

## Benzonía Village

### Ordinance. No. 2020-04

#### STEEP SLOPE PROTECTION OVERLAY ORDINANCE

Purpose: An ordinance to amend in part the Ordinance. Entitled "Village of Benzonía Zoning Ordinance, Adopted October 2, 1997 Amended", to add an additional level of overlay regulations to the existing zoning in place for parcels that contain steep slopes as defined herein.

Benzonía Village HEREBY ORDAINS

#### SECTION 1. REGULATIONS

**Section 1.1 Requirements.** All uses allowable in zoning districts of this Ordinance shall comply with the standards set forth in this section regulating the development of areas with sloped in excess of fifteen (15) percent or greater. These requirements shall be considered in addition to use restrictions or other applicable regulations for each zoning district, and shall be considered as a separate portion of the zoning application.

- A. The Steep Slope Overlay shall specifically address the following:
  1. Steep Slopes (slopes of 15% but less than 25%)
  2. Very Steep Slopes (slopes in excess of 25%)
- B. Other Overlay Zones may affect zoning districts in the Village. It is the applicants responsibility to determine if these or any other federal, state, or local regulations apply to their particular property. Other overlay zones in the Village include:
  1. US-31 Corridor Overlay
- C. In an area where an overlay zone is established, the property is placed simultaneously in each applicable zone. Where there is any conflict between the provisions or requirements of any Overlay District zone(s) and those of any underlying district, the more restrictive provisions apply.

#### SECTION 2. INTENT

**Section 2.1 Protection of Steep Slopes.** The purpose of this section is; to provide heightened regulation of the erection of buildings in areas susceptible to erosion; to minimize danger to public health by protecting watersheds; to prevent sewage disposal problems; to discourage erosion of soils by maintaining adequate foliage cover on hills; and to avoid the perpetuation of unvegetated open space on hillsides. Slope areas may be located within the confines of any land use district. The steep slope areas shall include all areas within the Village where the slope is fifteen (15) degrees or greater. Any development on slopes in excess of fifteen (15) percent shall be in conformance with the following objectives:

- A. Guard against property damage and personal injury, and minimize the potential for erosion, slope failure, stream siltation, increased runoff, flooding and contamination of surface waters caused by the adverse effects of site preparation and construction on steep slopes.
- B. Conserve existing woodlands for air and water quality benefits.
- C. Permit land uses by right that are compatible with protection of steep slope areas, and encourage the use of steep slope areas for open space and conservation uses.
- D. Require development to avoid steep slope areas wherever possible, and require all land use, clearing, grading, and construction to satisfy development standards.
- E. Regulate expansion of land use or development that existed on steep slope areas prior to enactment of

these requirements.

- F. Protect adjoining properties from harmful consequences of development permitted under these requirements.

### **SECTION 3. ADDITIONAL DEFINITIONS**

**Section 3.1** This section contains many commonly used terms found within this Article of the Ordinance. In addition to the definitions listed herein, all definitions from the Village Zoning Ordinance shall also apply, Additional definitions will include the following:

