

ORDINANCE NO. 2021-__

**AN ORDINANCE OF THE BEVERLY SHORES TOWN COUNCIL
AMENDING PORTIONS OF THE TEXT OF THE TOWN CODE AND ZONING
ORDINANCE**

WHEREAS, the Beverly Shores Town Council on February 2, 1984 adopted an Ordinance Establishing Zoning and Subdivision Regulations for the Town of Beverly Shores (“Town”), which is Chapter 155: Zoning and Subdivisions of the Beverly Shores Town Code (hereinafter “Zoning Ordinance”); and

WHEREAS, the Beverly Shores Advisory Plan Commission has initiated an amendment to the text portion of the Zoning Ordinance; and

WHEREAS, a public hearing has been held before the Beverly Shores Advisory Plan Commission, which has certified its proposal to amend the text of the Zoning Ordinance to the Beverly Shores Town Council; and

WHEREAS, notice has been given in accordance with Indiana Code of all proceedings concerning this text amendment to the Zoning Ordinance; and

WHEREAS, the Beverly Shores Town Council concurs with its Advisory Plan Commission and accepts its proposal and recommendation to amend the text of the Zoning Ordinance.

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED, by the Beverly Shores Town Council as follows:

SECTION 1: That subsection 155.003 be amended by the addition of a new defined term, “Clearing of Land”, as follows:

Clearing of Land. Any activity which may result in soil erosion or disturbance of the existing ground cover, bushes or native vegetation, including removal or cutting of native brush or ground cover, grading, or depositing or stockpiling of soil, material or ground cover; clearing of land will not include the limited removal of brush or ground cover necessary to comply with the requirements for a site plan application as provided in this Code.

SECTION 2: That in subsection 155.003 the defined terms “Fence”, “Lot Coverage”, “Screening or Screen”, “Steep Slope” and “Structure” shall each be deleted in their entirety and hereafter each read as follows:

Fence. A type of structural barrier usually made of posts affixed to the ground and supporting a railing, partition, screen, or other upright structure, typically made of wood, masonry, or metal, and partially or completely enclosing an area of ground to mark a boundary, control access, increase safety, or prevent escape.

Lot Coverage. That area of the lot or parcel covered by Buildings and Structures, including accessory buildings or structures, calculated as a percentage of the Lot Area. Lot Coverage shall include all impermeable Buildings and Structures, whether above or below ground level or on the ground surface, in the computations so as to provide greater assurance for surface water percolation or necessary on-site impoundment in instances of excessive rainfall, flooding or other water accumulation circumstances. Any semi-permeable or permeable structures, such as brick pavers, shall be calculated based on manufacturer specifications for installation and rate of absorption. Notwithstanding any other provision, a driveway shall be considered impermeable for the purposes of Lot Coverage. Unroofed decks built out of boards or planks that allow for drainage between the boards shall be excluded.

Screening or Screen. Structures or evergreen vegetation used in the commercial district that is maintained for the purpose of concealing from view the area behind the structures or evergreen vegetation.

Steep Slope. See Subsection 155.141.

Structure – Includes “Building”, and in addition, any man-made surface or designed earth feature including driveways, swimming pools, parking areas, garden houses, pole barns, sheds, pergolas, patios, decks, porches, playhouses and game courts located on a permanent foundation, but excluding lot or parcel boundary fences, walls, berms and screens, and other finished grading or drainage or landscaping.

SECTION 3: That subsections 155.042(D) and 155.042(E) shall be deleted in their entirety and hereafter read as follows:

(D) If the application is approved, the applicant shall be bound to the site plan in all details and respects as set out in the site plan application, including any revisions or amendments thereto approved by the Building Site Committee in writing, and if required by the Building Site Committee because of exceptional circumstances, shall post a \$10,000 cash or performance bond guaranteeing compliance with the site plan application and guaranteeing restoration of town streets to the condition detailed in the street inventory described in § 155.056(B)(8).

(E) If the application is approved, all contractors who will perform any activity related to the application shall comply with §155.067 CONTRACTOR REGISTRATION AND REVOCATION OF REGISTRATION PROCEDURES.

