

**ORDINANCE 9 -2013
TOWNSHIP OF MENDHAM
MENDHAM COUNTY – NEW JERSEY**

**AN ORDINANCE OF THE TOWNSHIP OF MENDHAM DELETING CHAPTER 20
“SOIL EXTRACTION REGULATIONS” AND CHAPTER 24 “LOT DEVELOPMENT
PERMIT” AND CREATING A NEW CHAPTER 20 “LAND DISTURBANCE”**

BE IT HEREBY ORDAINED by the Township Committee of the Township of Mendham as follows:

SECTION ONE:

Chapter 20 and Chapter 24 of the Ordinances of the Township of Mendham are hereby deleted in their entirety.

A new Chapter 20 is hereby created to be known as:

**CHAPTER XX
LAND DISTURBANCE AND LOT GRADING PERMIT**

I. Lot Grading Plan Permit

A. Definitions

APPLICANT- A person requesting permission to engage in lot grading activity

LOT GRADING PLAN – A plan to control soil erosion and sedimentation which meets or exceeds the Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee and has been reviewed and approved by the proper Township authority. (hereinafter referred to as the “plan” and or “lot grading plan”)

CLEARING – The cutting or removal of trees as regulated in the Township Tree Removal Ordinance.

CRITICAL AREA – An area as defined in Chapter XII of the Township ordinances, including wetlands, flood hazard areas, areas of shallow water table soils, recharge soils or steep slopes.

CUT – That portion of land surface or area from which earth has been removed or will be removed by excavation; the depth below original ground surface to excavated surface.

LAND DISTURBANCE – The stripping, filling or removal of soil or the removal of vegetation. The cutting of trees, with or without stump removal, is disturbance.

DIVERSION – A channel constructed across or at the bottom of a slope.

EROSION- Detachment and movement of soil or rock fragments by water, wind, ice or gravity.

EXCAVATION – Any act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated.

EXISTING GRADE – The vertical location of the existing ground surface prior to cutting or filling.

FILL – A man-made deposit of soil, rock or other materials.

FINISHED GRADE - The final grade or elevation of the ground surface.

FLOODPLAIN – The land bordering or adjacent to a river, stream, lake, pond, swamp or other waterway which is subject to flooding as evidenced by:

- A. Observed or recorded flood events;
- B. Floodplains as delineated by the NJDEP;
- C. Alluvial soil as shown on soil maps; or
- D. As determined by other soil or hydraulic studies.

GRADING – Any stripping, cutting, filling, stockpiling or any combination thereof, and shall include the land in its cut or filled condition.

IMPERVIOUS SURFACE- That portion of a lot which is improved or is proposed to be improved with principal and accessory buildings or structures, driveways, parking lots, pedestrian walkways, pools, retaining walls, decks or patios or any man-made improvements of the ground surface that reduces the ability for the soil to accept runoff as compared to natural conditions.

LAND – Any ground, soil or earth, including marshes, swamps, drainage ways and rock outcrops.

LIMIT OF GRADING – The boundary line formed between those areas of a site which are to be graded and the existing natural topography of the property. The limit of grading shall be synonymous with a no cut-no fill line.

LIMIT OF LOT GRADING – The boundary line formed between all portions of the site where lot grading will occur and the existing natural area of the property.

LOT GRADING – Any activity involving the clearing, grading, transporting, filling or excavation of land, stump removal or any other activity which causes land to be exposed to danger of erosion, but not including normal cultivation practices incident to customary farming activity. “LOT GRADING” shall be synonymous with “LAND DISTURBANCE”.

LOT GRADING PERMIT – A certificate issued to perform work under this article.

MULCHING – The application of plant or other suitable materials to the soil surface to conserve moisture, hold soil in place and aid in establishing plant cover.

NATURAL GROUND SURFACE – The existing ground surface of land prior to any grading excavation or other land disturbances.

RIPARIAN BUFFER/RIPARIAN ZONE – The riparian buffer or zone is the land and vegetation within a State regulated water and extending either 50 feet, 150 feet or 300 feet from the top of bank along both sides of the regulated water, depending on the environmental sensitivity of the water as determined by the NJDEP.

SEDIMENT – Soil material, both mineral and organic, that is in suspension, is being transported or has been moved from its site of origin by air, water or gravity as a result of erosion.

