**ORDINANCE 34-2013**

**OF THE GOVERNING BODY**

**OF THE BOROUGH OF BLOOMINGDALE**

**AN ORDINANCE OF THE BOROUGH OF BLOOMINGDALE, IN THE COUNTY OF PASSAIC AND STATE OF NEW JERSEY, amending the CODE OF THE borough of bloomingdale by recodifying chapter 92, zoning, article xiii, soil and soil removal, as chapter xxxii and by recodifying Chapter 92, zoning, Article XIV, shade trees, as chapter xxiii**

**Whereas**, based upon a review of the Borough Code, the Borough of Bloomingdale’s Ordinance Review Committee has recommended that Articles XIII and XIV of Chapter 92 of the Borough Code, regarding Soil and Soil Removal and Shade Trees are inappropriately placed as they are not zoning issues; and

**WHEREAS**, Articles XIII and XIV of Chapter 92 were previously placed in the Borough Code as Chapters XXXII and XXIII respectively; and

**WHEREAS**, pursuant to Ordinance 13-2005, these Chapters were moved into Chapter 92; and

**WHEREAS**, the Mayor and Borough Council now desire to recodify Articles XIII and XIV of Chapter 92 as Chapters XXXII and XXIII respectively in accordance with the recommendation of the Ordinance Review Committee.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Borough Council of the Borough of Bloomingdale, in the County of Passaic and State of New Jersey, as follows:

**SECTION 1**. Chapter 92, “Zoning,” Article XIII, “Soil and Soil Removal,” of the Code of Borough of Bloomingdale is hereby recodified in its entirety as Chapter XXXII, “Soil and Soil Removal,” of the Borough Code as follows:

**Chapter XXXII Soil and Soil Removal**

**Article I. Soil conservation.**

§ 32-1.1. Findings; determinations.

According to the Soil Conservation Service, United States Department of Agriculture, soils with a slope of fifteen percent (15%) or greater invariably involve severe limitations to development, including but not limited to building and road construction and septic effluent disposal. Moreover, it is found that the removal of vegetation and disturbance of soils on steep slopes by excavation and fill will increase runoff and result in soil erosion and siltation, with the resultant pollution of streams, as well as the potential danger of flooding and water drainage, thereby having the potential of endangering public and private life; that this condition is aggravated by soil disturbance, construction and development on these slopes, which create an additional hazard to the lives and property of those dwelling on the slopes below them; and that the most appropriate method of alleviating such conditions is through the regulation of such vegetation and soil disturbances, construction and development. It is therefore determined that the special and paramount public interest in these slopes justifies the regulation of property located thereon as provided below, which is the exercise of the police power of the Borough for the protection of persons and property of its inhabitants and for the preservation of the public health, safety and general welfare.

§ 32-1.2. Definitions.

As used in this section:

RESTRICTED SLOPE AREA ─ Any slope having a grade of fifteen percent (15%) or more, identified as D, E and F slopes on the soils maps or identified as having a grade in excess of fifteen percent (15%) by detailed site specific topographic surveys. Such slopes include, but without limitations, soils designated as Hibernia very stony loam (HID), Holyoke-Rock outcrop complex (HrE), Parker very gravelly sand loam (PbD), Parker-Edneyville extremely stony sandy loams (PeD), Rockaway extremely stony sandy loam (RrD), Rockaway-Rock outcrop complex (RvD) (RsE) (RsF) and Parker-Rock outcrop complex (PIE).

§ 32-1.3. Regulations for restricted slope area.

Conforming uses permitted on lots containing restricted slope areas, provided that no building or structure, including swimming pools, vehicular facilities, including roads, drives and parking areas, on-lot sewage disposal facilities or substantial nonagricultural displacement of soil is located within the restricted slope area herein defined, and provided that any such use is permitted in the zone in which the premises are located.

§ 32-1.4. Reserved.

§ 32-1.5. Designation of base site area.

A. Base site area shall be defined as that land area not of a restricted slope area nature that must be provided within the building envelope of each lot and which contains, as a minimum, the following:

(1) Minimum area for house and related facilities, exclusive of septic system and reserve septic area, shall be contiguous square feet not of a restricted slope area nature; and

(2) Minimum area for septic system and reserve septic area shall be contiguous square feet not of a restricted slope area nature. The area set forth in this subsection is not required to be contiguous to the area set forth in subsection A(1) above, but must be on the same lot.

B. For the purpose of this section, "building envelope" shall be defined to mean that portion of a lot which remains after all front, rear and side yard setback requirements as set forth in the zoning regulations have been established.

§ 32-1.6. Driveway construction.