- A. **Disturbance:** Any physical activity which results in the modification of topography by cutting or filling, stripping of topsoil, and/or placing of physical structures or improvements thereon.
- B. **Fill:** Any clean soil or rock materials (sand or clay) used to raise the ground elevation.
- C. **Forestry:** The management of forests and timberlands when practiced in accordance with accepted silvicultural principles, through developing, cultivating, harvesting, transporting and selling trees for commercial purposes, which does not involve any land development.
- D. **Land disturbing activity:** Any change of the land surface including removing vegetative cover, excavating, filling, grading, and the construction of any structure. An agricultural activity such as the planting, growing, cultivating and harvesting of crops is exempt from this definition.
- E. **Landscape Architect (Registered):** A Landscape Architect is a person who holds a license or is registered to practice landscape architecture in the State of Michigan in order to analyze, plan, design, manage, and nurture the built and natural environments.
- F. **Open space:** An area of land or water, or a combination of land and water on a parcel of land that is free of improvement and impervious surfaces.
- G. **Professional (Registered) Engineer:** An engineer who holds a license or is registered by the State of Michigan to provide consultation, investigation, evaluation, planning, design or review of material and completed phases of work in construction, alteration or repair in connection with a public or private utility, structure, building, machine, equipment, process, work or project when the professional service requires the application of engineering principles or data.
- H. **Woodland (Forest):** A plant community where tree species are dominant or co-dominant and the branches of the trees form a complete or nearly complete aerial canopy. Any area, grove or stand of mature or largely mature trees (larger than six inches DBH) covering an area of one-quarter acre or more, or consisting of ten (10) individual trees larger than eight (8) inches DBH, shall be considered a woodland. The extent of any woodland shall be measured from the outer-most drip line of all the trees in the community.

### **SECTION 4. IDENTIFICATION AND ESTABLISHMENT OF THE STEEP SLOPE OVERLAY DISTRICT**

**Section 4.1 Applicability and Extent.** The Steep Slope Overlay shall apply as follows:

- A. The Steep Slope Overlay District is defined and established as those areas having slopes of 15% or greater. These areas are shown approximately on the future land use map prepared by the Village. ( Refer to the Village Master Plan 2020.)
- B. Any application for land use approval (including rezoning, special land use and PUDs) shall graphically identify all steep slopes on the property. The boundaries shown on the Steep Slope Overlay District Map may be supplemented or modified by examination of one or more of the following sources by the Village whenever a land use, special land use or other land development permit is submitted for review:

1. Soil Survey of Benzie/Manistee Counties, Michigan, USDA Soil Conservation Service.
  2. Contour maps prepared from aerial photography.
  3. On-site survey prepared by a Registered Professional Engineer or Surveyor.
- C. The Steep Slope Overlay District shall be further divided into the following two categories:
1. **Steep Slopes: Slopes of 15% but less than 25%.** Slopes of fifteen (15) percent or greater slope (e.g., sloping fifteen (15) feet or more vertical per one hundred (100) feet horizontal) when there are five (5) adjacent contour intervals of two (2) feet each such that, in aggregate, they delineate a slope of at least fifteen (15) percent.
  2. **Very Steep Slopes: Slopes of 25% or more.** Slopes of twenty-five (25) percent or greater slope (e.g., sloping twenty-five (25) feet or more vertical per one hundred (100) feet horizontal) when there are five (5) adjacent contour intervals of two (2) feet each such that, in aggregate, they delineate a slope of at least twenty-five (25) percent.
- D. The Zoning Administrator shall decide whether or not the Steep Slope Overlay District has been shown with sufficient accuracy on the applicant's plans. Based on the Zoning Administrator's advice the Village may require applicants to revise the boundaries shown on the plans.
- E. The burden of proving the correct boundary shall be on the applicant, supported by engineering and/or surveying data or mapping, testimony of a soil scientist, or other acceptable evidence.

## SECTION 5. GENERAL PROVISIONS

**Section 5.1 Applicability.** The Steep Slope Overlay District is a zoning district that imposes a set of requirements in addition to those of the underlying zoning district shown on the Village of Benzonia Zoning Map. In an area where an overlay zone is established, the property is placed simultaneously in the two zones.

