

BOROUGH OF AVALON

ORDINANCE NO. 1259

AN ORDINANCE OF THE BOROUGH OF AVALON, ALLEGHENY COUNTY, AND COMMONWEALTH OF PENNSYLVANIA, TO BE KNOWN AS THE BOROUGH OF AVALON GRADING ORDINANCE; PROVIDING MINIMUM GRADING, EXCAVATING AND FILLING STANDARDS TO SAFEGUARD PERSONS AND PROPERTY BY PREVENTING EXCESS EROSION, HAZARDOUS ROCK AND SOIL SLIPPAGE; SETTING FORTH DEFINITIONS; PROHIBITING CERTAIN ACTS; PROVIDING EXCEPTIONS AND REQUIRING PERMIT APPLICATIONS AS WELL AS SUBMISSION OF PLANS; REQUIRING THE POSTING OF PERFORMANCE GUARANTY; SETTING FORTH EXPIRATION OF PERMITS, DENIAL OF PERMITS, SUPERVISION, MAINTENANCE, LIABILITY, SCHEDULE OF FEES AND NOTICE TO CEASE VIOLATIONS; PROVIDING FOR PENALTIES FOR THE VIOLATION THEREOF; AND REPEALING ALL INCONSISTENT ORDINANCES.

SECTION 1: ENACTING CLAUSE.

Be it ordained and enacted by the Council of the Borough of Avalon and it is hereby ordained and enacted by the authority of the same, that from and after the effective date of this Ordinance, the following Ordinance shall be in full force and effect in the Borough of Avalon.

SECTION 2: TITLE.

This Ordinance shall be known as the Borough of Avalon Grading Ordinance.

SECTION 3: CONFLICT WITH OTHER ORDINANCES.

All Ordinances or parts of Ordinances conflicting herewith are hereby repealed.

**SECTION 4: PURPOSE AND INTENTION OF ORDINANCE.**

The purpose of this Ordinance is to provide minimum standards to safeguard persons and property and to protect and to promote the public welfare by preventing excess erosion, hazardous rock and soil slippage, sediment production and other soil and water management problems and by regulating and controlling the design, construction, quality of materials use, location and maintenance of grading, excavation and fill.

**SECTION 5: RULES OF CONSTRUCTION.**

In the construction of this Ordinance, the rules and definitions contained in this Section shall be observed and applied, except when the context clearly indicates otherwise:

- A. Words used in the singular shall include the plural, and the plural the singular. Masculine words shall include the feminine and neuter.
- B. Words used in the present tense shall include the future tense.
- C. The word "shall" is always mandatory and not discretionary.
- D. The word "may" is permissive.

**SECTION 6: DEFINITIONS.**

Whenever used in this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

**ADMINISTRATOR** - The Building Inspector and/or Zoning Officer of the Borough of Avalon.

BEDROCK - Natural rock layer, hard or soft, in place at ground surface or beneath unconsolidated surficial deposits.

BOROUGH: The Borough of Avalon.

BUILDING INSPECTOR: The Building Inspector of the Borough of Avalon.

ENGINEERING GEOLOGIST - A person who holds a degree in geology from an accredited college or university and who has training and experience in the field of engineering geology.

EROSION - The detachment and movement of soil or rock fragments by water, wind, ice or gravity, including such processes as gravitational creep.

EXCAVATION - Any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.

FILL - Any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported or moved to a new location and shall include the conditions resulting therefrom.

GOVERNING BODY - The Borough Council of the Borough of Avalon.

GRADING - Excavation of fill or any combination thereof and shall include the conditions resulting from any excavation or fill.

GRADING PERMIT - Any permit required under these regulations.

HAZARD - A danger or potential danger to life, limb, or health or an adverse effect or potential adverse effect to the safety, use or stability of property, waterways, public ways, structures, utilities and storm sewers, including steam pollution.

PERSON: Shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

PROFESSIONAL - A person (engineer, surveyor or architect) licensed by the Commonwealth of Pennsylvania.

SITE - A lot, tract, parcel of land or a series of lot, tracts or parcels of land which are adjoining where grading work is continuous and performed at the same time.

SOIL ENGINEER - A person registered by the Commonwealth of Pennsylvania as a professional engineer and who has training and experience in the branch of soils engineering.