Where the minimum or actual front yard setbacks contain areas of a restricted slope area nature, driveways serving single-family residences shall be permitted to be constructed and cross the minimum or actual setbacks, provided that all applicable driveway development standards are met and the driveways are constructed as follows:

A. Driveways, serving single-family residences shall be constructed so that there is a grade of two percent (2%) starting at the curbline and running for a distance of not less than twelve (12) feet. There shall be a standing area in front of the garage, a minimum of twenty-five (25) feet in length, with a grade not to exceed five percent (5%). That portion of the driveway connecting to the standing area of the garage and the two percent (2%) grade from the curbline shall be constructed with smooth transitional curves and shall not exceed a grade of fifteen percent (15%). In the foregoing, where the driveway on a particular lot is to be constructed two (2) or more feet below the grade of the terrain on either side of the driveway, the driveway shall be a minimum of sixteen (16) feet in width in order to allow for the storage of plowed snow during inclement weather. All driveway surface, whether paved or unpaved, within restricted slope areas shall be considered to be impervious surfaces and shall be so included in the hydraulic calculations for the design of stormwater management drainage facilities.

B. No grading or sloping disturbance to construct any residential driveway shall exceed thirty-five (35) feet in width.

C. Driveways serving multiunit or townhouse residences shall be constructed so that there shall be a maximum grade of twelve percent (12%) maximum for lengths of fifty (50) feet and ten percent (10%) for longer lengths.

§ 32-1.7. Exceptions and waivers for restricted slope areas.

A. Where an applicant demonstrates through certified topographic maps, scale one inch equals two hundred feet (1" = 200') with contours at two (2) feet, and such proof is confirmed through on-site inspection by the Borough Engineer, that a property is misclassified and is not in a restricted slope area, then the Construction Official may grant an exception and proceed to process a construction application. The information or proof shall show that the lot has within it sufficient land not of a restricted slope area nature to equal the required base site area and that the lot equals at least the required lot size in the zone. The portion of the lot that qualifies as a restricted slope area shall be so classified and not utilized unless a waiver is granted.

B. Exceptions from the restricted slope area regulations shall proceed pursuant to N.J.S.A. 40:55D-51. In considering such requests for exceptions, the Board may refer requests to the Borough Engineer, the Environmental Commission and the Board of Health for recommendations. Such recommendations shall be made within thirty (30) days after receipt of referral. Where applicable, in accordance with the Municipal Land Use Law of 1975 (N.J.S.A. 40:55D-1), the Zoning Board of Adjustment may act in place of the Planning Board.

§ 32-1.8. Reserved.

§ 32-1.9. Severability.

If any subsection, sentence, clause or phrase of this section is, for any reason, held to be unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect the remaining portion of this section.

A. Procedures and fees under the within section shall all be in accordance with the sections relating to procedures and fees in the stormwater management regulations. (Revised General Ordinances of the Borough of Bloomingdale Chapter XXXIA)

B. Slope information is to be coordinated with the stormwater management application, if applicable. In the event that a person proposes an activity with respect to a tract of land to which the stormwater management regulations applies and which contains slope to which the slope area regulations apply, then, and in that event, all reports and documents submitted under the stormwater management regulations shall be amplified to include discussion and evaluation of slopes pursuant to this section.

**Article 2. Soil removal.**

§ 32-2.1. Legislative findings.

The Borough Council finds and determines that the unregulated relocation, filling, excavation and removal of soil or minerals on a large scale has resulted in conditions detrimental to the public safety, health and welfare, substantially hampering and deterring the efforts of the Borough to effectuate the general purpose of municipal planning.

§ 32-2.2. Definitions.

As used in this section:

APPLICANT — A developer or excavator as defined below.

DEVELOPER — Any person who, either directly or through an agent or independent contractor, engages or intends to engage in soil mining as defined by this section.

EXCAVATOR — Any person who shall move or remove soil as the term is hereinafter defined in this section.

LOT — Any parcel of land or portion thereof, the boundary lines of which can be ascertained by reference to the maps and records, or either, in the office of the Assessor of the Borough or in the Office of the Register of Deeds, Passaic County.

MAJOR SOIL MINING PERMIT or MAJOR SOIL PERMIT — A permit for the moving of one thousand (1,000) cubic yards or more of soil.

MINE — To move soil or minerals.

MINOR SOIL MINING PERMIT or MINOR SOIL PERMIT — A permit for the moving of less than one thousand (1,000) cubic yards of soil.

MOVE — To dig, to excavate, to remove, to deposit, to place, to fill, to grade, regrade, level or otherwise alter or change the location or contour, to transport or to supply. "Move" shall not be construed to include plowing, spading, cultivation, harrowing or discing of soil, or any other operation usually and ordinarily associated with the preparation of soil for agricultural or horticultural purposes.

OWNER — Any person seized in fee simple of any lot or having such other interest or estate therein as will permit, exercise or effect possession thereof or dominion thereover.

SOIL — Any earth, sand, clay, loam, gravel, humus, rock or dirt without regard to the presence or absence therein of organic matter.

TOPSOIL — Soil that, in its natural state, constitutes the top layer of earth and is composed of two percent (2%) or more, by weight, of organic matter and has the ability to support vegetation.

TREE — Any woody perennial plant with one (1) main trunk, such trunk having a diameter of at least eight (8) inches when measured four (4) feet above the level of the existing grade.