SEDIMENT BASIN – A pond, basin or other sediment basins, desilting basins, silt traps or other acceptable methods. Whenever feasible, development shall include structures or measures that provide for the detention of water and deposit of sediment.

SOIL CONSERVATION DISTRICT – The Morris County Soil Conservation District, which is a governmental subdivision of the state organized in accordance with the provisions of N.J.S.A. 4:24-1 et seq.

SOIL EROSION, SEDIMENT CONTROL AND FLOOD PREVENTION PLAN – A plan which fully indicates necessary land treatment measures, including a schedule of the timing for their installation, which will effectively prevent floods and minimize soil erosion and sedimentation. Such measures shall be equivalent to or exceed standards adopted by the New Jersey State Soil Conservation Committee and administered by the Morris County Soil Conservation District.

STANDARDS – Standards for Soil Erosion and Sediment Control in New Jersey as promulgated by the State Soil Conservation Committee in review of soil erosion and sediment control plans.

STORMWATER MANAGEMENT FACILITY OR BASIN – A pond, basin or other structure or measure that provides for temporary storage and/or treatment, and /or infiltration of storm water runoff and which includes a spillway, pipe, weir or other component to release the runoff at a controlled rate of flow.

STRIPPING - Any activity which removes or significantly disturbs vegetated or otherwise stabilized soil surface, including clearing and grubbing operations.

VEGETATIVE PROTECTION – Stabilization or erosive or sediment-producing areas of land by covering the soil with one or more of the following:

- A. Permanent seeding or permanent plantings producing long-term vegetative cover of land;
- B. Short-term seeding or short-term plantings producing temporary vegetative cover of land; or
- C. Sodding, producing areas covered with a turf of perennial sod-forming grass.

WATERCOURSE – Any natural or artificial watercourse, stream, river, creek, ditch, channel, canal, conduit, culvert, drain, gully, ravine, wash or other waterway in which water flows in a defined direction or course, either continuously or intermittently, within a definite channel including any area adjacent to inundation by reason of overflow of floodwater.

WETLANDS – Areas regulated by the NJDEP under the Freshwater Wetlands Protection Act Rules and defined therein.

- B. No land within the Township shall be cleared, brush hogged, disturbed, graded, excavated, except as follows:

Basic Requirements

- 1. It shall be unlawful for any person to perform land disturbance of any portion of land in excess of 3,500 square feet, create an increase in impervious surface in excess of 1,000 square feet or remove ten trees having a diameter of 10" or greater unless and until a plan has been submitted to and approved by the Planning Board, Board of Adjustment or Township Engineer as provided for herein.
- 2. A Lot Grading Plan shall be filed with and become part of any application for a construction permit or zoning permit if the limits of proposed land disturbance, impervious surface, and/or tree removal meet the threshold limits identified above. Such plan shall be prepared by a Professional Engineer licensed in the State of New Jersey in accordance with State law and accompanied by the required fees.

3. No land area in excess of 3,500 square feet within the Township shall be cleared, brush hogged, disturbed, graded, excavated or filled by a person for purposes including, but not limited to, the construction of roads or driveways, the filling of land, the excavation of land, the removal of natural resources, the mining of minerals or the development of recreational or educational facilities unless and until a plan has been submitted to, and approved or waived by the Planning Board, Board of Adjustment or Township Engineer and the Township Zoning Officer has issued a valid lot grading permit.
 4. The Planning Board, Board of Adjustment or Township Engineer, in approving a plan, exemption, waiver or building permit may impose reasonable conditions or requirements designated or specified on, or in connection therewith.
 5. Projects which have primary jurisdiction vested in the Planning Board shall have the permit approved by the Planning Board. Projects that do not require Planning Board approval shall have the permit approved by the Township Engineer. Projects that require relief from any provisions of the Township zoning standards or this section may have the permit approved by the Board of Adjustment, unless it is determined that a separate Lot Grading Permit is required as a condition of approval . Any Board approval shall consider the recommendations and conditions outlined by the Township Engineer.
- C. Issuance of Permit
1. The Township Zoning Officer shall issue a Lot Grading Permit upon receipt of a letter of approval from the Township Engineer.
- D. Minor Amendments to Plan
1. Amendments, changes or modifications of a minor nature to a plan required as a result of conditions arising in the field during construction may be ordered or approved by the Township Engineer. Additional escrow fees may be required if determined by the Township Engineer.
- E. Contents of Plan
1. The tax map sheet, block and lot number, date, graphic scale, North arrow and the names and addresses of owner or owners of the tract, the applicant, if other than the owner, and of the engineer who prepared the plan.
 2. All lot lines and lot line dimensions.