- A. The Steep Slope Overlay District shall be an overlay on all zoning districts. For any lot or portion thereof lying within the Steep Slope Overlay District, the regulations of the overlay district shall take precedence over the regulations of the underlying district.
- B. Where there is any conflict between the provisions or requirements of the Steep Slope Overlay District and those of any underlying district, the more restrictive provisions apply.
- C. These regulations apply to lots where the proposed land disturbing activity is greater than 5,000 square feet.
- D. All uses, activities and development occurring within any Steep Slope Overlay District shall be undertaken only in strict compliance with the provisions of this Article, with all federal and state laws, and with all other applicable Village codes and ordinances.
- E. No building lot shall be created unless it contains at least one (1) acre of area with slopes less than 25%. If it is infeasible to provide this area in accordance with the setbacks required by the underlying district, the lot area shall be increased as necessary to provide a minimum area equal to one (1) acre of area with slopes less than 25%.
- F. Finished slopes of all cuts and fills shall not exceed thirty three (33) percent, unless the applicant can demonstrate that steeper slopes can be stabilized and maintained adequately to the satisfaction of the Village.
- G. All cuts shall be supported by retaining walls or other appropriate retaining structures when, depending upon the nature of the soil characteristics, such structures are approved by the a Building Official from

the Benzie County Building Safety and Code Enforcement Department in order to prevent erosion.

- H. Any fill placed on the lot shall be properly stabilized and, when found necessary depending upon existingslopes and soil types, supported by retaining walls or other appropriate structures as approved by a Building Official from the Benzie County Building Safety and Code Enforcement Department.
- I. All retaining walls require consultation with a Building Official from the Benzie County Building Safety and Code Enforcement Department, a certification by a professional engineer that the wall was constructed in accordance with approved plans and applicable building codes.
- J. Any disturbance of steep slopes shall be completed within one construction season, and disturbed areas shall not be left bare and exposed during the winter and spring thaw periods. Permanent vegetative cover shall be planted within three days after completion of grading.
- K. No trees with a diameter at breast height (DBH) of six (6) inches or more shall be removed from steep slope areas unless in accord with the Environmental Provisions, Section 5. Tree Protection, Removal and Replacement.
- L. The alignment of roads and driveways shall follow the natural topography, minimize regrading and comply with design standards from County or State regulations.
- M. The maximum grade of a road or driveway shall not exceed ten percent (10%).
- N. The degree of steep slope protection sought by the provisions of this Article is considered reasonable for regulatory purposes. This Article does not imply that areas outside the Steep Slope Overlay District or permitted uses within the zoning district will be free from erosion or slope instability. This Article shall not create liability on the part of the Village or any officer or employee thereof for any damages that result from reliance on this Article or any administrative decision lawfully made hereunder.

## **SECTION 6. DEVELOPMENT ON STEEP SLOPES**

**Section 6.1 Development on Steep Slopes.** When the proposed building site has slopes in excess of fifteen (15) percent, questionable soils stability or evidence of erosion, the applicant shall consult with the County Soil Erosion Control Agent before a permit can be issued.

- A. A plan must be submitted to the Zoning Administrator for review and approval before any site work can begin, this may be included as a part of the overall land use permit. The plan shall contain the following:
  - 1. The plan shall demonstrate reasonable and acceptable steps to be taken to prevent erosion, consultation with a Building Official from the Benzie County Building Safety and Code Enforcement Department, and shall be prepared by a professional engineer, if required by the County. .
  - 2. The maximum height of the principal structure shall be twenty-five (25) feet.
  - 3. If the site plan requires a profession engineer, the landscape plan for the area of disturbance shall also be prepared by a registered landscape architect or professional engineer.
  - 4. Driveways and/or access drives shall be designed so their appearance is visually minimized.
  - 5. Structures shall not be sited on top of high points, outcroppings or prominent knolls within the site.
  - 6. Slopes of any proposed grading shall not exceed a ratio of 3:1 (or 33%). Any slopes shown at 3:1 must provide an acceptable erosion control fabric.

**Section 6.2 Retaining Wall Permit.** A land use permit shall be submitted and approved before the construction of any retaining wall. The application for permit must document the following:

- A. No retaining wall shall be erected without first having consulted with a Building Official from the Benzie County Building Safety and Code Enforcement Department,
- B. No retaining wall shall exceed the height of 3ft and there shall be at least 10 feet between stepped retaining walls.