WOODED AREA — An area of the property which is the subject of a soil mining permit application, the area consisting of at least one hundred (100) square feet, the surface of which is vegetated so as to form a visual screen.

§ 32-2.3. Applicability; exceptions; approvals of other agencies.

A. The provisions of this section shall not apply to the following:

(1) Excavations for the construction or repair of individual subsurface sewage disposal systems (septic systems) when such construction or repair is performed pursuant to a permit duly issued by the Borough Health Department.

(2) The movement of less than fifty (50) cubic yards of soil or five hundred (500) square feet of disturbed area, whichever amount is less.

(3) Site plans or subdivisions approved by the Board.

(4) Lake dredging, where approval is required by the Soil Conservation District, and New Jersey Department of Environmental Protection or any other governmental agency.

B. The Mayor and Council may, by resolution, waive any or all of the requirements of this section if the soil mining operation is proposed to take place upon lands dedicated to the conservation, development and regulation of potable water resources, upon the written request by the owner or applicant. Such written request shall state the exact purpose of the soil mining operation, location, commencement and completion dates and proposed routes of transportation of soil mining vehicles and equipment to be used in the Borough.

C. If approval by either the Soil Conservation Service of the State of New Jersey Department of Environmental Protection or any other governmental agency is required, such approval shall be required as a condition of approval of the soil mining permit application, and no soil mining permit shall be issued until same has been obtained.

§ 32-2.4. Permit required; transferability.

A. No person shall remove, move or cause, allow, permit or suffer to be removed or moved any soil from, in or upon any land in the Borough unless and until a soil permit shall first have been obtained, except as provided herein.

B. No owner of any land in the Borough shall cause, allow, permit or suffer any soil from, in or upon such land to be received, removed or moved by any developer or excavator until such developer or excavator shall first have obtained a soil mining permit, except as provided herein.

C. The soil mining permit shall not be assignable or transferable.

D. Specific attention is made to excavation upon or within lands. Dredging excavation or clearing of such an area is within the scope of this section and a soil mining permit is required.

§ 32-2.5. Approval of application; appeal.

A. All applications for the issuance of major soil permits are hereby required to be submitted to the Board, which Board shall refer the application to the Borough Engineer before considering such applications and make its report recommending the issuance or denial of such permit. No major soil permit approval shall be granted until the Board has submitted to the Mayor and Council, within the time period specified in §32-2.9, its report and recommendations, or the Board has forfeited such right to review by its failure to do so within the time period specified.

B. All applications for minor soil permits are hereby referred to the Borough Engineer, and shall be approved, conditionally approved or denied by the Borough Engineer. The applicant shall have the right to appeal the decision of the Borough Engineer to the Mayor and Council within twenty-one (21) days of such conditional approval or denial. Such appeal shall be made in writing, sent by certified mail, addressed in care of the Municipal Clerk and shall include a copy of such conditional approval or denial and all information made available to the Borough Engineer, upon which his decision was made. The Mayor and Council shall, within thirty (30) days of receipt of the appeal, either affirm, modify or reverse the decision of the Borough Engineer and shall notify the applicant within seven (7) days of such decision. In all other respects, the hearing of appeals pursuant to this section shall be held in accordance with § 32-2.9.

§ 32-2.6. Reserved.

§ 32-2.7. Contents of application.

A. Application for major and minor soil mining permits shall be made on forms prescribed and supplied by the Mayor and Council. The applicant shall set forth under oath, in duplicate, the following:

(1) The name and address of the applicant.

(2) The names and addresses of the owners of the premises.

(3) The relationship between the applicant and the owners.

(4) The interest that the applicant has in the lands in question.

(5) The purpose or reason for moving the soil.

(6) The kind and quantity, in cubic yards, of soil to be removed.

(7) The proposed date of completion of the work, including hours and days of operation.

(8) The name and address of the excavator, contractor or the person having express charge, supervision and control of the proposed excavation work.

(9) The name and address of the person to have charge or control of the operation of the hauling away of the excavation material.

(10) The number, capacity, type and description of each piece of equipment to be used in the operation and the number of truck loads to be removed.

(11) The routes over which the material will be transported and the method of traffic control.

(12) The method of abating noise and dust in the operation.

(13) The means of assuring lateral support and preventing erosion, floods and washing of silt into streams.

(14) The means of protecting downstream properties from the effects of the operation.

B. Accompanying the application for major soil permit shall be eight (8) copies of a topographical map at a scale of not less than one inch equals fifty (1" = 50') feet and showing contour intervals at five (5) feet for grades of ten percent (10%) or greater, and contour intervals at two (2) feet for grades of less than ten percent (10%). The map shall be prepared and certified by a New Jersey licensed land surveyor or engineer and shall show:

(1) The present grades on a one hundred (100) foot grid layout.

(2) The proposed grades at the points when the work has been completed.

(3) The quantity, in cubic yards, of soil involved in the work.

(4) The grades of all abutting streets and lots.

(5) Proposed slopes and lateral supports.

(6) Present and proposed surface water drainage.

(7) All areas within one hundred (100) feet of that portion of the property which will be involved in the soil mining activities, including trees and wooded areas therein.