3. Front, side and rear yard setbacks as required per the zone and dimensions to existing and proposed structures.
4. Location of all proposed buildings, dimensions thereof, and the first floor elevation.
5. Location of all buildings, wells and septic systems on adjoining lots.
6. The plan shall comprise a map and written drainage calculations, together with all drawings, plans, construction details or specifications as are necessary or appropriate under the circumstances, which fully and adequately describe both temporary and permanent measures to be employed to control, minimize and protect against soil erosion, sedimentation and flooding from a proposed lot grading, taking into account the particular nature and characteristics of the land, the surrounding area, the watercourses, the land disturbance and the development involved.
7. The plan shall cover all stages and aspects of the proposed land disturbance and planned development from grading, stripping, excavation and other site preparation through and including both final grading and the installation of permanent improvements. It shall accordingly include a time schedule indicating:
 - a. The anticipated starting and completion dates of each step in the land disturbance and development sequence.
 - b. The time of exposure of each land area prior to the completion of effective erosion and sediment control measures.
 - c. The sequence of installation of planned erosion and sediment control measures as related to the disturbance and development sequence referred to in E(2)a above.
8. The plan shall include the soil boundaries on the property based on the USDA Soil Survey Maps.
9. An earthwork analysis shall be provided to determine the net cut or fill for the project.
10. A key map, at a scale of between 1"=1000' and 1"=500' shall be provided.

11. The plan shall include a North arrow and a written and graphic scale.
12. The plan shall include a line drawn at the perimeter of the area of land disturbance and it is to be labeled "limit of land disturbance". The proposed area contained within the limit of land disturbance, measured in square feet, shall be shown on the plan.
13. The plan shall show all existing improvements and existing topography (2 foot contours) based on a survey prepared by a New Jersey licensed surveyor. The improvements shown shall include all existing utilities, improvements, structures, trees greater than 6 inches in diameter, septics and wells. The plan shall show all proposed improvements, proposed utilities, proposed retaining walls, proposed fences, proposed topography (2 foot contours), proposed spot elevations, storm water management facilities, soil erosion and sediment control measures, and applicable notes and construction details.
14. The plan shall include a graphic representation of all steep slopes regulated by the Township and a tabulation of the area of disturbance of each slope category. The steep slope areas shall, at a minimum, be shown within 25 feet of the limit of land disturbance and calculated between 2 foot contour intervals. The regulated slope areas shall be delineated perpendicular to the existing contour lines.
15. The plan shall depict any state regulated areas including, but not limited to, freshwater wetlands transition areas, riparian zones, Special Water Resource Protection Areas within 25 feet of the limit of disturbance. All watercourses, streams and State Open Waters within 300 feet of the land disturbance shall be shown on the map. The type of outside agency approval and status of any/all required outside agency approvals shall be noted on the plan.
16. All trees 6 inches or greater in diameter to be removed as part of the project shall be shown in accordance with the requirements of the Township tree removal ordinance. All trees within 25 feet of the limit of disturbance shall be shown.
17. Projects that meet the definition of "major development" under the Township storm water ordinance shall have storm water management systems designed to meet the standards

for major development. The plan shall show the location of all permeability testing as required by Appendix E of the Best Management Practices (BMP) manual

18. Projects that do not meet the threshold for “major development” under the Township storm water ordinance shall be designed as follows:
 - a. If the project creates 1,000 square feet or more of proposed impervious surface, the project must collect and store in drywells or other infiltration systems, approved by the Township Engineer, the equivalent of 3” of runoff from each square foot of proposed impervious surface. For the purposes of this section any existing impervious surface that was installed without approvals is considered “proposed”.
 - b. If the project creates 3,500 square feet or more of land disturbance, soil erosion and sediment control measures in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey shall be shown on the plan and implemented.

