

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

ORDINANCE NO. 2025-35

ESTABLISHING AN ORDINANCE REQUIRING LOT GRADING PLANS AND AS-BUILT SURVEYS

WHEREAS, Township of Berkeley Heights, in consultation with its Engineer, have a need to obtain grading plans and topographic surveys for newly elevated properties - before and after construction projects begin - to ensure compliance with the Township's grading and elevation requirements; and

WHEREAS, there are four types of plans required in this section: 1) Topographical survey of existing conditions and grades before project begins; 2) lot-grading plan; 3) as-built foundation survey; 4) as-built site survey.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council that:

SECTION I. Section 3.1.4, "Grading Plans," of "Appendix A – Municipal Land Use Procedures Ordinance," "Part 3- General Regulations," "Article 3.1 – Application of General Regulations Applicable to All Districts," of the Township Code of the Township of Berkeley Heights is hereby amended as follows:

Section 3.1.4 – Grading

All lots where fill material is deposited shall have clean fill and/or topsoil deposited which shall be graded to allow complete surface draining of the lot into local storm sewer systems or natural drainage courses. No re-grading of a lot shall be permitted which would create or aggravate water stagnation or a drainage problem on-site or on adjacent properties, or which will violate the provision of the Soil Erosion and Sedimentation Control Act, or the Soil Removal Ordinance of Berkeley Heights. Grading shall be subject to the approval of a lot grading plan and topographic survey of existing, pre-construction conditions submitted pursuant to Section 3.1.12, "Lot Grading Plan," and post-construction as-built surveys pursuant to Section 3.1.13, "As-Built Surveys." ~~limited to areas on an approved site plan or subdivision.~~ Any topsoil disturbed during approved excavation and grading operations shall be re-distributed throughout the site.

SECTION II. Section 3.1.12, "Lot Grading Plan," of "Appendix A – Municipal Land Use Procedures Ordinance," "Part 3- General Regulations," "Article 3.1 – Application of General Regulations Applicable to All Districts," of the Township Code of the Township of Berkeley Heights is created as follows:

Section 3.1.12 – Lot Grading Plan & Topographic Survey

- A. **Applicability. In order to provide against the adverse consequences of uncontrolled surface water drainage and to prevent soil erosion and control sediment deposition associated with land disturbance including but not limited to construction activities,**

ORDINANCE 2025-35

a lot grading plan and topographic survey of pre-construction conditions shall be submitted and approved prior to the issuance of a construction/zoning permit for the following activities:

1. The erection of any new structure, any addition, repair or renovation to an existing structure involving an extension of the foundation of the existing structure, any of which is not shown upon an approved site plan; or
2. Any of the following activities:
 - (a) Land disturbance that changes the elevation of the property.
 - (b) Land disturbance except for the purposes of sod replacement, greater than 500 square feet; or
 - (c) Land disturbance of less than 500 square feet if the project affects any critical areas; or
 - (d) Land disturbance within five feet of the property line that impacts drainage.
3. The demolition of a structure if the land disturbance beyond the footprint of the structure exceeds 500 square feet (excluding the square feet of the structure).

B. Waiver.

1. The Township Engineer may grant a waiver from the requirements of this subsection with respect to an addition to a single-family dwelling if the Township Engineer determines that the addition involves less than 500 square feet of impervious coverage, does not affect any steep slopes or critical areas, and does not require any significant changes in the existing grading of the lot. Any such determination shall be made upon the basis of the construction plans and such further information as may be requested from the owner of the property by the Township Engineer.

C. Lot grading plan & topographic survey details. Prior to the approval of a construction permit, the applicant shall submit a topographic survey and a lot grading plan. The topographic survey shall show the current existing contouring of the land and shall be reviewed and approved by the Township Engineer. The lot grading plan shall show the existing and proposed contouring of the land, along with the proposed final grading of the lot, and shall be reviewed and approved by the Township Engineer in accordance with the provisions of this subsection and more specifically as follows:

1. Prior to the issuance of a Temporary Certificate of Occupancy/Certificate of Occupancy, the applicant shall be required to submit full as-built surveys of the project constructed, signed and sealed by a licensed Professional Land Surveyor, which must include but is not limited to the contours of the newly shaped lot(s).

