

ORDINANCE NUMBER 2018-15

AN ORDINANCE OF THE TOWN OF PARADISE VALLEY, ARIZONA AMENDING THE PARADISE VALLEY ZONING ORDINANCE, ARTICLE XXII, HILLSIDE DEVELOPMENT REGULATIONS

WHEREAS, Article III Amendments, Section 306, establishes the authority and procedures for amending the Zoning Ordinance; and

WHEREAS, the Town Council desires to make some technical corrections to Article XXII, the Hillside Development Regulations, to provide consistency with other recently adopted changes to the Town Code;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PARADISE VALLEY, ARIZONA AS FOLLOWS:

Section 1. Article XXII, Hillside Development Regulations, Section 2203 is hereby amended (with deletions shown as ~~strike throughs~~ and additions shown in **bold**):

Section 2203 HILLSIDE DEFINITIONS. Where definitions are not defined in this section, the definitions in Article II shall control. For purposes of this Article, the terms contained in the Article shall have the following meanings:

Acre - 43,560 square feet as measured on the horizontal plane.

Alter the Mountain Top Ridge Line – Any Development on the Primary Ridge Line shown on **FIGURE 3** that disturbs or alters the natural mountain top profile.

Applicant – The person or entity desiring to improve or otherwise engage in any Development of property in the Hillside Development Area, including the owner of the property and any agents acting on behalf of the owner.

Building Pad – The total area under roof of all structures proposed for the property.

Building Pad Slope - The percent of slope measured at right angles to the natural contours along a line passing through the center of the proposed building and terminating at the ends of the Disturbed Area limits of the Building Site.

Building Site - That portion of the Lot or parcel, excluding driveways, upon which a building and appurtenances are to be placed or are already existing, including but not limited to; adequate areas for parking, turnaround areas not separated by driveways, sewage disposal, clearance, and proper drainage which conforms to the requirements of the provisions of this Article and the Town Code.

Cantilever – A rigid structural element of a building, deck, or walking surface that is anchored at one end of a support from which it protrudes more than two feet. This excludes roof overhangs that do not have a walking surface above them.

Chair - The chair of the Hillside Building Committee as selected by the members of the Hillside Building Committee pursuant to Town Code Section 2-5-6(D).

Code - The Code of Ordinances of the Town of Paradise Valley, Arizona in effect as of the date of these Regulations and as may be amended.

Commission - The Planning and Zoning Commission of the Town of Paradise Valley.

Committee or Hillside Building Committee - The Hillside Building Committee of the Town of Paradise Valley as constituted pursuant to Town Code Section 2-5-6.

Conservation - Retention or acquisition of land for the purpose of preservation in a natural state.

Conservation Easement - A permanent open space easement granted to the Town or to a public land trust to prohibit Development of property including roads and utilities and to retain and preserve the land for the scenic enjoyment of the general public.

Council - The Town Council of the Town of Paradise Valley.

Cut - The land surface which is shaped through the removal of soil, rock, or other materials.

Development - Any Grading, excavation or construction.

Disturbed Area - That area of natural ground excluding the Footprint of the residence that has been or is proposed to be altered through Grading, Cut and Fill, removal of natural vegetation, placement of material, trenching, or by any means that causes a change in the undisturbed natural surface of the land or natural vegetation (Please reference Section 2207.III).

Driveway – A paved or unpaved area providing access to the property, located between the right-of-way and the parking area or garage of the property.

Fill - The deposit of soil, rock, or other materials placed by man.

Finished Grade - The final grade and elevation of the ground surface after Grading is completed.

Footprint - That area of the residence measured from the outside walls (excluding any overhanging portions) which includes indoor uses such as attached garage, carports, utility room, laundry, etc., but excludes outdoor uses such as patios and breezeways.

Grading - Any excavating, or filling or combination thereof, including the conditions resulting from any excavation or Fill.

Hillside Development Area - Those areas marked in **FIGURE 1** and to all lands where the natural terrain under the building pad has a slope of ten percent (10%) or greater, whether shown in FIGURE 1 or not. However, a 10% or greater slope, in an area not denoted on Figure 1, created by a natural wash on land that otherwise would not be classified as hillside land shall be exempt from the hillside regulations.

