

November 14, 2019

Task 2: Review Hillside Protection Overlay language for clarity and accuracy, specifically with regard to enforcement.

Background

The purpose, applicability, and standards for the Hillside Protection Overlay District (HP) are set forth in **Article 8** of the new zoning ordinance. Section 8.9, Hillside Protection, of the new zoning ordinance is provided below for your reference. The overlay district is mapped on the new zoning map to include areas that have an average slope of more than 15%. Within the overlay district, density and grading are limited as the slope increases. With the implementation of the new zoning ordinance, development on property located within the Hillside Protection Overlay will be subject to site plan review to determine the density (if applicable) and grading limits, which are established following the completion of a slope analysis of the property. The slope analysis calculates the area (acreage) and the number of dwelling units permitted (density) within each of the 4 slope categories (see Table 8.6 below). The number of dwelling units permitted in each slope category are added together to obtain the number of dwelling units permitted on the entire property. The same approach is taken to calculate the land disturbance permitted on the property.

Current Application of the Hillside Protection Plan

Under the current zoning ordinance, the recommendations of the **Hillside Protection Plan** (HPP) are used to guide staff recommendations on residential rezonings, primarily those for planned residential districts, and in the review of use on review applications. The slope analysis for properties is done by Planning GIS staff, with the results included in staff reports and guiding staff recommendations. The Planning Commission and City Council may or may not accept the recommendations of staff. With the HPP recommendations serving as guidelines rather than mandates, staff has the ability to be flexible in the application of the guidelines, particularly with regard to use on review applications. In reviewing these applications and making recommendations, staff has the flexibility to balance the goals of the HPP with the benefits to the community of the proposed development. This flexibility can result in tradeoffs, such

as the allowance for a minor increase in disturbed area in exchange for additional landscaping or other site or community amenities.

Enforcement of the Hillside Protection Overlay Zoning District

Standard Applications

Under the new zoning ordinance, the density limitations (residential zoning districts only) and grading limitations (all zoning districts) recommended by the HPP become mandatory with the exceptions noted in Section 8.9.B. Administration of the Hillside Protection Overlay District (HP) and the application of its provisions to standard development applications are delegated to the Plans Review and Inspections Department. A slope analysis of properties located within the overlay and proposed for development will continue to be the first step in the evaluation of development proposals for these properties. Density and land disturbance limitations will be determined based upon the slope analysis. Compliance with the Hillside Protection Overlay restrictions will be enforced through the site plan review process with the Plans Review and Inspections Department.

Rezoning and Special Use Applications

Planning will use the Hillside Protection Overlay standards in the review of applications for rezonings and special uses, with the density and grading limitations being mandates rather than recommendations. These standards are mandatory and must be adhered to in the development of property located within the Hillside Protection Overlay Unless a variance is granted by the Board of Zoning Appeals providing relief from the density and land disturbance limitations or a deviation from the grading and density limitations is approved through a review of the project by the Planning Commission as authorized by the new zoning ordinance.

Deviation Requests

Section 8.9.C provides the option for review by the Planning Commission of a development project proposed in the Hillside Protection Overlay through the same process as established for a special use. The Planning Commission is authorized to approve deviations from the Hillside Protection Overlay standards for projects that request deviations and are reviewed through this process. Meetings at which these requests would be considered would be noticed (legal ad, sign on property, postcards to adjacent property owners, agenda on website) and a public hearing would be held to allow for public comment and input

on the request. Through this process, the merits of the project and the community benefits would be evaluated and balanced with the requested deviation(s) from the hillside protection standards. The Planning Commission is not limited in the degree or type of deviations(s) from the hillside protection standards that could be approved. Any decision of the Planning Commission could be appealed to City Council.

8.9 HP HILLSIDE PROTECTION OVERLAY ZONING DISTRICT

A. Purpose

Hillsides constitute significant natural topographic features of the City. In addition, when development occurs on hillsides, there are potential serious consequences, such as increased erosion, fire, or flood hazards, and property damage from extensive soils slippage and subsidence. In order to protect hillsides and hillside development, the HP Hillside Protection Overlay District is established.

B. Applicability

The HP Overlay regulations apply to all development on lots in all districts within the HP Overlay District with the following exceptions:

- 1.** Legally existing structures existing as of the effective date of this Code.
- 2.** Lots of record for single-family dwellings existing as of the effective date of this Code. This exception applies only where the lot of record is one (1) acre or less.
- 3.** Lots that have been issued a grading permit prior to the effective date of this Code.
- 4.** Lots that have been previously legally disturbed or developed would also be excepted provided that any new/additional disturbance does not exceed the previously-disturbed area or the maximum land disturbance permitted by Table 8.6 below, whichever is greater. For the purposes of this section, disturbance shall mean any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation.

C. Density and Land Disturbance Limitations

Table 8-6: Density and Land Disturbance Limitations establishes the maximum residential density and maximum land disturbance of the site for residential districts that are within the HP Overlay District. Only the maximum land disturbance is applicable in non-residential districts that are within the HP Overlay. All other dimensional regulations apply unless specifically modified by the HP Overlay District. The Knoxville-Knox County Planning Commission, following the procedure in Article 16.2.D. and applying the guidelines in the Knoxville-Knox County Hillside and Ridgetop Protection Plan, may issue a Certificate of Appropriateness for any application for any deviation from Article 8.9.

Table 8-6: Density and Land Disturbance Limitations

Percent of Slope	Maximum Density	Maximum Land Disturbance
Less than 15%	Maximum density permitted by district	100%
15% up to 25%	2 du/ac	50%
More than 25% up to 40%	0.5 du/ac	20%
More than 40%	0.2 du/ac	10%

D. Site Plan Review

All development within the HP Overlay District is subject to site plan review.

Section 16.2.D. (Process for Review and Approval of Requests for Deviations from Hillside Protection Standards)

D. Procedure

An application for a special use must be filed with the Knoxville-Knox County Planning staff. Once it is determined that the application is complete, the staff will schedule the application for consideration by the Knoxville-Knox County Planning Commission.

- 1.** Upon receipt of a complete application, the Knoxville-Knox County Planning Commission will consider the special use at a public hearing.
- 2.** The Knoxville-Knox County Planning Commission must evaluate the application based upon the evidence presented at the public hearing, pursuant to the approval standards of this section. The Knoxville-Knox County Planning Commission must either approve, approve with conditions, or deny the special use.