(8) Such other pertinent data as the Mayor and Council may hereafter by resolution require.

§ 32-2.8. Application fees; resubmissions.

A. Prior to the commencement of operations, a permit fee shall be paid to the Borough calculated in accordance with the following schedule:

(1) Up to and including five hundred (500) cubic yards of soil to be removed, the fee shall be fifty ($50.00) dollars, payable at the time of application.

(2) Above five hundred (500) cubic yards and up to three hundred thousand (300,000) cubic yards, the fee shall be one hundred twenty-five ($125.00) dollars plus the sum of five ($0.05) cents per cubic yard for quantities in excess of two thousand five hundred (2,500) cubic yards up to and including three hundred thousand (300,000) cubic yards. The sum of one hundred twenty-five ($125.00) dollars must be paid at the time of application with the remaining fees paid prior to issuance of permit, or quarterly in advance if greater than eight hundred ($800.00) dollars.

(3) For all quantities in excess of three hundred thousand (300,000) cubic yards, the fee shall be fifteen thousand ($15,000.00) dollars per year. The sum of two thousand five hundred ($2,500.00) dollars must be paid at the time of application with the remaining fees paid annually in advance, due on the anniversary date of the permit.

B. The application shall be submitted to the Administrative Officer with a topographical map and required filing fee of five hundred ($500.00) dollars. The number of cubic yards of soil to be used in the compilation of the fee shall be as stated in the application and on the accompanying topographical map.

C. Resubmission of application; when required. Where substantial changes in the soil mining permit application have been required as a condition of approval the applicant may be required to resubmit an application with approved amendments to the Administrative Officer. The Borough Engineer shall review the resubmission with the terms and conditions of approval. The fee to be paid by the applicant for a resubmission shall be five hundred ($500.00) dollars per resubmission.

§ 32-2.9. Consideration by Planning Board or Zoning Board; hearing.

A. Within forty-five (45) days after receipt of the application or within such further time as may be consented to by the applicant, the Board shall review and consider the same and render its report and recommendations to the Mayor and Council. Notice of the time and place for major soil permit shall be given by certified mail to the applicant.

B. The applicant shall cause notice of the hearing to be published in the official newspaper of the Borough at least ten (10) days prior to the date of the hearing by the Board. The applicant shall provide notice, by personal service or mail, within five (5) days of the date, to all of the owners of real property located within two hundred (200) feet in all directions, as their names appear on the municipal tax records of the time, date, location and subject matter of the hearing. The affidavits of publication and service shall be filed with the Board at the time of the hearing.

§ 32-2.10. Report of Board; determination by Mayor and Council.

The Board shall deliver its report and recommendations to the Mayor and Council at the next regular meeting of the Council following the expiration of the time period specified in § 32-2.9. The Mayor and Council, within forty-five (45) days after receipt of the report and recommendations of the Board, shall grant, conditionally grant or deny the application for major soil permit. The aforesaid shall be decided by resolution of the Mayor and Council.

§ 32-2.11. Notice of consideration.

Notice of the time and place of the Mayor and Council's consideration of the applicant for major soil permit and report and recommendations of the Board shall be given by certified mail to the applicant.

§ 32-2.12. Reserved.

§ 32-2.13. Factors to be considered.

In considering any application, the Borough Engineer or the Board and the Mayor and Council shall be guided by the general purpose of municipal planning and shall take into consideration the following:

A. Soil erosion by water and wind.

B. Surface water drainage.

C. Soil fertility.

D. Lateral support of abutting streets and lands.

E. Public health and safety.

F. Land values and uses.

G. The general welfare of the Borough and its citizens.

H. Whether the proposed work will create a nuisance.

I. Whether the proposed work is necessary in connection with the development of the property.

J. Traffic congestion or other nuisances.

K. The effect that the proposed removal of soil would have on individual sanitary sewage disposal systems.

L. The preservation of existing watercourses.

M. The creation of sharp declivities, pits or depressions.

N. Whether the proposed removal of soil constitutes a commercial activity.

O. Such other factors as may bear or relate to the coordinated, adjusted and harmonious physical development of the Borough.

P. Compatibility with the zoning scheme of the Borough.

§ 32-2.14. Performance guaranty required.

A. No major soil permit shall be issued and no soil mining shall commence unless and until the applicant shall have posted with the Municipal Clerk a performance guaranty in form and with surety acceptable to the Borough, in an amount determined by resolution of the Mayor and Council. Such guaranty shall be posted, in favor of the municipality, with the Municipal Clerk and shall assure faithful performance by the principal, within the time period specified in the major soil permit, that all proposed soil mining shall take place in accordance with the permit and all applicable Borough and other governmental approvals. Acceptable forms of surety shall include cash, certificate of deposit or other form approved by the Mayor and Council and shall be provided in the amount determined by resolution of the Mayor and Council in conformity with the provisions of subsection B below.