Hillside Wash – A natural watercourse at least two feet deep from the top of the bank and measuring at least five feet wide at the top of the bank.

Lot - A legally subdivided parcel of land occupied or intended for occupancy by one main building, together with any accessory buildings including the open spaces required of the Hillside Regulations and having adequate frontage on a public or private street.

Natural Grade - The undisturbed natural surface of the land, including washes.

Off-Site Storm Water – Water that originates during precipitation events that comes from other parcels and flows onto the subject Lot.

On-Site Storm Water - Water that originates during precipitation events that falls directly onto the subject Lot.

Primary Ridge Line - That line running from the highest point along the mountain top downward along a divide to the 1500 foot mean sea level elevation as shown on **FIGURE 3**.

Raised Outdoor Living Area – Uncovered areas such as porches, decks, platforms, and retained areas which extend three (3) feet or more above grade.

Retaining Wall - A wall or terraced combination of walls, including, planters, negative edge pools, used solely to retain more than eighteen inches (18") of material, water, or to support or to provide a foundation or wall for a building.

Raw Spill Slope – An area created by causing or allowing earth or other material to fall, flow or run down the slope, thereby creating a change in the natural appearance and topography.

Sheet Flow – ~~A shallow and wide overland flow of water.~~

Significant Natural Features - Include Hillside Washes, Significant Vegetation, and Significant Rock Outcroppings provided these features are in their undisturbed natural state.

Significant Rock Outcroppings - Any surface rock or group formation of rocks covering an area of 200 square feet or larger or any surface rock formation with a height greater than ten feet from the lowest surrounding grade.

Significant Vegetation - A living single tree or cactus having a height greater than 15 feet or three or more trees or cacti, located within a radius of 15 feet, each having a height greater than 12 feet.

Storm Drainage Design Manual – The manual adopted pursuant to Town Code Section 5-10-3.

Steep Slopes—Slopes 20% or greater within a 200' radius of the proposed Building Site.

Subsurface or Seismic Damage—Knowledge of subsurface or seismic damage that may have resulted from adjacent or previous development and should be verified through seismic refraction survey.

Subterranean—That space which lies totally underground, and which cannot be seen from outside the exterior perimeter of the structure on the same horizontal plane which originates at that point where the building intersects the ground.

Town - The Town of Paradise Valley.

Unique Topography—Non-uniform grades throughout the lot.

Veneered Rock Slope – A group formation of rocks of similar colors that blend in with the surrounding natural setting.

View Fencing (View Fence) – Fencing that is constructed in such a manner as to achieve 80% overall openness.

Section 2. Article XXII, Hillside Development Regulations, Section 2205, is hereby amended (with deletions shown as ~~strike throughs~~ and additions shown in **bold**):

Section 2205 **REVIEW AND DEVELOPMENT PROCESS.** The Hillside Building Committee shall review Development plans, as outlined in Section 2204, prior to the issuance of a building, Grading or other Development permit. The review and development process consists of up to four stages, depending upon the nature and scope of the proposed Development. In addition, safety reviews and measures may be required as outlined in Section 2205.VI.

- I. **Pre-Application Review:** All applications for development or building and construction within Hillside Development Areas are required to submit a pre-application to determine the need for all such applications to comply with certain requirements pursuant to the Hillside Development Regulations and the Hillside Safety Improvement Measures and Process Manual. The Applicant shall submit a completed pre-application prior to submitting an Administrative Hillside Chair Review, Combined Hillside Building Committee Review, Concept Plan Review, or Formal Hillside Building Committee Review application.
- III. Administrative Hillside Chair Review: The Applicant shall submit a completed application and the required fees to the Town. Proposed accessory structures and additions may be reviewed by the Hillside Building Committee Chair provided the proposed improvements do not: (i) exceed or increase the building height of the main residence; (ii) increase the existing building Footprint by more than 100 square feet; (iii) create more than 100 square feet of additional Disturbed Area; (iv) increase the length of

walls by more than 15 lineal feet; (v) propose a significant addition of exterior lighting; or (vi) create a significant adverse visual impact. The Chair shall review the submittal for compliance with the goals, purposes, and specific criteria of this ordinance.