ORDINANCE 2025-35

2. The lot grading plan shall be prepared by a professional engineer licensed in New Jersey and shall be certified by a licensed surveyor. The lot grading plan shall be drawn to a scale of not less than one inch equals 30 feet, but may be supplemented by a key map of smaller scale, and shall be prepared in sufficient detail to show the following:
 - (a) The existing surface drainage pattern as it affects the subject property and all abutting land; Existing drainage areas of stormwater runoff onto the subject lot shall be fully illustrated on the Lot Grading Plan.
 - (b) The elevation of the street at each limit of the frontage of the subject property and a permanent feature such as a manhole rim or set corner or similar structure;
 - (c) The location of any existing streams, wetlands, wetland buffers, watercourses, riparian buffers ponds, storm sewers or drainage facilities which relate to drainage of surface waters from or to the subject property;
 - (d) Any proposed storm sewers, ditches or other drainage facilities which will receive surface waters from or to the subject property;
 - (e) The proposed location of all surface and subsurface structures for which a construction permit is being sought;
 - (f) Residential garages shall conform to Section 6.3.10.
 - (g) The proposed location of all roof leader drains, driveways, dry wells, underdrains, utility lines below ground and any individual sewage disposal system; all underground structures and piping either proposed or existing shall be illustrated on the lot grading plan.
 - (h) The outer limits of all areas in which any grading or filling is proposed on the subject property;
 - (i) Any proposed changes in the existing surface drainage pattern which will result from the construction proposed for the subject property including any proposed changes on abutting lands;
 - (j) All existing trees with trunks exceeding five inches in diameter measured at a point four feet above the existing ground level, which trees are located within the outer limits of the areas mentioned in Subsection C1(h) above as well as within 10 feet of the outer limits of any such areas.
 - (k) Topography reflecting contours at two-foot intervals and identifying slopes in the following ranges: Less than 15%, 15% to 20%, 20% to 25%, and 25%, and greater land disturbances shall conform to the requirements of the steeply sloping terrain (Section 3.1.11).
 - (l) Top of wall and toe of wall elevations of all proposed retaining walls shall

ORDINANCE 2025-35

be clearly delineated at regular intervals on the plan. Retaining walls shall conform to the requirements set forth in (Section 3.1.11). Retaining walls that involve placement of fill in floodways shall meet the requirements of Section 15.28.050(C)(1) of the Township Code and N.J.A.C. 7:13.

- (m) A letter of interpretation (LOI) from the New Jersey Department of Environmental Protection (NJDEP) shall be obtained if wetlands or wetlands buffers are present on the subject property.
- (n) Appropriate storm drainage facilities shall be provided for protection of downstream properties.
- (o) Any proposed building or structure or attendant protective measures will not impede the flow of surface water through any watercourse. Only a nominal increase in water surface elevation and velocities will be allowed due to construction.
- (p) Any proposed vehicular facilities, including roads, drives or parking areas, shall be so designed that any land disturbances shall not cause erosion. Both the vertical and horizontal alignment of vehicular facilities shall be so designed that hazardous circulation conditions will not be created.
- (q) Any fill placed on the lot shall be properly stabilized and, when found necessary depending upon existing slopes and soil types, supported by retaining walls or other appropriate structures as approved by the Township Engineer.
- (r) All cuts shall be supported by retaining walls or other appropriate retaining structures when, depending upon the nature of the soil characteristics, such structures are found necessary in order to prevent erosion.
- (s) Upon installation of roofing material on a structure, temporary gutters and downspouts should be immediately installed and connected to the drywells, pending installation of any permanent gutters.
- (t) For all lots with proposed disturbance of a steep slope area, the design standards for disturbance of steep slopes shall conform with Section 3.1.11.

D. Fees. Four copies of each required lot grading and topographic survey plan shall be filed with the Township Engineer, together with an application fee as determined below:

1. \$1,000 for a lot grading plan that involves a new or substantially improved principal structure. This fee includes a preliminary site visit, initial review plus one revision, and two site inspections during construction and final inspection for obtaining Temporary Certificate of Occupancy (TCO) of Certificate of Occupancy

ORDINANCE 2025-35

(CO). Additional inspections needed as a result of more plan changes will trigger additional charges of \$50 per substantive revision.

2. \$400 for an addition to an existing structure, accessory structure or land disturbance of over 500 square feet. This fee includes a preliminary site visit, initial review plus one revision, and two site inspections during construction and final inspection for obtaining Temporary Certificate of Occupancy (TCO) of Certificate of Occupancy (CO). Additional inspections needed as a result of more plan changes will trigger additional charges of \$50 per substantive revision.
 3. In addition to standard lot grading fees, all applications proposing to disturb steep slopes shall also pay an inspection fee for Township officials to monitor construction activities. The initial inspection fee shall be \$0.25 per square foot of steep slope disturbance. Any violations of the approved lot grading plan may result in additional inspection fees being imposed.
 4. All fees – including those required for additional inspections - shall be paid to the Township prior to the issuance of a certificate of occupancy for the new structure or within 30 days upon the Township's receipt of the costs incurred.
 5. Engineering and legal costs incurred by the Township in addressing or resolving violations of this section shall be paid to the Township by the applicant in accordance with contractual prevailing rates with the Township. Payment of costs shall be made within 30 days upon the Township's receipt of the costs incurred.
- E. Review by Township Engineer. The lot grading plan shall be filed with the Township Engineer.
- F. Subsurface sewage disposal system plan required. In the event that the property subject of the lot grading plan will be served by an individual subsurface sewage disposal system, then a complete plan for the system shall be submitted to the Township Engineer along with the proposed lot grading plan. In reviewing the proposed lot grading plan, the Township Engineer shall consider not only the impacts which the lot grading plan may have upon the proper functioning of the individual subsurface sewage disposal system but also any surface drainage impacts which the system, especially a system with a mound disposal field, may have upon surface drainage on the subject property and abutting lands.
- G. Standards for approval. The Township Engineer shall not approve a lot grading plan or revised plan unless the Township Engineer determines that the plan is designed to control surface waters in a manner that will minimize the adverse effects of such waters upon the subject property and abutting lands. In addition, a lot grading plan shall not be approved unless the following conditions are met:
1. Driveway shall comply with Section 20.3.7, and shall not exceed 15%, except that under unusual conditions and for short distances the Township Engineer may approve grades not exceeding 18%, provided the average centerline grade