SOIL SURVEY - The unpublished and operational soil survey for Allegheny County, Pennsylvania, and the accompanying text Soil Survey Interpretations of Allegheny County, Pennsylvania, as prepared by the United States Department of Agriculture (USDA) Soil Conservation Services et al. When applicable, "soil survey" shall mean Soil Survey,

Allegheny County, Pennsylvania, when this publication is completed.

SOLID WASTE - All parts or combinations of ashes, garbage, refuse, radioactive materials, combustible demolition materials and industrial wastes, such as food-processing wastes, wood, plastic, metal scrap, etc.

**SECTION 7: PROHIBITED ACTS.**

No person shall construct, enlarge, alter, repair or maintain any grading, excavation or fill or cause the same to be done contrary to or in violation of any provision of this Ordinance.

**SECTION 8: PERMIT REQUIRED.**

- A. Except as set forth in Section 9 hereof, a grading permit must be obtained from the administrator for new grading, excavations and fills; changes, additions or alterations made to existing excavation or fill shall conform to the provisions of these regulations. A separate grading permit shall be required for each site. One (1) permit may cover the grading, excavation and any fills made on the same site.
- B. Only one (1) permit is required for a continuous parcel to be graded for a proposed major planned development, such as residential planned unit development or a planned industrial park, when adequate standards or requirements for grading the

parcel are approved by the administrator.

- C. When grading is to be performed for and executed concurrently with the construction of a new building, a separate grading permit will be required.

**SECTION 9: EXCEPTIONS.**

- A. A grading permit will not be required for any of the following situations:
1. Grading limited to reasonable, regular, normal maintenance and landscaping improvements by individual homeowners where standards herein are not violated.
  2. Stockpiling of rock, sand and aggregate in an area properly zoned for such use.
- B. Grading performed for the construction of an individual residence shall not require a separate grading permit. The grading permit will be part of the building permit and all provisions herein shall apply unless otherwise noted.

**SECTION 10: STANDARDS FOR GRADING.**

- A. The maximum slope of cut shall not be greater than one and one-half ( $1\frac{1}{2}$ ) horizontal to one (1) vertical, and maximum slope for fill shall not be greater than two (2) horizontal to one (1) vertical.

- B. Adequate provisions shall be incorporated to prevent erosion due to storm drainage. All provisions shall be properly engineered and may be paved or plated swales and/or gutters and/or piped storm sewers. All to be reviewed and subject to approval of the Borough Engineer.
- C. Existing storm drainage shall not be diverted to adjacent property owners.
- D. Adequate engineered provisions shall be incorporated to prevent sediment infiltration into existing streams.
- E. All fills shall be compacted to provide stability of fill materials and to prevent settlement of slippage.
- F. Immediately upon completion of grading, all areas not designated for building or paving shall be mulched and planted. Planting shall be appropriate to maintain slopes from erosion and subject to approval of the borough. In general, planting may be rye grass, crown vetch or honeysuckle.
- G. Any slope which exceeds fifty (50) feet in vertical height shall be properly benched.
- H. In addition to the above, all fill-and-cut operations shall be performed in compliance with the Erosion and Sediment Control Handbook for Allegheny County.

- I. In the event that the cut-and-fill operation affects any natural watercourse, under Pennsylvania Department of Environmental Protection, dams and encroachments jurisdiction, by change in direction, cut and fill along the banks, culverts or bridges or construction adjacent to, the applicant must present with his application the permit and the letter of comments from the Department of Environmental Protection, dams and encroachments jurisdiction.

**SECTION 11: PERMIT APPLICATION; SUBMISSION OF PLANS.**

Every applicant for a grading permit shall file a written application with the administrator in a form prescribed by said administrator, which shall contain the following information:

- A. Describe the land on which the proposed work is to be done by lot and block, tract or street address.
- B. Be accompanied by the plans and specifications prepared and sealed by a professional (engineer, surveyor or architect), giving a reasonable picture of the site and proposed soil erosion controls, if any. Said plans must be complete with North arrow, scale, distance to road intersections, adjacent structures, roads, utilities, waterways, existing contours and finished proposed contours. All contours shall be minimum five-foot intervals. All necessary existing and finished spot elevations are



required to show drainage details of all constructed measures to prevent soil erosion and planting.

C. The administrator may waive the preparation of said plans by a professional when it is self-evident that the proposed work is simple, clearly shown on the plans submitted and creates no potential nuisance or hazard to adjacent property.