- HHIII. Combined Hillside Building Committee Review Meeting:** The Applicant shall submit all materials outlined in Section 2206 (III) to the Town. The Hillside Building Committee shall then review the submittal for compliance with the goals, purposes, and specific criteria of this ordinance and either approve, approve with stipulations or changes, or deny the submittal. Minor remodel/additions, site improvements (such as, but not limited to, solar panels, pool and spa additions), shall be reviewed as a Combined Hillside Committee Review.
- HHIV. Concept Plan Review Meeting:** The Applicant, along with their architect and engineer shall submit a completed application and the required fees, to the Town Manager or designee at the time they request a concept plan review meeting (pre-hillside meeting) with the Hillside Building Committee. All new single-family residences and major remodel/additions require a Concept Plan Review Meeting. The purpose of this meeting is to discuss, review, and give suggestions and guidance to the Applicant regarding the proposed development including: the location of the building pad and accessory uses; how these relate to Significant Natural Features; the preservation of existing vegetation; Grading concepts and their adaptation to the natural hillside topography; and how the requirements pursuant to these hillside regulations and purpose statement will guide the proposed Development.
- HHV. Formal Hillside Building Committee Review Meeting:** At this stage, in addition to those materials previously submitted, the Applicant shall submit all materials outlined in Section 2206 (III) to the Town Manager or designee. The Hillside Building Committee shall then review the submittal for compliance with the goals, purposes, and specific criteria of this ordinance and either approve, approve with stipulations or changes, or deny the submittal. All new single-family residences and major remodel/additions require a Formal Hillside Committee Review Meeting.
- HHVI. Safety Measures and Reviews.** Refer to Chapter 5 of the Town Code for Safety Measure and Review Requirements.
- HHVII. Building Permit Review:** The final construction plans submitted to the Town Community Development Department for review and approval shall comply with the final approval of the Hillside Building Committee. Any variation from excavation and Grading requirements within the Town Code must be accompanied by a soils engineering report from a testing laboratory or geological engineer approved by the Town Engineer. No site preparation or construction shall commence until the Town has issued a Grading, demolition, or building permit.
- A. The plans, including any safety measures and reports, for any Development in the Hillside Development Area, must be approved by the Town and appropriate legal permit(s) issued before any clearing and grubbing, Grading, bulldozing, blasting, or movement of earth is commenced. Building permit applications must be

submitted within a twelve month period after the date of approval from the Hillside Building Committee or Hillside Building Committee Chair. If a building permit application is not submitted within a twelve month period, the approval shall be null and void. If appropriate, based upon circumstances outside the control of the Applicant, a one-time six (6) month extension may be granted by the Town Manager or designee. If the permit expires, at no time after that expiration period does the applicant have any vested prior approval rights.

- B. When a building, demolition, or Grading permit is required under the provisions of these regulations or any other provision of the Town Code for new single family residences, major remodels or additions, major site improvements, and minor remodel/additions and minor site improvements, the Applicant shall first provide the Town with a form of financial assurance, and a right of entry and temporary construction easement agreement, acceptable to the Town Attorney.

The financial assurance shall be in an amount sufficient to place the Town in an assured position to do or to contract to be done the necessary work to cover, restore, and landscape exposed fills and cuts to blend with the surrounding natural terrain and to restore the property back to natural grade to the extent possible. The financial assurance shall be calculated in a dollar amount equal to thirty-five (35) times the Grading Permit Fee specified in the Town's Master Fee Schedule or in such greater amount as deemed appropriate by the Hillside Building Committee and Town Manager or designee with the Committee to evaluate a higher fee when there is demolition (with or without Cut and Fill) or the building site has loose fill or boulders, significant washes or drainage ways, or steep and difficult to access terrain that would dictate the need for a higher assurance amount in order to complete restoration of a particularly difficult hillside property site.

