

ORD.#9-2012

AN ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF MOUNT OLIVE AMENDING THE LAND USE ORDINANCE OF THE TOWNSHIP OF MOUNT OLIVE TO AMEND THE SUBMISSION REQUIREMENTS FOR APPLICATIONS FOR DEVELOPMENT WITHIN THE HIGHLANDS PRESERVATION AREA OF MOUNT OLIVE TOWNSHIP

WHEREAS, The Township of Mount Olive did submit a Petition for Plan Conformance to the Highlands Council pursuant to the requirements of the Highlands Water Protection and Planning Act (N.J.S.A.13:20-1 et seq.) with regard to the seventy-nine percent (15,865 acres) of Mount Olive Township that lies within the Preservation Area; and

WHEREAS, the Highlands Council approved said Petition on January 20, 2011; and

WHEREAS, the Highlands Council requires the adoption of a Development Application Checklist Ordinance as part of Plan Conformance to ensure that Applicants achieve compliance with the standards and protections required under the Highland Regional Master Plan conditioned upon subsequent approval by the Highlands Council or the New Jersey Department of Environmental Protection (NJDEP) for land located in whole or in part within the Preservation Area portion of the Township of Mount Olive; and

NOW THEREFORE, BE IT ORDAINED by the Township Council of the Township of Mount Olive that §400-9 of Chapter 400, the Land Use Ordinance of the Township of Mount Olive is hereby amended to incorporate the following provisions:

SECTION 1

§400-9

A. APPLICATIONS FOR DEVELOPMENT IN THE PRESERVATION AREA.

No Application for Development as defined in this Chapter involving property located (or partially located) in the Preservation Area of the Highlands Region, for which application submission requirements apply under this Ordinance, shall be deemed complete or considered for review by the Planning Board until and unless the Applicant has obtained and provided a copy of:

1. A Consistency Determination from the Highlands Council indicating that the application is consistent with the Highlands Regional Master Plan; or
2. A Consistency Determination from the Highlands Council indicating that the application is not consistent with the Highlands Regional Master Plan,

accompanied by a certification, as detailed in Section 1.B below, by the Applicant's professional(s) that the application has been revised since review by the Highlands Council to achieve consistency with the Highlands Regional Master Plan.

B. FINDINGS OF INCONSISTENCY. Where a Highlands Council Consistency Determination indicates that an Application for Development is inconsistent with the Highlands Regional Master Plan, no such application shall be deemed complete or considered for review by the Planning Board, until or unless the Applicant has obtained from the professional(s) responsible for preparation of the Applicant's plans, a certification indicating that to the best of the knowledge and abilities of such professional(s), the plans have been revised to achieve consistency with the Highlands Regional Master Plan and specifically describing the revisions made to achieve such consistency.

C. EXCLUSIONS. The following specific improvements and related applications shall be excluded from the provisions of this Section:

1. Any improvement to a single family dwelling in lawful existence as of the effective date of this Ordinance, provided that such improvement: a) is related and dedicated solely to the single-family residential use of either the dwelling or the property upon which it is situated; b) results in results in the ultimate disturbance of less than one (1) acre of land; and c) produces a cumulative impervious surface area of less than one-quarter (1/4) acre.
2. The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Ordinance, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
3. The repair or maintenance of any building or other structure lawfully existing as of the effective date of this Ordinance. This exclusion shall not be construed to permit repairs or maintenance activities that alter the footprint of such building or structure.
4. The interior improvement, rehabilitation, or modification of any building or other structure lawfully existing as of the effective date of this Ordinance. This exclusion shall not be construed to permit activities that alter the footprint of such building or structure.
5. The attachment of signs or other ornamentation to any building or structure, to the installation of windows, doors, chimneys, vents, shafts, heating, ventilation, or air conditioning equipment, or to any other such improvement to a building or structure provided it occupies a surface area footprint of not more than 50 square feet. This exclusion shall not be construed to permit ultimate disturbance or

cumulative impervious surface in excess of that provided at 1, above, for single-family dwellings.

6. Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Ordinance, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
7. Any activity, improvement or development project located (or partially located) in the Preservation Area deemed by NJDEP to constitute a non-Major Highlands Development in a Highlands Applicability Determination issued pursuant to N.J.A.C. 7:38-2.4.

D. EXEMPTIONS. Any activity, improvement or development project listed and demonstrated to constitute a Highlands Act exemption shall be exempt from the provisions of this Section.

1. Demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Preservation Area shall consist of a Highlands Applicability Determination issued by the NJDEP pursuant to N.J.A.C. 7:38-2.4.

E. WAIVER. The Planning Administrator may issue a waiver from the provisions of this Section where it can be established by the Applicant and can be verified by the Planning Administrator that:

1. The activity, improvement or development proposed by the subject Application for Development has not yet been formally determined to be exempt from the Highlands Act, but eligibility for an exemption has been sufficiently established by the Applicant; or
2. The activity, improvement or development proposed in the Application for Development will neither encroach upon a Highlands Resource or Highlands Resource Area, nor be of detrimental impact to any Highlands resource or Highlands Resource Area as these are identified and delineated in the Highlands Regional Master Plan. The Applicant's professional(s) responsible for preparation of the Applicant's plan shall establish compliance of the above through a formal certification specifically addressing the Highlands Resources and Resource Areas and related policies and objectives as identified in Chapter 4 of the Highlands Regional Master Plan.

F. HIGHLANDS COUNCIL CALL-UP. All municipal waivers or findings of application completeness issued pursuant to this Section shall be subject to Highlands Council call-up review and the municipality shall specifically include conditions of this review consistent with this paragraph. In all such cases, the municipality shall within five (5) calendar days of issuance, provide notice to the Applicant and to the Highlands Council of any waiver or finding of application completeness made pursuant to this Section. The

Highlands Council call-up review period shall expire fifteen (15) calendar days following its receipt of such notice. Absent any notice to the municipality from the Highlands Council within that timeframe, the application shall be considered complete, with the date of the waiver or application completeness to be as of the date of first issuance by the municipality. Upon determining to exercise this authority for call-up review, the Highlands Council shall transmit notice to the Applicant and the municipality.

G. DEFINITIONS. In addition to the Definitions set forth in §400-6 the following terms shall apply to the provisions of this Section:

Disturbance – means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

Disturbance, Ultimate – means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

Highlands Council – means the New Jersey Highlands Water Protection and Planning Council.

Highlands Act – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 et seq.

Highlands Applicability Determination – means the determination made by the NJDEP of whether a project proposed for the Preservation Area is a major Highlands development, whether any such major Highlands development is exempt from the Highlands Act, and whether the project is consistent with the applicable Area wide Water Quality Management Plan.

Highlands Area – means that portion of the municipality for which the land use planning and regulation are in conformance with, or are intended or proposed to be in conformance with, the Highlands Regional Master Plan.

Highlands Preservation Area Approval (HPAA) – means a permit to engage in a regulated activity in the Highlands Preservation Area issued by the NJDEP pursuant to the Highlands Act and the NJDEP Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38), including an HPAA that contains a waiver pursuant to N.J.S.A. 13:20-33b. Highlands Preservation Area Approval includes Highlands general permits issued

pursuant to N.J.S.A. 13:20-33d and promulgated at N.J.A.C. 7:38-12. HPAA, when used in this Ordinance, includes Highlands general permits unless explicitly excluded.

Highlands Region – means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

Impervious Surface – means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

Impervious Surfaces, Cumulative – means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

Municipal Land Use Law (MLUL) – means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*

NJDEP – New Jersey Department of Environmental Protection

NJDEP Preservation Area Rules – means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 *et seq.*

Plan Conformance – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.

Preservation Area – means that portion of the Highlands Region so designated by subsection b. of section 7 of the Highlands Act.

Regional Master Plan – means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

SECTION 3

The Township Clerk is directed to give notice at least ten days prior to the hearing on the final adoption of this Ordinance to the clerks of all adjoining municipalities and the Morris County Planning Board, and to all others entitled to notice under N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63. Upon final passage of this Ordinance, the Township Clerk is further directed to publish notice of passage and to file a copy of this Ordinance as finally adopted with the Morris County Planning Board as required by N.J.S.A. 40:55D-16.

SECTION 4

If any portion, paragraph, clause, sentence or phrase of this Ordinance is determined to be invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining portions of this Ordinance.

SECTION 5

All ordinances or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 6

This Ordinance shall take effect after final passage and publication in the manner prescribed by law.

TOWNSHIP OF MOUNT OLIVE

Alex Roman, Council President

ATTEST:

Lisa Lashway, Township Clerk