SECTION 4: That subsection 155.055(C)(3) shall be deleted in its entirety and hereafter read as follows:

(C)(3) Installation or construction of a driveway, deck, porch, carport, garage or room addition;

SECTION 5: That subsection 155.058(C) shall be amended to read as follows:

(C) ~~The Building Commissioner thereupon shall issue the permit upon evidence that the fees required in § 155.065 have been paid.~~ **The Building Commissioner shall issue the permit as provided in § 155.059.**

(1) One set of plans and drawings shall be returned to the applicant by the Building Commissioner and marked either approved or disapproved and signed by the Building Commissioner.

(2) Two sets of plans, similarly marked, shall be retained by the Building Commissioner.

(3) If the application for a building permit is disapproved, the Building Commissioner shall indicate the reasons by certified letter to the applicant.

SECTION 6: That subsection 155.059 be deleted in its entirety and hereafter read as

follows:

§ 155.059 BUILDING REGULATIONS.

(A) If the application for a building permit is approved, the building permit shall state the approval date and the expiration date for the permit. No activity related to the building permit may begin until the permit is issued to the applicant and displayed in a conspicuous place at the building site. Activity includes Excavation or Clearing of Land, delivery of material, any new construction or the altering, adding or repairing of existing construction. The permit will not be issued to the applicant until payment of the designated fees, as provided in § 155.065, including the payment of any fines owed to the Town.

(B) If any activity related to the building permit begins prior to the issuance of a building permit, the owner will be subject to a fine, not to exceed \$1,000, and the fee for the building permit shall be doubled. This fine and double fee must be paid prior to the issuance of the building permit, if the permit was already issued, all work must stop until the fine and additional fee is paid.

(C)(1) No changes or alterations of any plans or specifications that: (i) increases the size or height of any structure; (ii) alters the pitch of the roof of any structure; (iii) is a change or alteration that is regulated by the Building Code or Sanitary Code; (iv) removes trees not previously indicated; or (v) involves excavation or grading shall be made without the Building Committee's approval.

(2) The Building Commissioner shall notify the applicant in writing of the Building Committee's action.

(D) Construction Hours. No construction or activity related to the building permit is permitted outside of these designated hours of construction: 7 a.m. to 6 p.m. Monday through Saturday. There shall be no construction on any Sunday. There shall be no construction on the following holidays or on a Saturday on the following weekends: Mother's Day, Memorial Day, Father's Day, the Fourth of July, or Labor Day. In the event of emergency, the Building Commissioner may authorize temporary exceptions.

SECTION 7: That subsection 155.065 be deleted in its entirety and hereafter read as follows:

§ 155.065 DURATION OF BUILDING PERMITS.

(A) A building permit shall expire twelve months from the date of approval, except that a building permit for complete construction of the Main Building shall expire eighteen months from the date of approval. The building permit shall state the expiration date. Once a building permit has expired, the project must be terminated, and all construction or activities related to the building permit must stop until or unless a new building permit is issued. A building permit will expire earlier than the expiration date stated on the permit if the project is completed. The completion date shall be determined by the Building Commissioner via the issuance of a certificate of occupancy, or if such is not required for the project, by issuance of

the Building Commissioner's written acknowledgment of completion of a permitted project.

(B) If the project has not been, or will not be, completed by the permit expiration date, the owner must submit a new application for a building permit and pay the fees required. The new application must comply with all the requirements of § 155.056, and the fee for the new permit will be double the fee required for the original permit. No work or construction related activities may resume until the new building permit is approved by the Building Committee, the double fee is paid, any fine owed to the Town is paid, and the permit is issued as provided in § 155.059. The Building Committee may waive all or a portion of the fee in situations where the delay in completion of the project was due to extraordinary circumstances not caused by the owner or any contractor on the project.

(C) All fees and fines shall be paid to the Clerk-Treasurer of the Town of Beverly Shores. The fee for the permits described in this Chapter are set forth in Town Fee Schedule, § 10.99. A double fee shall apply in the circumstances provided in this Chapter.