D. The above plans and specifications shall be submitted to Allegheny County Conservation District for approval before submission to the administrator, and said approval must be submitted for a permit when:

1. Excavation or fill exceeds five (5) feet in vertical depth and results in a cut or fill slope steeper than four (4) horizontal to one (1) vertical and exceeds an area of one thousand (1,000) square feet for areas recognized by the Allegheny County Soil Survey as containing landslide-prone soils.

2. Excavation or fill exceeds ten (10) feet in vertical depth and results in a cut or fill slope steeper than three (3) horizontal to one (1) vertical and exceeds an area of five thousand (5,000) square feet in area for areas not recognized by the Allegheny County Soil

Survey as landslide-prone.

3. In the event that the applicant deems it necessary to exceed the slopes of cut and fill as recommended in the soil survey or by the Allegheny County Conservation District, said applicant may do so, only when the design is certified by a soil engineer or geologist. However, in no case shall the slopes be greater than specified in Section 10, Standards for Grading, Subsection A.

**SECTION 12: HAZARDOUS CONDITIONS.**

- A. Whenever the governing body, upon the recommendation of the administrator, determines that any existing excavation, embankment or fill has become a hazard as defined in Section 6, the owner of the property upon which the excavation, embankment or fill is located or other person or agent in control of said property shall be given notice of said determination by the administrator, shall within the reasonable period specified therein repair, reconstruct or remove such excavation, embankment or fill so as to eliminate the hazard.
- B. If, after such notification, the property owner has not made the necessary repairs within the time adopted, then the governing body may direct

government employees to make the required repairs, and the cost thereof shall be borne by the property owner by a lien filed as provided by law.

- C. Whenever the governing body, upon the recommendation of the administrator, determines that any proposed excavation or fill may present a hazard as defined in Section 6, the governing body reserves the right to require the applicant to have the proposed work certified by a soil engineer or geologist.

**SECTION 13: COMPLETION; PERFORMANCE GUARANTY.**

- A. Before issuance of a grading permit, the applicant shall post a bond issued by a Pennsylvania approved corporate surety or other approved security in the amount of ten percent (10%) of the estimated cost of the grading work and erosion control facilities proposed for the permit to guarantee said work and facilities in a satisfactory manner and meeting the requirements of this Ordinance. No bond shall be required if another bond or other approved security is posted for construction and/or site improvements. When all requirements of this Ordinance have been met and the work has been completed in a satisfactory manner, the full amount of security shall be returned to the person posting said security.

B. Alternate surety for construction of individual residence, in lieu of above may be as follows:

1. Cash deposit in the amount of seventy-five (\$75.00) for each residence, refundable upon compliance with this Ordinance or may remain in deposit with the Borough to be applied to the next permit.
2. Cash deposit or surety as outlined in Section 13(A) above in the amount of one thousand dollars (\$1,000.00) to remain in effect for grading all individual residences for a one-year period.

**SECTION 14: EXPIRATION OF PERMIT.**

Every grading permit shall expire by limitation and become null and void if the work authorized by such permit has not been commenced within six (6) months or if it is not completed totally within two (2) years from the date of issue, provided that the governing body, acting upon the recommendation of the administrator, may, if the permit holder presents satisfactory evidence that unusual difficulties have prevented work from being started or completed within the specified time limits, grant a reasonable extension of time not to exceed six (6) months, and provided, further, that the applicant for the extension of time is made before the date of expiration of the permit. Any physical changes in the site, such as surface water drainage, soil and bedrock dislocations, alteration of groundwater discharge or any

other natural or man-made modification which would cause a doubt to be cast upon the feasibility of the contents of the original permit approval, must be reported to the administrator in the intervening period between approval of permit and completion of the project.

**SECTION 15: DENIAL OF PERMIT; APPEAL.**

- A. When the requirements of this Ordinance for obtaining a permit have been met, the administrator shall approve the proposed plan and grant a grading permit to the applicant. Approved work may then start. However, when, in the opinion of the administrator, work proposed by the applicant is likely to endanger any property or person or any street or alley or create hazardous conditions, the grading permit shall be denied. In determining whether the proposed work is likely to endanger property of streets or alleys or create hazardous conditions, the administrator shall give due consideration to possible saturation by rains, earth movements, runoffs, surface waters and subsurface conditions, such as the stratification and faulting of rock, aquifers, springs and the nature and type of the soil or rock. Any party aggrieved by the decision of the administrator shall appeal the administrator's decision to the governing body within thirty (30) days of receipt of notice of such decisions.