B. Any performance guaranty required pursuant to subsection A above shall be based upon an estimate prepared by the Borough Engineer, at the request of the Mayor and Council. The amount of the performance guaranty shall be in the amount required to restore all disturbed areas to a revegetated state, to restore interrupted drainage patterns and to generally provide moneys to repair that damage which has been caused by development which is not consistent with approvals therefor.

§ 32-2.15. Permit to stipulate conditions.

The major soil mining permit shall set forth all of the conditions under which the same was granted and the time during which the soil removal shall be completed.

§ 32-2.16. Time schedules; reports on progress.

A. In the event that major soil removal is permitted, the applicant and owner shall proceed with the work within thirty (30) days after the resolution of the Mayor and Council authorizing the Municipal Clerk to issue the major soil mining permit.

B. The applicant or owner shall, within thirty (30) days from each three (3) month period following the date of the permit, furnish the Municipal Engineer, certifying the amount of material removed during such three (3) month period, which certification shall be accompanied by a profile map and other engineering data in support of the certification.

§ 32-2.17. Revocation of permit.

In the event that the guaranty required by the Mayor and Council is not furnished within thirty (30) days from the resolution referred to in § 32-2.16A or in the event that the work is not commenced within the time, the applicant or owner shall not have the right to remove any soil and the major soil mining permit shall be revoked.

§ 32-2.18. Consequences of delay or abandonment; violation of permit.

In the event that in the opinion of the Borough Engineer the project or any part thereof has been abandoned, is unnecessarily delayed or cannot be completed at the rate of progress or within the time specified in the major soil mining permit, or there is a willful violation of any of the terms of the major soil mining permit, then the Borough Engineer may so certify in writing to the Mayor and Council, and the Mayor and Council may declare a default and notify the person having an interest in or in charge to discontinue the project. The Mayor and Council may, at its option, revoke the major soil mining permit or may call upon the surety on the performance guaranty to complete the project.

§ 32-2.19. Removal or fill of material in excess of permitted amount.

A. In the event that the enforcing official determines that the amount of materials removed or filled exceeds the gross amount permitted to be removed or filled under the major soil mining permit, the applicant or owner shall immediately restore to or remove from the site under the direction of the Engineer the amount of material taken or filled in excess of the amount permitted to be removed or filled except that if rock is removed, it may be replaced by clean soil. The materials to be restored or removed shall be of the same type and quantity as the material removed or filled. The cost of restoring or removing such material shall be borne by the applicant or the owner. In the event that such excess material is not restored or removed, the Borough, at its option, shall restore or remove such material and the cost or expense shall be a lien upon the premises from which the excess is taken or placed, and the lien shall be enforced in the same manner that liens for nonpayment of real estate taxes are enforced.

B. In the event that the amount of material removed or filled is in excess of the amount of material permitted, the major soil mining permit will be revoked except to permit the applicant to restore or remove the excess material.

C. In the event that the amount of material removed or filled is more than as stated in the certification referred to in § 32-2.16B and the owner or applicant has not removed or restored all the yardage permitted under the major soil mining permit, the permit shall be suspended until the owner or applicant pays to the Borough the amount it is entitled under the terms of § 32-2.8.

§ 32-2.20. Storage of topsoil.

If pursuant to a major soil permit, any person, owner, developer or excavator removes topsoil within any lot, or adds fill to any lot, provisions shall be made for the storage of the topsoil within the boundary lines of the lot.

§ 32-2.21. Reserved.

§ 32-2.22. Hours of operation.

There shall be no major soil mining operations, which term shall include loading or unloading, on Sundays, legal holidays or Saturdays after 12:00 noon, nor at any time between the hours of 5:00 p.m. and 8:00 a.m. following, prevailing time. Exceptions to the hours of operation shall only be allowed for State D.O.T. contracts. The owner must notify the Municipal Clerk of the existence of a State contract. Operations shall not be permitted for more than one 24-hour period per week.

§ 32-2.23. Removal of topsoil prohibited; exceptions.

Where major soil mining is permitted under this section, no person, owner, developer or excavator shall remove to any part beyond the boundary lines of the lot any topsoil whatsoever, unless and until topsoil not inferior in quality to that which has been removed shall first have been replaced uniformly to a depth of not less than six (6) inches, measured from the proposed final grades as shown on the topographical map referred to in § 32-2.7B over the entire disturbed area of the lot, excepting only such portions as shall be or shall have become, since the date of filing of such topographical map, permanently covered by a building or structure, street, pavement, curb, sidewalk or other paved area, or by any body of water or waterway. In no event shall the developer or excavator remove from the lot more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil as aforesaid.

§ 32-2.24. Conformance with proposed grades required.

A. Where major soil mining is permitted, no developer or excavator shall, at any time in the course of the work, excavate or fill more than six (6) inches below the proposed final grades as shown, unless:

(1) The major soil permit specifies otherwise and the performance guaranty, referred to in § 32-2.14, makes specific provision for replacement, on or before the completion date set forth in the soil permit, of soil of sufficient quantity and kind to restore the final grades to those shown on the topographical map referred to in § 32-2.7B; or

(2) After issuance of the major soil permit, the developer or excavator, before digging or excavating below the minimum level shall apply to the Mayor and Council for an amendment to the application and topographical map then in effect, which amendment may be granted upon such terms and conditions as the Mayor and Council deem necessary to assure adherence to the purposes and objectives of this section.