SECTION 8: That subsections 155.067 be deleted in its entirety and hereafter read as follows:

§ 155.067 CONTRACTOR REGISTRATION AND REVOCATION OF REGISTRATION PROCEDURES.

(A) All Building Contractors providing services within the Town of Beverly Shores must register with the Town by completing the Application for Contractor Registration and paying the annual registration fee to the Clerk-Treasurer in advance of performing any activity in the Town. This registration requirement applies to all entities of any kind or individuals performing any work as a contractor or sub-contractor for: construction, repair, maintenance, excavation, electrical, plumbing, drywall, painting, roofing, or any other construction related activity, tree services, landscaping services, driveway installation or sealing or any other similar contractor-provided services in the Town irrespective of whether a building permit is required. This registration requirement does not apply to a: homeowner, engineer, architect, employee of a contractor, delivery service, or a supplier of product or material who performs no other services in the Town.

(B) As a part of the Contractor Registration Application, all Building Contractors will be required to provide a certificate of liability insurance that is no less than \$500,000, and including coverage that is in compliance with Indiana workers' compensation and occupational health and safety laws, and property damage. The certificate holder shall be, "Town of Beverly Shores, 500 Broadway PO Box 38, Beverly Shores, IN 46301. The insurance policy shall be maintained as long as the Registered Contractor continues to do business in the Town.

(C) Any violation of this section shall cause the Building Commissioner to issue a stop-work order on all projects the Building Contractor is doing in the Town.

(D) The annual registration fee is stated in the Town Fee Schedule, § 10.99. Registration fees are nonrefundable. Registration shall be effective on the date issued and expires on December 31 each year. The registration may be renewed for the following year beginning December 1. Renewal registrations must be completed by January 31. Registrations that are not renewed by January 31 shall lapse and require a new application. If an application for contractor registration lapses, the contractor must cease all business in the Town of Beverly Shores until an application for contractor registration is renewed or otherwise reinstated.

(E) (1) If the Building Commissioner determines that a building contractor has committed a fraud, misrepresentation and/or multiple or flagrant violations of the town code, then the Building Commissioner shall notify by registered mail the Building Contractor, the property owner of record on the approved building permit, and the Plan Commission, of the violations.

(2) The Plan Commission will, within 30 days of notice being served, conduct a hearing to review the findings by the Building Commissioner and, if necessary, establish any penalty, which may include but is not limited to the following:

(a) Revocation of contractor registration;

(b) Revocation of building contractor's approval on any or all building permit(s); and

(c) Denial of the surety (performance) bond acceptance by the Town of Beverly Shores from the building contractor on the current and/or future projects for a period of 1 year.

(3) Any decision of the Plan Commission may, within 30 days, be appealed to the Town Council.

(F) If a registered contractor's registration is revoked:

(1) The registered contractor will not be permitted to apply for any new building permits for 1 year and any pending applications for building permits will be denied;

(2) The registered contractor will only be allowed to complete construction on projects for which there are approved building permits at the time of building contractor registration revocation, if the approved building permits were not revoked under division (C) above;

(3) The Plan Commission shall notify by registered mail the registered contractor and the property owner of record on the approved building permit that the contractor registration has been revoked; and

(4) In the event subsequent violations occur during the revocation period, the Plan Commission may extend the period of revocation up to 1 year for each additional violation to a maximum period of 5 years. Upon appeal, the Town Council will conduct a hearing to review the findings by the Plan Commission.

SECTION 9: That subsection 155.082(A) be deleted in its entirety and hereafter read as follows:

(A) Maximum height of a building shall be 35 feet (see definitions for "Height of Building" in § 155.003);

SECTION 10: That a new subsection 155.082(L) be added and hereafter read as follows:

(L) Lot Coverage: Maximum of 30% (see definition for Lot Coverage in § 155.003).

SECTION 11: That subsection 155.086(A)(10) be deleted in its entirety and hereafter read as follows:

(A)(10) The following requirements and prohibitions apply to fences:

(a) Fences shall be no taller than six (6) feet in height and shall be permitted in rear and side yards.

