

ORDINANCE NO. 2019-03

AN ORDINANCE OF THE BOROUGH OF KENILWORTH AMENDING THE EXISTING CHAPTER 120 LAND USE PART 3 "ZONING", ARTICLE 22 "GENERAL REGULATIONS, EXCEPTIONS AND MODIFICATIONS", ADDING ITEM 16 "BUILDING REQUIREMENTS" AND ITEM 17 "SECURING THE CONSTRUCTION/RENOVATION SITE" WITHIN THE BOROUGH OF KENILWORTH, COUNTY OF UNION, STATE OF NEW JERSEY

Purpose:

The purpose of this Ordinance is to amend Chapter 120 LAND USE ORDINANCE whereby the Borough Council seeks to Ordinance to establish elevation levels for flood prevention above the seasonal high water table for lowest floors of new buildings and establish fencing and other safety precautions at construction sites.

BE IT HEREBY ORDAINED by the Council of the Borough of Kenilworth, County of Union, State of New Jersey as follows:

NOW THEREFORE, Chapter 120 "Land Use", Part 3 "Zoning", Article 22, item 16 "Building Requirements", be added to the Borough Code, as follows:

120-22.16 BUILDING REQUIREMENTS

- A. Prior to a building permit being issued for any new building, building addition, or building alteration that involves construction of a new foundation for any use, the owner shall demonstrate, to the satisfaction of the Borough Engineer, that any subsurface floor is at an elevation of a minimum of two feet (2') above the seasonal high water table (SHWT) and that no footing drain or under-drain system shall be less than two feet (2') above the SHWT. For the purpose of this section, subsurface shall be defined as any part of a building that is below existing grade.
- B. The SHWT elevation shall be certified by a licensed professional engineer as described in N.J.A.C. 7:9-5.8. Profile pits are required at the location of the proposed foundation. One profile pit 5,000 square feet of building footprint area is required.
- C. Profile pits shall be provided as described N.J.A.C. 7:9-5.8.(e) as follows:
 1. Profile pits shall be excavated, if possible, to a minimum depth of ten feet (10') below the existing ground surface or to solid bedrock, where encountered. If the profile pit becomes unstable due to lack of soil cohesion or the presence of groundwater, or both, the pit may be terminated at a depth less than feet (10') and soil evaluation below the depth of the pit may be carried out by means of three or more soil borings, performed as prescribed in N.J.A.C. 7:9-5.8.(f). The depth of the soil evaluation shall never be less than two feet (2') below the proposed lowest subsurface floor elevation.
 2. It is recommended that persons performing soil evaluation not enter into portions of a soil profile pit which have been excavated to depths greater than five feet (5') below the surrounding ground surface. It is the responsibility of persons performing or witnessing soil evaluation to comply with all applicable Federal, State and local laws and regulations governing occupational safety.
 3. In soil profile pits and borings, the following characteristics of each recognizable soil horizon or substratum (not including rock substrata) shall be determined:

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- i. Depth and thickness of horizon;
- ii. Soil color, using the Munsell system of classification which includes an alphanumeric symbol together with a descriptive color name;
- iii. Estimated soil textural class, using the USDA system of classification;
- iv. Estimated volume percentage of coarse fragment, if present;
- v. Abundance, size and contrast of mottles, if present;
- vi. Soil structural class (soil profile pits only); and
- vii. Soil consistence.

4. Terminology for soil logs shall be as described in N.J.A.C. 7:9A-5.3. Alternate methods may be used as approved by the Borough Engineer.