B. Where the major soil mining is permitted, no person, owner, developer or excavator shall deposit soil upon, fill in or raise grade of any lot without first making provision for:

(1) The use in the work of soil or such other materials as will not result in deviation from the proposed final grades or the uniformity thereof by reason of any abnormal shrinkage or settlement.

(2) The collection and storage upon the lot of the original topsoil to the end that the topsoil shall not be buried beneath soil or other material of inferior quality, and the uniform replacement of the topsoil so stored over the entire area or surface of the fill soil so that the final grade or grades of the replaced topsoil shall be in accordance with the proposed final grade shown on the topographical map referred to in § 32-2.7B(2). In the event that such provision shall be not practicable, provision shall be made for the uniform placement over the entire area or surface of the fill soil, excepting only such portions thereof as shall become permanently covered by a building or structure, street, pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway, of a layer of topsoil not inferior in quality to that of the original topsoil, to a depth of not less than six (6) inches, measured from the proposed final grades as shown on the topographical map.

(3) The preservation of existing watercourses.

§ 32-2.25. Preservation of trees.

In order to prevent erosion, any developer or excavator removing soil shall leave as many trees as practicable in all areas except where excavations are made for buildings, driveways and streets. The application map made by such developer or excavator shall show the trees to be left standing, for the consideration of the Mayor and Council. Where trees are removed or die, a sufficient number of new trees of evergreen species shall be planted around the perimeter of the excavated area to equal or exceed the number of trees that existed prior to the start of work. The tree count shall be based on trees two (2) inches in diameter or greater measured at four (4) feet above the ground. Replacement trees shall be a minimum of one and one-half (1 1/2) inches in diameter. Specific species selection shall be submitted to the Borough Engineer for approval.

§ 32-2.26. Transport of materials; covering.

In order to prevent spillage, undue dust and dirt conditions, the holder of the major soil mining permit or his agents and servants shall be required to compel every vehicle transporting fill, dirt or other material under the major soil mining permit to be covered with a canvas or similar top covering so as to prevent the contents or any part thereof on the vehicle from being scattered or spilled while in the course of moving within the Borough. Any person owning or operating a vehicle without having or using such covering in the course of transporting material within the Borough shall be subject to the penalty provisions of § 32-2.31A. In addition, the Mayor and Council shall have the right, on due notice to the permittee, to suspend or revoke the permit in the event that vehicles are used without such covering or transporting of material is made without the same being covered.

§ 32-2.27. Responsibilities of applicant.

A. In order to prevent undue dust conditions, the holder of the major soil mining permit shall be required to water all roads or streets or areas, whether temporary or not, within the confines of the site where such holder's operations are carried on. The areas to be covered with water and the quantity and number of applications and the periods when such areas shall be covered shall be determined by the Mayor and Council, and stated in the resolution granting approval.

B. In order to prevent undue dust conditions, the areas where actual excavations are being carried out shall be watered in the manner prescribed by the Borough Engineer.

C. The Mayor and Council shall have the right, on due notice given to the permittee, to suspend or revoke the major soil mining permit in the event that the holder refuses or neglects to diligently execute the aforementioned orders of the Borough Engineer to prevent the undue disseminating of dirt and dust.

D. Where applicable, the holder of a soil mining permit shall obtain other local, State or Federal agency permits. These shall include, but not be limited to:

(1) Site plan or subdivision approval.

(2) Soil Conservation District approval.

(3) State health and safety approval.

(4) State Department of Environmental Protection approval.

(5) United States Army Corps of Engineers approval.

E. If use of explosives is anticipated or required, approval in accordance with law shall be obtained. A copy of the approval shall be posted with the Borough. Prior to the use of any such devices, the Borough Police Department shall be notified twenty-four (24) hours in advance.

§ 32-2.28. Right of inspection.

For the purpose of administering and enforcing this section, the Enforcing Officer or designated assistant shall have the right to enter into and upon any lands in or upon which major soil moving or mining operations are being conducted, to examine and inspect such lands.

§ 32-2.29. Enforcing officer.

The Construction Code Official is hereby designated as the officer whose duty it shall be to enforce the provisions of this section. He shall, whenever directed by the Mayor and Council or the Municipal Clerk or other officer so designated by resolution of the Mayor and Council, inspect the premises for which permits have been granted and ensure compliance with the terms of the major soil mining permit and of this section.

§ 32-2.30. Reserved.

§ 32-2.31. Violations and penalties.

A. Any person who violates any provision of this section shall, upon conviction, be liable to the penalty stated in the Revised General Ordinances of the Borough of Bloomingdale Chapter I, Section 1-5.

B. The imposition of the penalty provided in subsection A of this section shall not be deemed to be in lieu of any other provision of this section for revocation or suspension of the major soil mining permit, and shall not constitute a bar to the collection by the Borough from the permittee of the costs of abating or correcting the violation.