(b) Measured on a vertical plane bounded by the top and bottom of the fence material, and the two nearest support posts, and facing the property boundary, there must be as least as much open and unobstructed space within the area of the vertical plane as solid fence material.

(c) Barbed wire and electrified wire are prohibited from use in a fence.

(d) A property boundary fence shall be setback to a line that is not within a right-of-way, whether the right-of-way area is paved or unpaved.

(e) When a property slopes downward to a property boundary in a rear or side yard, a fence shall be setback from the side lot line or rear lot line a distance of fifteen (15) feet or to the crest of the slope, whichever is less, when the land surface slopes downward towards the property boundary at a horizontal to vertical ratio of 1:3 or steeper.

(f) A gate wider than four (4) feet on a property boundary fence shall be setback at least ten (10) feet from a right-of-way, whether the right-of-way area is paved or unpaved.

(g) The design of a fence structure may be prohibited or restricted in accordance with the site plan approval requirements of 155.042(B)(5).

SECTION 12: That subsections 155.138(A), 155.138(B), and 155.138(C) shall be deleted in their entirety and hereafter read as follows:

(A) No driveway shall be constructed, resurfaced or replaced upon, over, or under the street right-of way, including the so-called untraveled area as well as the so-called traveled area of the street right-of-way, until a driveway permit to construct, resurface or replace the driveway has been approved and issued by the Building Commissioner in accordance with rules, regulations or ordinances relative thereto and the required permit fee has been paid to the Clerk-Treasurer as provided in § 155.065. No permit shall be required for maintenance of an existing driveway, so long as the same materials are used in the maintenance as the existing driveway and the dimensions of the driveway are not changed.

(B) (1) A driveway shall be constructed at the owner's risk and responsibility.

(2) For a distance of 2 feet from the traveled portion of the right-of-way, each driveway shall be at the same or lower grade and elevation as the traveled portion of the right-of-way.

(3) Driveways shall be constructed of a material such as asphalt, concrete, brick, pavers or other similar material as approved by the Building Commissioner. A driveway shall be constructed of materials and in such a manner which prevents sand, stone, cinders or other ground material from being washed, thrown or carried onto public roads.

(4) Slag shall not be permitted as a base or surface of a driveway.

(5) The driveway in the Residential District shall be limited to a width of 16 feet and allowed a 5-foot radius at the intersection of the traveled portion of the right-of-way. Further limitations may apply if a driveway is on a slope. A driveway located on or affecting a Steep Slope is greatly discouraged and will only be permitted in extraordinary cases, see §155.143. An apron at the garage may be allowed to accommodate up to two cars.

(C) Each driveway shall have constructed and installed a drainage system (e.g. slotted drain into a drywell or culvert) approved by the Town Building Commissioner and Building Committee to prevent storm water runoff from the driveway onto the traveled portion of the right-of-way. Any pipe or trench used must be sloped for self-cleaning with a velocity of 3 feet per second.

SECTION 13: That subsections 155.034(M)(2)(d), 155.037(D), and 155.131(K) shall be deleted in their entirety.

SECTION 14: That new subsections 155.140, 155.1141, 155.142, 155.143, 155.144 and 155.145 shall be added and hereafter read as follows:

§155.140 PROTECTION OF STEEP SLOPES.

Steep slope protection. It is the policy of the town to protect the fragile dune environment within the town. As a part of this policy, the town will require planning to minimize or avoid damage to the dune environment and in particular to steep slope dunes which are particularly fragile.

Sections 155.140 through 155.145 comprise the Steep Slope Protection provisions: these minimum requirements supplement the applicable provisions of Chapter 155 and are in addition to all other applicable requirements in the Code. Reference to the Committee in these Steep Slope Provisions refers to either the Building Site Committee or the Building Committee, as applicable.

§155.141 DEFINITION OF STEEP SLOPE.

A slope greater than a one-foot vertical rise in a three-foot horizontal plane on a dune which is at least 20 feet in height measured from the lowest point of elevation on the Lot. A dune shall meet this definition if it rises or falls continuously at least twenty (20) feet or if it consists of a series of dunes and/or swales on the Lot that in the totality rise or fall at least twenty (20) feet from the lowest point of elevation on the Lot.