F. Responsibility of Applicant

- a) “Stake” State regulated area.
 - b) Maintain or repair any of the above or any drainage facilities damaged or otherwise adversely affected by reason of the applicant’s project. Such maintenance or repair work shall be promptly performed.
 - c) Promptly remove sediment from any stream or watercourse, pond, lake, or drainage facility resulting from the applicant’s project.
2. No person shall block, impede the flow of, alter or construct any material thing or commit any act which will affect normal or flood flow in any stream or watercourse without having obtained a lot grading permit from the Township and, where required from the County of Morris and the State of New Jersey.
 3. An objective of the plan shall be to maximize groundwater recharge and to minimize runoff.
 4. Soil erosion and sediment control measures shall, at a minimum, conform to the Standards for Soil Erosion and Sediment Control in New Jersey, as amended or supplemented. All soil erosion control measures designed for the project must be maintained in working order for the entirety of the project.

5. A permit shall be obtained, when necessary, from the Morris County Soil Conservation District.
 6. The applicant shall retain a copy of the approved plan on the site and shall provide a copy of the approved plan to the site contractor.
 7. The applicant shall be responsible for any damage to public improvements caused during the course of the work or installation of the improvement.
- G. Additional Plan Requirements
- In addition to the above, to the extent feasible in particular situations, the following measure or considerations shall be incorporated in the plan:
1. The smallest practical area of land shall be disturbed at any one time during development and the duration of such disturbance shall be kept to a practical minimum.
 2. Whenever feasible, natural vegetation and the natural ground surface shall be retained and protected.
 3. Temporary vegetative cover and/or mulching shall be used to protect areas from erosion during construction of the development.
 4. Diversion and outlets, both temporary and permanent, shall be constructed and/or installed to accommodate the runoff caused by the changed soil and surface conditions during and after development.
 5. Disturbed soil shall be stabilized as quickly as practicable.
 6. Until the disturbed area is stabilized, sediment in the runoff water shall be trapped and removed by the use of debris basins, sediment basins or other approved measures.
 7. To the greatest extent practicable, the applicant shall preserve natural features and existing grades, thereby keeping grading, stripping and excavation to a minimum.
 8. Adequate provisions shall be made to minimize surface water from damaging slopes and embankments. Diversion may be used for this purpose.
 9. Fill shall be placed and stabilized so as to minimize erosion and shall not encroach on watercourses closer than 100 feet, unless specifically approved.

10. During grading operations, approved methods of dust control will be exercised.
11. During grading, excavation and other construction activities, slopes and embankments shall be stabilized by mulching with straw with a binder, or jute or other geotextile fabric staked in position and/or seeded with annual rye grass or other acceptable method.
12. Permanent vegetative protection, plant cover, lawn or ground cover and mechanical erosion control devices and measures shall be installed or constructed, and completed, as soon as practically possible.
13. Permanent improvements, such as pavement, catch basins, curbs, etc., shall be installed or constructed, and completed as soon as practically possible in the construction sequence.
14. Permanent storm water management facilities shall be constructed whenever feasible to temporarily retain the increased runoff from modifications to the land. Such facilities shall conform with standards and criteria established or approved by the Township Engineer in accordance with the Township storm water control ordinance.
15. Maintain existing drainage patterns and natural land cover to the extent possible and minimize any negative impacts to surrounding property owners or natural resources.

H. Approval of Lot Grading Plan; conditions

1. Conditions. In considering and approving a plan, the Planning Board, Board of Adjustment or Township Engineer as the case may be:
 - a. Shall have the right, among other things, to fix the time schedule for exposure of land areas and for the construction and installation of improvements or the taking of other measures to prevent soil erosion and sedimentation, and may require that such work or measures be completed prior to any site development work.
 - b. Shall provide for the posting of performance and maintenance guarantees where appropriate.
 - c. May refer the plan to the Township Environmental Commission, the Soil Conservation District, the Tree Preservation Committee and/or any other qualified governmental agency or agencies.
 - d. May impose reasonable conditions or requirements necessary or desirable for the proper implementation of the plan, in accordance with the purposes and intent of this article.