§ 32-2.32. Statutory authority.

This section is subject to the provision of N.J.S.A. 40:55D-26b.

§ 32-2.33. Time limit for permit.

No permit shall extend for a longer period than five (5) years. Any work not completed in accordance with the permit in accordance with the time limit set in the permit shall not be completed unless and until a new permit is applied for and issued in accordance with the terms of this section.

**§ Article III. Slopes for low and moderate income housing construction.**

In furtherance of the purposes set forth in Chapter XII, Low and Moderate Income Housing, of the Revised General Ordinances of the Borough of Bloomingdale, structures to be built pursuant to Chapter XII shall not be built on slopes greater than fifteen percent (15%). However, in order to allow some flexibility in location of the units, a portion of the structure (less than ten percent (10%)) is allowed to be constructed on a slope of twenty-five percent (25%). In reviewing an application for development involving parcels of land subject to Chapter XII of the Revised General Ordinances of the Borough of Bloomingdale, the Planning Board shall be mindful of the fact that the principal objective of Chapter XII is to generate the number of units and commensurate the number of affordable set-aside units so as to meet the affordable housing obligations of the Borough as defined in the substantive certification. Accordingly, the Planning Board may, in reviewing the application, permit the departures from the standards from any development regulation of the Borough which is applicable. If such departures are required in order to permit the densities provided for in Chapter XII, the Planning Board shall grant such departures, subject to the procedures and the standards contained in § 12-2.8. Such departures shall not be deemed to constitute a need for a bulk variance and shall be considered by the Board as part of the site plan or subdivision application. It is again emphasized that in considering any request for a departure, the Planning Board shall consider not only the need to generate the requisite number of units on the site in order to comply with the substantive certification, but also appropriate planning and environmental criteria. If a request is made for a particular departure and the same number of units on the site could nonetheless be constructed without the requested departure, the Board shall not permit the departure so long as the other alternative, which would be complying with the bulk standards of Chapter XII is not significantly cost-generative in relationship to the overall cost of the entire project.

**SECTION 2**. Chapter 92, “Zoning,” Article XIV, “Shade Trees,” of the Code of Borough of Bloomingdale is hereby recodified in its entirety as Chapter XXIII, “Shade Trees,” of the Borough Code as follows:

**chapter XXIII Shade Trees**

Article I. Shade trees.

### § 23-1.1. Definitions.

### As used in this section:

### ENVIRONMENTAL ENFORCEMENT OFFICER (EEO) — The Building Subcode Official or his duly appointed designee, who may, on his own initiative or on the complaint of any individual, take action hereunder to ensure compliance with this chapter. He may request expert assistance, subject to the approval of the Governing Body.

### TREE — Any woody perennial plant with a diameter of four (4) inches.

### § 23-1.2. Purpose.

### The purpose of this section is to discourage indiscriminate and excessive removal, cutting and destruction of trees, which has caused environmental damage and adversely affected property values, to prevent soil erosion and stream pollution and silting, to augment flood control, to restrict the cutting of trees to a minimum during construction, to reduce dust and air pollution, to preserve wildlife habitat, to beautify the streets and to reforest the municipality by encouraging the planting of trees wherever and whenever possible.

### § 23-1.3.     Exceptions.

Trees may be removed without filing a tree removal and planting plan herein below under the following conditions:

A.    Any tree growing in a public right-of-way.

B.    Any tree growing in the following areas on a lot containing a dwelling:

    (1)     Within forty (40) feet of the front wall and the rear wall of the dwelling structure.

(2)     Within twenty (20) feet of either side wall of the dwelling structure.

(3)     Within five (5) feet of any paved surface.

(4)     On or above any existing or proposed utility lines or septic system, provided that requisite permits are obtained.

(5)     On or above any surfaces which are being prepared for the immediate extension of pavement expansion, of recreation areas, installation of swimming pools, installation of outdoor sheds or garden enhancement; provided, however, that no tree shall be removed until and unless a necessary requisite permit is obtained for the construction activity.

C.    Likely to endanger life or property.

D.    Dead or diseased.

E.     Trees on the premises of nurseries and garden centers.

F.     Tree farms may remove up to but not more than thirty percent (30%) of trees from their entire tract, provided that a forest management plan, approved by the New Jersey Department of Environmental Protection, Bureau of Forestry or other professional forester has been submitted to the EEO.

G.    Removal of one (1) tree per residential lot per year.

H. The Oak Tree situated in front of Borough Hall may be removed only upon a determination by an arborist that the tree is diseased or unsafe and an affirmative vote by a majority of the Borough Council that the tree should be removed, except in cases of emergency where public safety necessitates the removal of the Oak Tree.

§ 23-1.4. Tree removal and planting plan.

A. An approved tree removal and planting plan is required prior to approval of a subdivision, site plan or building permit or prior to the removal of any tree not excepted in § 23-1.3. The EEO shall make an on-site inspection within fourteen (14) days of submission of the plan and all trees to be cut are to be clearly identified with tagging by the plan applicant at the time the plan is submitted.