§155.142 PROHIBITION AGAINST CONSTRUCTION ON A STEEP SLOPE EXCEPT AS PROVIDED.

(A) No construction, excavation, digging, grading, change of contour or Clear Cutting of ground vegetation shall occur on or within ten feet of a Steep Slope within the town except in compliance with provisions of this chapter. Septic systems will be excepted if there will be no digging below four feet from the surface of the slope at any point either during or after construction, and the applicant otherwise demonstrates that the proposed septic system as well as the construction related activities are consistent with the intent of this chapter.

(B) If there is a Steep Slope within any setback of a Lot, no construction activities, including the removal of trees or vegetation, shall occur within the side or rear yard setbacks which contain any portion of a Steep Slope.

§155.143 SUPPLEMENTARY CRITERIA FOR APPROVAL OF SITE PLAN AND ISSUANCE OF BUILDING PERMIT ON A LOT CONTAINING A STEEP SLOPE.

(A) The applicant's plans shall utilize areas of the Lot that will not affect the Steep Slope, for example, by utilizing areas that may have been previously cleared or graded for construction. The Committee will recommend adjustments in the applicant's plans in order to protect Steep Slopes and will condition site plan approval or building permit approval on the applicant utilizing an alternative site on the Lot.

Any proposed driveway shall be located on the portion of the Lot that does not affect the Steep Slope. A driveway located on or affecting a Steep Slope is greatly discouraged and will only be permitted in extraordinary cases where the Committee determines that the construction of and placement of the driveway will not adversely impact the Steep Slope and the plans limit the dimensions of the driveway to minimize the impact, and there is no practicable alternative site on the Lot.

(B) It is the applicant's burden to demonstrate that there is no practicable alternative site on the Lot or adjacent property available to the applicant which would avoid or lessen the impact to the Steep Slope. The applicant's plans must demonstrate to the Committee that no alternative practicable site exists and that the proposed construction, and location of any Structure will not cause damage to the dune, roadway, or surrounding property owners. If the proposed Building site, or any preparation for construction, staging or construction activities, excavation, grading or any other activity is on or within ten feet of a Steep Slope or that disturbs or impacts the Steep Slope, then no more than 120 cubic yards of sand or soil for septic and no more than 180 cubic yards of sand or soil for the Dwelling and all other Structures, including a driveway, if permitted, shall be removed, relocated, or added to the dune.

§155.144 SUPPLEMENTAL SITE PLAN AND BUILDING PERMIT REQUIREMENTS FOR STEEP SLOPES.

A. In addition to complying with all the requirements listed in Section 155.040, Application for Site Plan Approval, the requirements of Section 155.131, Dune Topography, and 155.056, Application for Building Permit, the applicant must produce the information provided in B through E below.

B. A geotechnical engineering report from an engineer licensed in Indiana, Illinois or Michigan to demonstrate:

1. An accurate estimate of the amount of sand or other material in cubic yards expected to be excavated, graded, filled or transported during the life of the permit, and if excavation is to occur, the location of where the excavated material will be finally deposited;

2. The construction, excavation, digging, grading, change of contour, including of trees and vegetation, site restoration and remediation, contemplated in applicant's site plan will not damage or interfere with the established slope terrain, slope stability, create erosion, cause water drainage problems, change water drainage or obstruct or retard the flow of water or threaten the safety of neighboring properties.

3. A slope stability analysis of the dune including a discussion of the effect of construction and excavation as well as the effect of the location of the structure on the dune.

C. The applicant's plans must show:

(1) A site diagram, in scale and adequate detail, that indicates the areas of the site with contours of 0 to 10% slope, >10% to 20%, >20% to 33%, and >33;

(2) A complete description of the area affected during construction or excavation activities;

(3) All precautions which will be taken during construction to protect the area;

(4) All monitoring which will occur, during construction or excavation;

(5) All efforts which will be taken to restore the site after construction to the original slope;

(6) All studies conducted on the site to support any conclusions; and

(7) A three-dimensional drawing or model of the structure on the proposed site.