- C. Retaining walls in excess of 3ft may be approved by the Planning Commission with supporting documentation from a Professional Engineer or Landscape Architect or a Building Official from the Benzie County Building Safety and Code Enforcement Department,.

**SECTION 7. PERMITTED USES AND DEVELOPMENT ON SLOPES OF 15% BUT LESS THAN 25%**

- A. Open space and conservation uses are permitted by right on steep slopes, provided that they shall not include any structures, roads, driveways, parking areas, construction, or other development, or grading, or clearing of vegetation.
  - 1. Wildlife sanctuary, woodland preserve, arboretum, and passive park and recreation areas.
  - 2. Forestry and reforestation in accordance with recognized natural resource and soil conservation practices, and as permitted by the Environmental Provisions and/or any other local, state or federal regulations.
  - 3. Front, side, or rear yards, and required lot area for any underlying zoning district, subject to the requirements of Section 5 General Provisions, herein, and provided such yards shall not be used for any use prohibited under Section 8 and 11, herein.
  - 4. Non-structural accessory uses necessary to the operation and maintenance of the above permitted uses.

**SECTION 8. PROHIBITED USES AND DEVELOPMENT ON SLOPES OF 15% BUT LESS THAN 25%**

- A. The following uses are specifically prohibited on slopes of 15% but less than 25%:
  - 1. Removal of topsoil except when related to an approved conditional use.
  - 2. Solid waste disposal, recycling uses, junk yards, or other outdoor storage uses.

**SECTION 9. SPECIAL USES AND DEVELOPMENT ON SLOPES OF 15% BUT LESS THAN 25%**

- A. The following uses and activities may be permitted by Special Land Use (SLU) provided that they are in compliance with the provisions of the underlying district and are not prohibited by any other Ordinance:
  - 1. Structures, roads, driveways, parking areas, construction or other development.
  - 2. Clearing of vegetation or grading, including the addition of fill.
  - 3. Sealed public water supply wells with approval of the Michigan Department of Environment, Great Lakes, and Energy (EGLE).
  - 4. Sanitary or storm sewers and stormwater detention basins with the approval of the County
  - 5. On-lot sewage disposal systems, when approved by the County
  - 6. Utility transmission lines and above ground utility line structures unless upon petition of a public utility corporation, the utility company shall, after a public hearing, decide that the present or proposed situation of the lines or structures in question is reasonably necessary for the convenience or welfare of the public.
- B. Applications for special land uses shall provide the following information and documentation:
  - 1. A plan by a Registered Professional Engineer or Surveyor which accurately locates the proposed use with respect to the Steep Slope Overlay District boundaries, with all pertinent information

describing the proposal, and a topographical survey with contour elevations at no greater than 2-foot intervals, where feasible.

2. A plan of proposed development or use of the site, conforming to the preliminary plan requirements of the Special Land Use (SLU) permit, Section 9.14 of the Village Ordinance, , with contours shown at 2-foot intervals, where feasible, throughout the steep slope areas proposed for development or use. Contours shall be accurately drawn from on-site survey or aerial photographic sources.
3. Proposed modifications to the existing topography and vegetative cover, as well as the means of accommodating stormwater runoff.
4. Specifications for building construction and materials, including filling, grading, storage of materials, and water supply and sewerage facilities.
5. Documentation of any additional engineering and/or conservation techniques designed to alleviate environmental problems that may be created by the proposed activities, in compliance with municipal sedimentation and erosion control regulations.
6. Written confirmation from the Township Fire Department that emergency access is satisfactory to provide adequate fire protection.