The Grading permit for new single-family residences, major remodel/additions, and major site improvements shall be based upon the total number of cubic yards of Cut and Fill needed to restore the property back to Natural Grade. The Grading permit for minor remodel/additions and minor site improvements shall be based upon the total number of cubic yards of Cut and Fill associated with the project that is needed to restore the affected portions of the property back to Natural Grade.

In the event that work or Development on the site has commenced and then subsequently been abandoned for more than six (6) months the building, demolition, or Grading permit shall be revoked and become void; the financial assurance shall be forfeited to the Town at that time; and the financial assurance may be used by the Town, in its discretion, in such amounts as are necessary to restore the hillside property construction site to its original condition (based upon the scope of work - new single family residence, major remodel/additions, major site improvements or minor remodel/additions and minor site improvements).

Further, in the event that at any time during building, demolition, or Grading (or other construction at the site), unhealthy or unsafe conditions arise or are created by the Applicant and are not promptly addressed or remediated so as to cure the unsafe condition, the financial assurance may be used by the Town to address and remediate an unhealthy or unsafe condition. The Applicant or property owner shall, upon reasonable notice from the Town, provide access to the property for the purpose of restoration of the construction site to its original condition (based upon the scope of work - new single-family residence, major remodel/additions, major site improvements or minor remodel/additions and minor site improvements) or to address any health or safety conditions that arise or are created by the Applicant. In the event that building, demolition, or Grading has not commenced within six months from the date of issuance of the building, demolition, or Grading permit, the plan approval and permit shall expire and the financial assurance shall be returned or cancelled.

- VIII. Issuance of Certificate of Occupancy: Prior to the issuance of any Certificate of Occupancy for any building constructed pursuant to these Regulations, the applicant shall obtain from the Town certification of compliance with this Article. For projects that are ready for Certificate of Occupancy (C of O) or Certificate of Completion (C of C) between the months of May 15th and September 15th, the applicant may request a temporary deferment on the installation of the landscaping (in which the C of O or C of C may be released without the installation of the landscaping). The temporary landscape deferment is subject to the following conditions:
- A. 4. The landscaping shall be installed in accordance with the approved plan,
 - B. 2. The Town will hold the financial assurance until the landscaping is installed, and
 - C. 3. The landscaping must receive an approved inspection by the Town within five (5) months from the issuance of the C of O or C of C.
- IX. Expiration of Applications. **A hillside application that fails to receive Hillside Building Committee or Hillside Building Committee Chair approval within eighteen (18) months from the date of hillside application submittal is null and void. Thereafter, the Applicant must file a new application (along with the applicable application fee and submittal requirements) and the new application is subject to the ordinance in effect at the time of the new application.**
- A. Expired applications that did not receive Hillside Building Committee review may request a partial refund of 80% of the original application fee. Expired applications that received Hillside Building Committee review (that is, a Concept Plan Review) are not subject to a refund.
 - B. An applicant may apply for a one-time six (6) month automatic extension. The extension is measured from the original date of application expiration. After such one-time extension, the Town Manager or designee may, in his or her sole discretion, extend the time if the Town Manager or designee finds that the Applicant establishes, to the satisfaction of the Town Manager or designee, a

hardship or other circumstance beyond the Applicant's control that has led to the delay. The Town Manager or designee may, in his or her sole discretion, then grant up to two (2) additional "extensions" for periods not exceeding one hundred eighty (180) days each, provided, again, that the Applicant establishes, to the satisfaction of the Town Manager or designee, a hardship or other circumstance beyond the Applicant's control that has led to the additional delay.

- C. All requests for extensions shall be in writing and shall specify the hardship or other circumstance beyond the Applicant's control that justifies the extension request.
- D. The application expiration shall be tolled during the time period of any court action that delays the application.
- E. For applications filed prior to June 21, 2018, the date of June 21, 2018 shall be used as the application submittal date for purposes of expiration of all hillside applications.