(D) The applicant's plans shall adapt to, and minimize disturbance of, the natural terrain, trees and other vegetation both during construction and after construction, including plans for implementing the following storm water controls:

(1) the location and placement of structural controls to eliminate soil erosion and sedimentation from areas of the site where construction has disturbed the pre-construction land surface; and

(2) temporary stabilization of the disturbed land surface within five business days of completion of construction to re-vegetate with sod, seed, soil blanket, or implement similar measures followed by permanent stabilization before project

completion using measures such as landscaping, retaining walls, hard surfaces, and water flow dissipators.

- (E) The applicant's plans shall contain landscape enhancement and shall provide for the planting of non-invasive trees and native vegetation designed to stabilize the dune and protect it from future movement.
- (F) The Committee may require a minimum setback for equipment movement or storage.

155.145 APPLICANT'S BURDEN TO DEMONSTRATE COMPLIANCE WITH STEEP SLOPE PROVISIONS; APPLICANT'S RIGHT TO APPEAL FOR A VARIANCE TO THE BZA.

(A) It is the applicant's burden to demonstrate to the Committee that it has met the requirements for site approval and the issuance of a building permit for construction on a Lot containing a Steep Slope. If the Committee determines that the applicant has failed to meet its burden, then it shall not approve the site plan or building permit, as applicable. If the application is disapproved, the Building Commissioner shall prepare a report summarizing the concerns and issues resulting from the applicant's plans as related to the steep slope and shall include the report with the records for the site plan application. The Building Commissioner shall maintain records of all actions on site plan applications.

(B) In that case, the applicant may file a petition for variance before the Board of Zoning Appeals pursuant to Section 155.034, in which case the applicant shall have the burden of demonstrating the standards for variance, as supplemented by the Steep Slope Protection Provisions, 155.140 et.al., in addition to, all other requirements for obtaining a variance under Section 155.034.

The B.Z.A. in its discretion, may also take the following actions:

(1) The B.Z.A. may select a licensed Indiana geotechnical engineer from a list of engineers approved by the Town, to review the initial engineering reports submitted by the applicant. All costs and professional fees associated with this review shall be paid by the applicant.

(2) Approval may be conditioned upon receipt of an insurance policy in the minimum combined single limit coverage amount of \$1,000,000 with the named insureds: The Town of Beverly Shores, the builder, the property owner, and adjacent or other affected property owners. If special circumstances exist in the discretion of the B.Z.A., it may require coverage in excess of \$1,000,000 up to the amount necessary to protect all the named insureds. The insurance policy shall be approved by the Building Commissioner and shall remain in force for a minimum of one year following granting of the occupancy permit. If there are any issues remaining under the policy after the one-year period and either the Town, or any

other affected landowner gives notice to the insurance company and the property owner, then the policy shall remain in effect until the remaining issues are resolved.

SECTION 15: That subsections 155.198 shall be deleted in its entirety and hereafter read as follows:

§ 155.198 EXEMPTIONS FROM NOISE REGULATIONS.

The following uses and activities shall be exempt from the noise level regulations:

(A) Between the hours of 7:00 a.m. and 6:00 p.m., noises customarily resulting from construction work for any activities conducted pursuant to a building permit;

(B) Between the hours of 7:00 a.m. and 7:00 p.m., noises customarily resulting from construction work, which is not subject to the requirement to obtain a building permit under § 155.059 (D), and noises customarily resulting from the maintenance of grounds;

(C) The noises of safety signals, burglar alarms, emergency valves, warning devices, aircraft and railroads and snow removal; and

(D) Church bells, chimes and carillons.

SECTION 16: This Ordinance 2021-__ shall be in full force and effect from and after its passage and adoption as provided by law.

ALL OF WHICH IS ADOPTED by the Town Council of the Town of Beverly Shores, Indiana, this _____ day of _____, 2021.

BEVERLY SHORES TOWN COUNCIL

By: _____
Geof Benson, President

Susan Loeb

John Blackburn

Catherine Matrona Malik

Thomas Weber

ATTEST:

Ellen Hundt, Clerk-Treasurer