

PUBLIC HEARING
A LOCAL LAW OF THE TOWN OF MARLBOROUGH, ULSTER COUNTY, NEW YORK
AMENDING CHAPTER 155 “ZONING”, ARTICLE IX, SECTION 155-41.1 OF THE
MARLBOROUGH TOWN CODE ENTITLED “RIDGELINE AND STEEP SLOPE
PROTECTION”

APRIL 22, 2024 7:00 PM
MINUTES OF MEETING

Present: Supervisor Corcoran
Councilman Zambito
Councilwoman Sessa
Councilman Cauchi

Danielle Cherubini, Deputy Town Clerk

Also Present: Maribeth King, Resident/CAC Member
Cindy Lanzetta, Resident

Absent: Councilman Molinelli

Supervisor Corcoran read the proposed changes in the law that was re-introduced on April 8, 2024 and opened the public hearing for comments.

Maribeth King read the following comments from the CAC which are incorporated into the minutes as follows:

Town of Marlborough Conservation Advisory Committee Comments for Public Hearing, Amendment to Town Code 155-41.1 April 22, 2024

The Conservation Advisory Committee is grateful for the additional changes being proposed for this Code. It is very gratifying so many made their voices heard, and that the Town Board incorporated multiple suggestions and comments, including those of the CAC, into this new wording.

It is noteworthy and commendable that additional definitions are included. These help further define the intention of the Code. While we did not have ample opportunity to discuss wording for the updated code, we are very appreciative of the inclusion of guidelines for controlling light pollution as well as architectural attention to color of any intended structure.

On the whole, this proposed wording appears to satisfy the public's many questions and comments.

However, there are two concerns.

Code 151-41.1(F)4 presently reads in part:

"Applicants for construction on properties to which this section applies shall demonstrate to the reviewing board or Town Engineer, as the case may be, that the proposed buildings or structures will not extend above the predominant treeline."

In addition, in section 151-41.1(F)1 of the original Code, the Planning Board or the Zoning Board of Appeals is specifically assigned to review all applications pertaining to Ridgeline and Steep Slope Protection.

In the proposed new wording the Town Code Enforcement Officer is specifically included as a responsible party along with the Town Engineer. This is a change and seems appropriate as their roles are to ensure the Code is explained and enforced. And including their roles in the proposed amendment mirrors other areas in Code 151-41.1 and Code 155-2.

In contrast, in the proposed amendment, "the reviewing board" is eliminated. To be consistent, shouldn't "the reviewing board," meaning the Planning Board and Zoning Board of Appeals, also be cited just as they are in both areas of the original wording? Is there a specific reason for removing "the reviewing board,"¹¹

It would seem that the most logical place for an applicant to know if they were following the Town Code would be by the Planning Board (or any board) that has to approve the application. Approvals are a lengthy process and it seems fitting the Planning Board or ZBA should be an explicit authority in the process. Its inclusion in this one sentence serves to reinforce their job duties.

We understand the approval for structure placement resides with the Town Engineer and Code Enforcement Officer, but we question why the applicant no longer needs to "demonstrate to the reviewing board" as well that a structure will be placed. The Code should leave no ambiguity about the applicant's responsibility. Eliminating this phrase of the Code also seemingly removes the Boards' responsibility for informing and enforcing the Town Code, and is contrary to the roles for which these Boards are intended.

The CAC would suggest keeping the words: "to the reviewing board". Retaining the voice of the reviewing board in the process allows for a checks and balances provision for all parties involved, and leaves no question as to their respective duties.

The proposed amendment includes a definition of the Ridgeline, reinforcing the definition provided in 151-41.1 (A)3. Including the Town Code Enforcement Officer in the amended wording makes sense. Likewise, reiterating an applicant's instruction to "demonstrate to the reviewing board and the Town Engineer and Town Code Enforcement Officer...." would also give clear instructions and expectations to all involved.

On a second note, absent any notation of the required distance from the top of the ridgeline which is accomplished by removing the 50-foot wording, there should also be some numerical or demonstrable method that puts what is allowable on the record so the applicant is certain their project is compliant with the Code. Once again, your goal was to create a Code that was less ambiguous. This would protect the applicant, the Planning Board, and ultimately, the Town.

*Thank you for your consideration. Respectfully submitted by,
Maribeth King, CAC member, on behalf of
Mici Simonofsky, Chair pro tern
Town of Marlborough Conservation Advisory Committee*

Cindy Lanzetta, Resident, stated she is commenting as a private citizen of Marlboro. She thanked the Board for being responsive to a lot of the comments. She expressed her view on vertical setbacks and stated her opinion that 40 to 50 feet would be appropriate. She still feels the code is ambiguous with regard to direction of which a structure is viewed from the east.