- D. Profile pits and soil borings are required to be witnessed by the Borough. A notice of not less than 48 hours shall be provided. A witness fee of \$300.00 per profile pit or soil boring is required.
- E. The elevation of the SHWT shall be determined as described in N.J.A.C. 7:9-5.8 as follows:
 1. Where mottling is observed, at any season of the year, the SHWT shall be taken as the highest level at which mottling is observed, except when the water table is observed at a level higher than the level of the mottling.
 2. Where mottling is not observed, the SHWT shall be determined based upon either of the following methods:
 - i. During the months of January through April, inclusive, water levels may be measured directly within soil profile pits or borings. Whenever the Borough determines that there has been a significant departure from normal climatic conditions the Borough may, with due notice to the administrative authority, lengthen or shorten the period allowed for direct measurement during any given year. In low lying coastal areas where groundwater levels fluctuate with the tides, measurements shall be taken at the time of highest groundwater elevation in response to tidal fluctuation; or
 - ii. During other times of the year, the depth to the SHWT may be obtained from the Soil Conservation Service County Soil Survey Report provided that the soil series present at the site is identified based upon comparison of soil profile morphology observed within a soil profile pit, and the soil profile description provided for the soil series in question within the County Soil Survey Report. In cases where the SHWT is shown as a range of elevations in the County Soil Survey Report, the highest elevation of the range shall be used as the seasonal high water table. The highest elevation determined by this method

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shall be decreased by a factor of 1.5. For example a SHWT depth of six feet (6') shall be reduced to four feet (4').

3. When the determination of SHWT must be made in disturbed ground recognized as prescribed in N.J.A.C. 7:9A-5.10, direct observation during the months of January through April inclusive is the only method which shall be permitted.

NOW THEREFORE, Chapter 120 "Land Use", Part 3 "Zoning", Article 22, item 17 "Securing the Construction/Renovation Site", be added to the Borough Code, as follows:

120-22.17 SECURING THE CONSTRUCTION/RENOVATION SITE

- (a) It shall be the responsibility of the Contractor working a Construction/Renovation Site or the Owner of a Construction/Renovation Site to secure the Construction/Renovation Site with a lockable fence to protect the health and safety of the public. The Borough Engineer or the Construction Official, in the reasonable exercise of their discretion, shall determine the type of fence as to material, height, type, fence locking mechanism, and the type of machinery that requires fencing and the size of the hole, cavity or mound that requires fencing so as to protect the health and safety of the public. The fence shall be installed prior to the Commencement of Work and shall remain and be maintained on the Construction/Renovation Site until there is no longer a hole, cavity or mound, until there is no machinery or until a structure is closed, whichever is later. For subdivisions and new single-family construction, it shall be the responsibility of the Contractor/Owner to install a fence around the entire perimeter of the construction area. Fencing is to remain closed/locked/secured when no personnel are at the construction site or no construction activities are taking place.
- (b) Fences shall be constructed and erected according to trade standards and of adequate strength to resist wind pressures, and for purposes of preventing unauthorized entry. Fences shall not be constructed of barbed wire, razor ribbon, metal spikes, electrified materials or other dangerous materials. Affixed to the fence shall be two signs, the first sign shall read, "NO TRESPASSING", and the second sign shall read "DANGER".
- (c) The Construction/Renovation Site must be closed, and fence locked, as set forth in this Ordinance at the end of each work day and whenever the Construction / Renovation Site is not attended to by either the Owner or Contractor.
- (d) Fences shall not block or prohibit access to fire hydrants or fire department suppression system/standpipe system connections.
- (e) Fences erected on Construction/Renovation Sites pursuant to this subsection 22.17 shall be considered temporary fences; and nothing within this subsection 22.17 shall be construed to replace, amend or supersede the provisions of the Borough's Land Use Code at Chapter 120, subsection 22.10 (Vision Clearance at Intersections).

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Severability

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall continue in full force and effect, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Effective Date

This Ordinance shall take effect twenty (20) days after the first publication thereof after final passage as provided by law.

Anthony DeLuca, Jr., Mayor

INTRODUCTION						COUNCILPERSON	FINAL ADOPTION				
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.
		X				KAY CECERI			X		
					X	LAWRENCE CLEMENTI			X		
X		X				MARK DAVID		X	X		
		X				LINDA KARLOVITCH			X		
	X	X				GERRY LAUDATI			X		
				X		ROBERT SCHIELKE	X		X		
Introduced: April 24, 2019			I hereby certify the above ordinance was adopted by the Borough Council of the Borough of Kenilworth, County of Union, State of New Jersey on the aforementioned date.								
Final Adoption: May 22, 2019											
_____ Laura Reinertsen, Borough Clerk											