of work.

- (1) Following completion of the work for which a permit was issued, the applicant shall submit a certification by an engineer, licensed by the State of New York, that the completed work meets the requirements of the permit. The Town Engineer may require an as-built survey from the applicant. Upon receipt of the certification and the survey, if needed, the Town Engineer will verify that the work has been completed in accordance with the permit.
- (2) Where the activity subject to this chapter also involves a building permit, the Building Inspector shall not issue a certificate of occupancy or a temporary certificate of occupancy until the Town Engineer verifies that all work has been completed in accordance with the permit.

§ 245-9. Variances.

A. Any person, upon a showing of extraordinary hardship caused by the provisions of this chapter, may apply to the Zoning Board of Appeals for a variance from this chapter. Such request may be granted only if the applicant establishes that:

- (1) Denial of such variance would result in an extraordinary hardship, as distinguished from an inconvenience, if the provisions of this chapter are literally enforced.
- (2) An applicant will be deemed to have established the existence of extraordinary hardship only if it is demonstrated, based on specific facts:
 - (a) That the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this chapter, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:
 - [1] Do not apply to or affect other property in the immediate vicinity;
 - [2] Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

- [3] Are not the result of any action or inaction by the applicant or the owner or predecessors in title, including any transfer of contiguous lands which were previously in common ownership; or
- (b) There is a compelling public need for development of the parcel in question based upon one of the following:
- [1] The proposed development will serve an essential health or safety need of the municipality such that the public benefits from the proposed use override the importance of the protection of the slope area as established in this chapter; that the proposed use is required to serve existing needs of the residents; and, that no feasible alternatives exist outside the slope area to meet such established public need; or
 - [2] The proposed development constitutes an adaptive reuse of an historic resource and said reuse is necessary to ensure the integrity and continued protection of the designated historic resource.
- (c) Additional findings required. An application for a hardship variance to permit development on or near a slope area may be approved only if the Zoning Board of Appeals specifically finds that:
- [1] The proposed development will not be materially detrimental or injurious to other properties or improvements in the area in which the subject property is located, increase the danger of fire or flood, endanger public safety or result in substantial impairment of a slope area;
 - [2] The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this chapter; and
 - [3] The variance is the minimum relief necessary to relieve the extraordinary hardship established by the applicant.
- B. A variance granted under the provisions of this section does not constitute an approval of the entire development proposal nor does it constitute a variance of any other requirements contained within any other applicable local, county or state laws or ordinances or regulations.

§ 245-10. Existing or prior development or improvements.

The provisions of this chapter do not apply to any development, alteration, or improvement of property for which final approval has been obtained and has not expired, and the approved work is not completed prior to the effective date of this chapter. As used in this section, the term "final approval" means:

- A. In the case of the subdivision of land, preliminary or final approval of a subdivision plat as the term is defined in New York Town Law § 276.
- B. In the case of site plan approval not involving the subdivision of land, adoption by the Planning Board, or Town Board, as the case may be, of a resolution granting approval.
- C. In the case of such permits, the actual commencement, alteration or improvement of property.

§ 245-11. Exemptions.

The following activities are exempt from application of this chapter:

- A. Customary landscaping.
- B. Emergencies.
- C. Minimal excavation: any excavation disturbing no more than two cubic yards in area.

§ 245-12. False or misleading statements.

If an applicant, its agent, representative, or anyone acting on behalf of the applicant makes any false or misleading statement or presents any false or misleading information in connection with an approval sought under this chapter, the approval granted under this chapter will be null and void. Any activity conducted with an invalidated approval will be subject to the penalties contained in § 245-14.

§ 245-13. Penalties for offenses.

- A. Civil sanctions.

- (1) Any person found violating any provision of this chapter or conditions duly imposed pursuant thereto will be served with a written notice stating the nature of the violation and providing a specified time within which the violator shall immediately terminate the proscribed conduct and take satisfactory corrective

action.

- (2) Any person who is found to have violated, disobeyed or disregarded any provision of this chapter will be liable to the Town for a civil penalty not to exceed \$10,000 for every such violation, to be assessed by the Town Court, after a hearing or opportunity to be heard before the Town Court.
- (3) The Town Court, in addition to any other power it may possess, has the power, following a hearing, to direct the violator to immediately terminate any conduct proscribed under this chapter and satisfactorily restore the affected area to its condition prior to the violation or otherwise complete the terms and conditions of the permit. The Town Court may order the use of all or part of any performance bonds to complete, restore or otherwise improve the affected area.

B. Criminal sanctions.

- (1) Any person found violating any provision of this chapter or conditions duly imposed pursuant thereto will, for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000.
- (2) For a second and each subsequent offense, such person will 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 of no more than six months, or both.
- (3) Each offense is a separate and distinct offense and, in the case of a continuing offense, each day's continuance thereof must be deemed a separate and distinct offense.
- (4) The Town Attorney shall prosecute any person alleged to have violated the provisions of this chapter and shall seek equitable relief to restrain any violation or threatened violation of its provisions.

§ 245-14. Fees.

All permit application, review or monitoring fees and escrow deposits will be in an amount set forth in the fee schedule established by resolution of the Town Board and in accordance with Chapter 230 of the Town Code.