Section 3. Article XXII, Hillside Development Regulations, Section 2207.V., is hereby amended (with deletions shown as ~~strikethroughs~~ and additions shown in **bold**):

V. GRADING AND DRAINAGE STANDARDS.

- A. There shall be no clearing, grubbing, Grading, importing or stockpiling of Fill material on, or to, any site prior to approval of such Development by the Hillside Building Committee and approval of a Grading plan by the Town, unless such clearing, grubbing, or Grading, is required by the Town for public safety purposes. If applicable, approval of a Grading plan and drainage report prepared by a registered Engineer may be required for Town review and approval.
- B. The maximum depth of Fill shall not exceed 7.5 feet except beneath the Footprint of the main residence. All exposed Disturbed Area Fill shall be contained behind Retaining Walls or covered with a natural rock veneer and treated with an aging agent and landscaped with indigenous plant material.
- C. Veneered Rock Slopes may be allowed provided that they are approved by the Hillside Building Committee, and:
 - 1. The vertical height of the Veneered Rock Slope does not exceed the vertical height of the exposed Cut with the base of the Veneered Rock Slope structurally engineered for stability.
 - 2. The Veneered Rock Slope does not exceed a one to one slope.

3. Retaining Walls used to limit the height of the Veneered Rock Slope are color treated or veneered to blend in with the surrounding natural colors.
- D. Raw Spill Slopes are prohibited. Any violation will be subject to a stop work order until the spill slope is removed, restored to its Natural Grade, re-vegetated and approved by the Town.
- E. Storm water requirements for Off-Site **Storm Water** and On-Site Storm ~~water~~**Water** shall be per the ~~Town of Paradise Valley~~ Storm Drainage Design Manual.
- F. A Hillside Wash may be realigned in accordance with Chapter 5 of the Town Code and ~~The Town's~~ **the** Storm Drainage Design Manual.
- G. Washes located on a property shall be maintained in accordance with Chapter 5 and Chapter 8 of the Town Code and the ~~Town's~~ Storm Drainage Design Manual.

Section 4. Article XXII, Hillside Development Regulations, Section 2210, is hereby amended (with deletions shown as ~~strike throughs~~ and additions shown in **bold**):

Section 2210. REMOVAL OF PROPERTY FROM HILLSIDE DEVELOPMENT AREA

The Hillside Building Committee and Town Council shall review ~~plans for~~ any request to remove a property from the Hillside Development Area. This process **for requesting a removal of a property from the Hillside Development Area** applies **only** to properties that are ~~designated~~ within a **designated** Hillside Development Area ~~and that~~ have a slope of less than ten percent (10%). If a property owner ~~elects requests~~ to remove ~~the a~~ property from the Hillside Development Area, the following **process shall be used** applies:

1. The applicant must provide documentation that the property has a Building Pad Slope and site slope of less than ten percent (10%) in accordance with Section 2202 and Section 2209B.
2. The request will be reviewed by the Hillside Building Committee, which will make a recommendation **either for** ~~of~~ approval, approval with stipulations, or denial **of the request** to remove the property from the Hillside Development Area.
3. The applicant shall have no other code violations;
4. The Town Council ~~will either~~ **may, in its sole discretion, either** approve, deny, or approve the request with stipulations, which may include eliminating any non-conformities.

Section 5. Any person found guilty of violating any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500, or imprisonment not to exceed six months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as described. A violation of the provisions of this Ordinance or amendments thereto may constitute a civil offense, and any person who is served with a citation charging such violation and who admits, or is found responsible for such offense shall be liable to pay to the Town a civil sanction in

an amount not to exceed seven hundred fifty dollars. Each day that a violation continues shall be a separate offense punishable as described.

Section 6. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 7. This Ordinance shall become effective in 30 days.

Section 8. In accordance with Article II, Sections 1 and 2, Constitution of Arizona, the Town Council has considered the individual property rights and personal liberties of the residents of the Town before adopting this ordinance.

PASSED AND ADOPTED by the Mayor and Council of the Town of Paradise Valley, Arizona, this ____ day of September 2018.

Michael Collins, Mayor

ATTEST:

Duncan Miller, Town Clerk

APPROVED AS TO FORM:

Andrew M. Miller, Town Attorney