2. Notice of decision; time. Written notice shall be provided to the applicant indicating the decision on the plan. Such decision shall be made within a period of 30 days of submission of the complete application, unless, by mutual agreement, this period is extended for an additional 30 days. Failure to make a decision within such period, or any extension thereof, shall constitute approval.
 3. Deviations from approved plan. After a plan has been approved, it shall be unlawful for the applicant, or any person performing services in implementing the plan, to deviate, change, amend or modify the plan, except in accordance with 1(D).
- I. Performance Guaranty

In cases where the scope of the project warrants, the applicant shall post a performance guaranty in an amount to be established by the Township Engineer to guarantee the construction or installation of the measures included in the plan. The guaranty may be in the form of a performance bond issued by a surety in a form approved by the Township Attorney, a certified check returnable after full compliance, or other type of surety as may be approved by the Township Attorney. At least 10% of the surety shall be posted by certified check. The guaranty shall be released after all work has been completed in accordance with the approved plan. No guaranty shall be released until all construction and re-vegetation measures have been fully established and approved and all inspection fees have been paid to the Township as provided for herein.
 - J. Enforcement; Inspection
 1. The requirements of this article shall be enforced by the Township Engineer, who shall also inspect or require adequate inspection of the work carried out pursuant to this article.
 2. Generally, inspections shall be conducted at the following times:
 - a. Prior to the establishment of measures, to discuss the details of location, changes due to field conditions, etc.
 - b. Intermittently during the establishment of vegetative and structural measures.
 - c. After completion of all construction and establishment of vegetation.
 - d. At other times as may be necessitated because of unsatisfactory conditions.
 3. If the Township Engineer finds conditions other than as shown in the plan, or in the event of failure to comply with the plan or any condition thereto, he may refuse to inspect and/or approve further work and may require necessary measures to be promptly installed and may require modifications to the plan when, in the judgment of

the Township Engineer, such are necessary to properly control soil erosion, sediment and storm water runoff. The Township Engineer may also issue stop-work orders and seek other penalties as provided for in Chapter 22-2.

4. The applicant and contractor shall have a copy of the approved plan on site during construction.
5. In the event of failure to comply with the requirements of this section, the Zoning Officer and/or Construction Official shall refuse to issue building permits and/or certificates of occupancy and may revoke building permits which may have been previously issued.

K. Fees

1. Each application for approval of a plan shall be accompanied by a fee determined in accordance with the section 13-14 of the Township Ordinance.
2. In addition to the application fee, the applicant shall pay the costs of plan review and inspections by the Township Engineer or his representative at the rates currently in effect at the time of any such inspections. These costs will be paid from an escrow account established at the time of application in an amount of \$3,000.00. Any unused escrow will be returned to the applicant after the final inspection for the project has been performed and all invoices with regard to review and inspection have been paid.

L. Exemptions

1. Land Disturbance for yards, gardens, swimming pools or other minor improvements where the total area of land disturbance is less than 3,500 square feet and the duration of the land disturbance does not exceed 30 days are specifically exempt from the requirements of this article.
2. Land Disturbance associated with the construction of an alteration to a failing individual subsurface sewage disposal system is exempt from the requirements of this article.
3. Land Disturbance in connection with Woodland Management Plans that have been approved by the Township.

M. Appeals

1. Appeals from decisions under this article shall be made in writing to the Township Committee. Such appeal shall be filed with the Township Zoning Officer within 10 days of the date of such decision.

The appellant shall be entitled to a hearing before the Township Committee within 30 days from the date of appeal.

N. Violations and Penalties

1. If any person violates the provisions of this article, the Township may institute a civil action in Superior Court for injunctive relief to prohibit and prevent such violation and such court may proceed in a summary manner.
2. The Township Engineer and the Township Zoning officer are authorized to issue notices of violation pursuant to this Chapter.
3. Any person convicted of a violation of this Chapter shall be subject to the fines and penalties set forth in Chapter 22-2 of the Mendham Township Ordinances. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

SECTION TWO

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason found to be unconstitutional or unenforceable, such decision shall not affect the remaining portion of this ordinance.

SECTION THREE

All ordinances of the Township are inconsistent with the provisions of this of Mendham which ordinance are hereby repealed to the extent of such inconsistency.

SECTION FOUR

This ordinance shall take effect upon final passage and publication thereof as provided by law.

INTRODUCED: 9-09-2013

ADVERTISED: 9-18-2013


PUBLIC HEARING: 12-09-2013

ADOPTED: 12-09-2013

ADVERTISED: 12-10-2013

ATTEST:

TOWNSHIP OF MENDHAM
IN THE COUNTY OF MORRIS



Kathleen Potter, RMC
Township Clerk



Richard A. Merkt
Mayor