- B. The governing body shall, within forty-five (45) days of the filing of an appeal from the decision of the administrator, consider the alternate methods, standards or materials proposed by the developer when, in his opinion, strict compliance with the provisions of these regulations is unnecessary. The governing body shall render a decision affirming, overruling or modifying the decision of the administrator within ninety (90) days of the filing of an appeal and mail a copy of such decision to the applicant or permit holder at said party's last known address. Any applicant or permit holder shall have the right to appeal to any court of competent jurisdiction from any decisions of the governing body.

**SECTION 16: SUPERVISION.**

- A. The permit holder or his agent shall notify the administrator in writing of the start and completion of each continuous grading operation. Notice shall be received by the administrator or at his office at least two (2) working days before start of completion of grading operation.
- B. Grading work at these stages or at any other time will be subject to spot inspections at the discretion of the administrator to determine that the work is being performed in compliance with

these regulations.

- C. In cases, when grading occurs in areas of landslide-prone soil as recognized by the soil survey or better, the administrator may require special precautions from the grader, which precautions shall be in accordance with sound engineering practice. The results of all soil tests and core boring made relating to the site graded shall be submitted to the administrator.

**SECTION 17: MAINTENANCE.**

- A. The owner of any property on which an excavation or fill has been made shall maintain in good condition and repair the excavation or fill permitted and also all retaining walls, cribbing, drainage structures, fences, ground cover and any other protective devices as may be a part of the permit requirements.
- B. If, at any time subsequent to the completion of the grading work, the cut face or fill slope shall evidence signs of deterioration, erosion or other evidence which might be detrimental to the properties above and below the grading site, the administrator may direct the property owner to take necessary remedial steps in accordance with sound engineering practice to restore the grading to a safe condition and to do so in a reasonable period

of time.

**SECTION 18: LIABILITY.**

Neither the issuance of a permit under the provisions of this Ordinance nor the compliance with the provisions hereto or with any condition imposed by the administrator hereunder shall relieve any person from any responsibility for damage to persons or property resulting therefrom or as otherwise imposed by law nor impose any liability upon the Borough for damages to persons or property.

**SECTION 19: SCHEDULE OF FEES.**

Each application shall be accompanied by a fee as set forth in the Borough Fee Schedule then in effect.

**SECTION 20: NOTICE TO CEASE VIOLATION.**

Upon written notice of any violation of any of the provisions of this Ordinance being served by the administrator on any person, such violation shall be discontinued in accordance with said notice. If violation is not discontinued, the administrator shall revoke the grading permit and the violator shall be subject to the fines and penalties as set forth herein.

**SECTION 21: VALIDITY.**

The provisions of this Ordinance are severable and if any of its provisions or any part of any provision shall be held unconstitutional or otherwise held to be invalid, the decision of the Court shall not affect or impair any of the remaining provisions. It is hereby declared to be the intent of Borough Council that this Ordinance would have been enacted had such



unconstitutional provisions or parts thereof not been included herein.

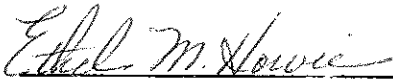
**SECTION 22. VIOLATIONS AND PENALTIES.**


Any person, firm, corporation, association or other entity that violates Section 8 of this Ordinance shall forfeit and pay to the Borough for each and every separate offense a sum of not less than fifty dollars (\$50.00) or more than six hundred dollars (\$600.00) to be used for and recovered as other fines and penalties are now by law recoverable and, in default of payment of the fine and costs of prosecution, shall be committed to the county jail for a period not exceeding ninety (90) days. All other violations of this Ordinance shall be subject to a maximum fine of one thousand dollars (\$1,000.00) or a maximum term of imprisonment of ninety (90) days.

ORDAINED AND ENACTED this 7th day of December,  
1999.

ATTEST:

BOROUGH OF AVALON

  
Ethel M. Howie  
Assistant Secretary

  
HARRY W. DILMORE  
President

Examined and approved by me this 16th day of  
November, 1999.

  
Daniel K. Bricmont, Esq. Mayor