Supervisor Corcoran read the following correspondence from Scenic Hudson which is incorporated into the minutes as follows:



SCENIC HUDSON, INC.
85 Civic Center Plaza
Suite 300
Poughkeepsie, NY 12601
Tel: 845 473 4440
Fax: 845 473 2648
ScenicHudson.org

April 22, 2024

Via Email

Scott Corcoran, Supervisor
And members of the Town Board
Town of Board of Marlborough
21 Milton Turnpike, Suite 200
Milton, NY 12547
supervisor@marlboroughny.us

Re: Ridgeline Protection Law Amendments

Dear Supervisor Corcoran and members of the Town Board:

Scenic Hudson commends the Town Board for responding to public comment on the original proposal to amend the Town of Marlborough's Ridgeline and Steep Slope Protection Law. We write today in response to the latest proposed amendment as announced at the April 8th Town Board meeting. We offer the suggestions below in the spirit of assisting the Town's desire to protect its ridgelines and steep slopes in a manner that applicants will find clear and flexible.

While the updated proposal would introduce important protections regulating lighting and the use of reflective materials on the ridge, it would still eliminate the current buffer zone between the crest of the ridgeline and the highest point of any new construction. We remain strongly in favor of including a numerical elevation buffer both to ensure appropriate protectiveness and to create a clearly understood standard for approving new construction.

The current law provides that no structure "shall be located closer than 50 feet in elevation to the ridgeline."¹ In addition, the law prohibits any disturbance within that 50-foot buffer zone, except in cases where a necessary access driveway cannot reasonably be located outside of that area.² This provision is comparable to similar elevation buffers imposed by other municipalities in the region to conserve sensitive ridgeline areas, including Amenia³ in Dutchess County and Hillsdale⁴ in Columbia County. The proposed amendment would eliminate this 50-foot buffer zone entirely.

Instead, the amended law would only require that the highest point of any construction not extend above the highest elevation of the ridgeline "as viewed from the East as determined by the Town Engineer and the Town Code Enforcement Officer." Without a clearly defined buffer zone, the amended law would

¹ Town of Marlborough, NY Code § 155-41.1(F)(4).

² *Id.* at § 155-41.1(F)(4)(b).

³ Town of Amenia, NY Code § 121-14.1(F)(4).

⁴ Town of Hillsdale, NY Code § 245-31(7)(d).



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Fax: 845 473 2648
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attempt to prohibit "disturbance of the tree line area above the highest points of the structure and the highest point of the Ridgeline."

We understand that concerns have been raised regarding ambiguous language in the current law that interferes with effective enforcement. However, it appears that the amended law would be equally, if not more, vulnerable to inconsistent interpretation. Whether or not a building of a certain height would appear to extend above the ridgeline will be impacted by the observer's location, their viewing angle, the current leaf cover, and other conditions subject to variation. Moreover, leaving the Town Engineer and Code Enforcement Officer without a consistent numerical standard to apply is likely to raise additional concerns that the law will be enforced inconsistently and risks creating confusion for property owners regarding what projects will be ruled acceptable. It is likewise unclear how the "tree line area" mentioned in the amended § 155-41.1(F)(4)(b) will be measured consistently. For example, it will likely be difficult for landowners attempting to measure from the tops of structures on their property to determine whether their activities will have an impact on the "tree line" as seen from more distant viewpoints.

What is clear is that the proposed change would open significantly more of Marlborough's ridgeline to development. A structure with a low enough height could conceivably be built almost on the top of the ridge, so long as its highest point remained below the crest. Removing the specific numerical guideline currently imposed by the law would risk creating further uncertainty in enforcement and remove key protections for these sensitive areas.

The current law reflects a strong intent to protect Marlborough's ridgelines and steep slopes for "the safety and welfare of the citizens of the town."⁵ While the current proposal's additional construction standards reflect the Town Board's ongoing commitment to addressing public input, we still strongly believe that modifying or clarifying the existing elevation buffer will most effectively ensure that the law is unambiguous and protective of Marlborough's natural areas.

We hope that the Town Board considers these comments, and takes steps to provide additional protection and clarity prior to making its determination.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johnathan Clark".

Johnathan Clark, Esq.
Advocacy Attorney

⁵ See Resolution 103 of 2005, Marlborough, NY, (Oct. 11, 2005).

Councilman Cauchi made a motion to close the public hearing at 7:18 p.m. Motion seconded by Councilwoman Sessa.

*Respectfully submitted,
Danielle Cherubini
Deputy Town Clerk*