B. No certificate of occupancy shall be issued unless tree removal and planting have been in accordance with the approved plan or a bond posted guaranteeing proper planting and removal.

C. Data required for a tree removal and planting plan shall include:

(1) The tax map, lot and block number.

(2) The area of tract, and the location of streams, wetlands, streets and woods.

(3) Slopes over fifteen percent (15%).

(4) The type of tree-cutting, clear or selective.

(5) Removal in relation to buildings, roads and septic systems and sewer lines, present and proposed.

(6) A list of trees to be planted, preferably selected from the preferred species list, which shall be on file in the office of the EEO.

(7) The map of surrounding properties showing wooded areas and features.

D. The tree removal and planting plan shall be prepared by the applicant on forms to be prepared and supplied by the EEO.

§ 23-1.5. Criteria for plan approval.

A. Trees may be removed within five (5) feet of the edge of pavement of drives and parking areas.

B. Trees may be removed from proposed building foundations as follows:

(1) Forty (40) feet as front and backyard setback.

(2) Twenty (20) feet as side and backyard setback.

C. Where more than three (3) inches of fill is required around trees, the tree must be protected by an air well six (6) feet in diameter. Tile pipe must radiate like spokes from the well to provide oxygen to the roots. The top of the well must extend six (6) inches above the surface. If the tree is a species that will eventually die due to root disturbance or changes in drainage or the owner prefers to remove the tree, it may be removed and another tree from the preferred species list may be planted after the fill has stabilized.

D. Tree removal is prohibited where the existing trees form part of a planned greenbelt or buffer.

E. Any tree used in a required planting or to replace a damaged tree must be at least two and one-half (2 1/2) inches in diameter and must be nursery stock, balled and burlapped.

F. Trees in the area between the street line and setback line of the buildings shall be preserved to the greatest extent possible.

G. The removal of trees from any environmentally sensitive area or slopes over fifteen percent (15%) is prohibited as it will contribute to extra runoff of surface water, erosion and silting, unless other means, approved by the Hudson Essex Passaic Soil Conservation District, are provided to prevent runoff and erosion.

H. Any grading must protect standing trees from machine operation, soil storage or material storage by a distance equal to or greater than the drip line of the tree. Any tree damaged to the extent that such damage may cause disease or death to the tree must be replaced. Temporary construction fences delineating clear-cut setbacks are required for tree protection.

I. Trees may be removed to allow for backfill or soil removal, provided that the same amount of wooded area is replaced when fill is settled.

J. Unless otherwise proven necessary, staging areas for machinery, equipment, supplies, materials, etc., shall be within a cleared building area in order to prevent damage to trees designated to be saved.

K. If, upon a building site inspection, the EEO finds that trees have been removed without regard for this section, no building permit shall be issued until the alleged violation has been prosecuted and disposed of in Municipal Court.

L. Should the EEO discover violations of the section following the issuance of a building permit, a stop-work order will be issued until the matter is disposed of in Municipal Court.

M. Trees shall be planted every fifteen (15) feet along streets in front of commercial establishments and commercial driveways.

N. One (1) tree shall be planted for every seven (7) car stalls in parking lots. Such trees shall be planted alongside or within the parking lots.

O. The prescribed number of trees determined upon approval of the tree removal and planting plan shall be continuously maintained such that diseased or dead trees shall be replaced within the next available growing season.

§ 23-1.6. Reserved.

§ 23-1.7. Fees; costs.

A. A fee schedule shall be on file in the Office of the EEO for the purpose of adequately covering the administrative costs of this section. The fee shall be included with the plan submitted. Where needed and not otherwise provided, an escrow account will be established to cover expenses associated with regard to any expert assistance retained by the Borough. The amount of the escrow shall be set by the EEO.

B. The owner or applicant shall reimburse the Borough for all costs of expert advice obtained in connection with the application for an approved plan which may exceed the fee schedule.

§ 23-1.8. Violations and penalties.

Any person violating any provisions of this section shall, upon conviction, be liable to the penalty stated in Chapter I, Section 1-5 of the Revised General Ordinances of the Borough of Bloomingdale.

**SECTION 3**.All ordinances or parts of ordinances of the Borough of Bloomingdale inconsistent herewith are repealed to the extent of such inconsistency.

**SECTION 4**. If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.

**SECTION 5**. This law shall take effect immediately upon final passage, approval and publication as required by law.

**NOTICE**

NOTICE IS HEREBY GIVEN, that the above Ordinance was introduced and passed on first reading at an Official Meeting of the Governing Body of the Borough of Bloomingdale held in the Municipal Building on the 12th day of November 2013, and the same shall come up for final passage at an Official Meeting of the Governing Body to be held on the 26th day of November, 2013, at 7:30 P.M., at which time any persons interested shall be given the opportunity to be heard concerning said Ordinance.

Jane McCarthy, RMC

Municipal Clerk/Borough of Bloomingdale