#### **SECTION 10. PERMITTED USES AND DEVELOPMENT ON SLOPES OF 25% OR MORE**

- A. Open space and conservation uses are permitted by right on slopes of 25% or more, provided that they shall not include any structures, roads, driveways, parking areas, construction, or other development, or grading, or clearing of vegetation.
  1. Wildlife sanctuary, woodland preserve, arboretum, and passive park and recreation areas.
  2. Forestry and reforestation in accordance with recognized natural resource and soil conservation practices, and as permitted by the Environmental Provisions and/or any other local, state or federal regulations.
    - a. In areas where slopes are 25 percent or steeper, harvesting of trees shall not occur except in conformance with a forest management plan prepared by, and under the supervision of, a professional forester using Michigan Department of Natural Resources best management practices for forestry.
  3. Front, side, or rear yards, and required lot area for any underlying zoning district, subject to the requirements of Section 5 General Provisions, herein, and provided such yards shall not be used for any use prohibited under Section 7, herein.
  4. Non-structural accessory uses necessary to the operation and maintenance of the above permitted uses.

#### **SECTION 11. PROHIBITED USES ON SLOPES OF 25% OR MORE**

- A. The following uses are specifically prohibited on slopes of 25% or more:
  1. Removal of topsoil.
  2. Solid waste disposal, recycling uses, junk yards, or other outdoor storage uses.
  3. Structures, roads, driveways, parking areas, construction or other development.
  4. Clearing of vegetation or grading, including the addition of fill.

5. Sealed public water supply wells.
6. Sanitary or storm sewers and stormwater detention basins.
7. On-lot sewage disposal systems.
8. Utility transmission lines and above ground utility line structures.
9. Extractive uses.

## **SECTION 12. SPECIAL USE STANDARDS AND CRITERIA**

- A. In considering a special use application, the Planning Commission shall consider the following:
1. Relationship of the proposed use to the objectives set forth in Section 2.
  2. Adverse effects on abutting properties.
  3. The need for a Forest Management Plan on wooded steep slope areas.
  4. Proposed roads, driveways and parking areas are designed so that land clearing and/or grading will not cause accelerated erosion. Both vertical and horizontal alignment for such facilities shall be so designed that hazardous conditions are not created.
  5. Alternative placements on non-steep slope areas were carefully evaluated for structures, including buildings, retaining walls, swimming pools, roads, access driveways, parking facilities and other development, and can be shown to be inappropriate or infeasible to the satisfaction of the Planning Commission.
  6. Proposed on-lot sewage disposal facilities are properly designed and constructed in conformity with applicable regulations.
  7. Proposed non-agricultural displacement of soil is for purposes consistent with the intent of this Article and will be executed in a manner that will not cause erosion or other unstable conditions. The applicant shall provide an erosion and sediment control plan and supporting evidence.
  8. Surface runoff of water will not create unstable conditions, including erosion, and appropriate stormwater management facilities will be constructed as necessary.

## **SECTION 13. ENFORCEMENT AND SANCTIONS.**

- A. The rules and regulations of this article shall apply to all public and privately owned land in the Village, and shall be in addition to requirements imposed by other Village ordinances.
- B. Violations of the ordinance shall be enforced by the Zoning Administrator who is authorized to issue municipal civil infractions notices and citations pursuant to the authority of and as provided in applicable state law, per the procedures in the existing Zoning Ordinance, Article 9 and the Municipal Civil Infraction Ordinance.

## **SECTION 14. SEVERABILITY**

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

**SECTION 15. REPEAL**

All ordinance or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 16. EFFECTIVE DATE**

This Ordinance shall become effective upon the publication in accordance with law.

At a regular meeting of the Village Council for Benzonia Village held on the 6<sup>th</sup> day of July, 2020, Trustee Misner, moved for the adoption of the foregoing ordinance and Trustee French supported the motion.

Voting For, Roll Call: Bair, Heyn, Cook, French, Misner, Flynn

Voting Against: None

Excused - Rankin

The Village President declared the ordinance adopted.

Timothy Flynn,  
Village President.

**CERTIFICATION**

The foregoing is a true copy of Ordinance No. 2020-04, which was enacted by the Village Council for the Benzonia Village at a regular meeting held on July 6, 2020.

Rhonda Nye,  
Village Clerk