ORDINANCE 2025-35

of the driveway does not exceed 15%.

2. There shall be no change in existing grade that raises the elevation of the lot within five feet of a property line. Furthermore, there shall be no change in existing grade, which raises any portion of the lot within 15 feet of a property line to an elevation that is more than four feet above the existing ground level at the property line. Any new grade shall be at an even slope with the toe of the slope at the ground level which exists at five feet inside the property line; provided, however, that, when necessary, swales shall be created in order to control surface waters in a manner that will protect abutting lands.
3. Retaining walls shall conform to Section 3.1.11, and Retaining walls that involve placement of fill in floodways shall meet the requirements of 15.28.050(C)(1) of the Township Code and N.J.A.C. 7:13. Distances from property lines shall be measured at right angles to straight portions and radial to curved portions.
4. Grades steeper than one (vertical) to three (horizontal) should be avoided. In cases where these grades are unavoidable, provisions for soil stabilization, access and maintenance of those areas must be provided to the Township Engineer for approval.
5. An area around the foundation of the building shall be graded downward according to the requirements of the New Jersey Uniform Construction Code.
6. The lot grading plan complies with the terms and conditions of any development permit issued with respect to the lot pursuant to the provisions of Title 15 (Chapter 15.28, "Floodplain Regulations").
7. Roof runoff from any roofed area shall be in accordance with the New Jersey Uniform Construction Code.
8. On-site stormwater management. The applicant shall establish adequate measures for on-site stormwater management, including BMPs, meeting the following requirements:
 - (a) The peak rate of the runoff from the site following completion of the development shall be reduced to 50% and 75% of the predevelopment rates for the two-year and ten-year storms, respectively. The post-development peak rate of runoff for the 100-year storm shall not exceed that which existed prior to development. Every practicable effort shall be made to minimize any increase in volume and to maintain and/or improve the quality of runoff which existed prior to development. Stormwater runoff rates and volumes are to be computed in accordance with Chapter 5 of New Jersey Department of Environmental Protection's Stormwater Best Management Practices Manual.
 - (b) Maximum use shall be made of presently existing stormwater runoff control devices, mechanisms or areas such as existing berms, terraces, grass waterways, favorable hydrologic soils, swamps, swales,

ORDINANCE 2025-35

- watercourses, woodlands, floodplains, as well as any proposed retention structures.
- (c) The plans shall avoid the concentration of flow and shall provide for dissipation of velocities at all concentrated discharge points.
 - (d) For calculating runoff and controls, the applicant may use the Soil Conservation Service Method or the Rational Method depending upon which is more appropriate in the particular instance. Computations shall cover the two-, ten-, and 100-year storm frequencies.
 - (e) All outfalls are to be designed in a manner to slow velocities at the outfall and provide stream channel protection.
 - (f) Due consideration shall be given to the relationship of the subject property to the natural or established drainage pattern of the watershed(s) of which it is a part. Surface water runoff shall not be transferred from one watershed to another.
 - (g) The use of conservation restrictions is encouraged.
 - (h) All water-carrying structures and/or retention areas shall be completed and stabilized prior to diversion of water to them.
 - (i) Innovative stormwater runoff control and recharge devices, such as rooftop storage, drywells, cisterns, roof drain infiltration trenches, and rain gardens are encouraged provided they are accompanied by detailed engineering plans and performance capabilities.
 - (j) Design and construction of drywells shall comply with New Jersey Department of Environmental Protection's Stormwater Best Management Practices Manual.
 - (k) Nonstructural stormwater management strategies as are set forth in N.J.A.C. 7:8-1.1 et seq. shall be incorporated into the stormwater management plan whenever possible.
 - (l) The Township's Standard soil erosion and sediment control notes shall be included in text form on the plan.
9. No re-grading of a lot shall be permitted which would create or aggravate water stagnation or a drainage problem on-site or on adjacent properties, or which will violate the provision of the Soil Erosion and Sedimentation Control Act, or the Soil Removal Ordinance of Berkeley Heights.
10. If the lot grading plan contains a structural retaining wall, a copy of the structural calculations, signed and sealed by an engineer or architect licensed in the State of New Jersey shall accompany the plans. All structural retaining walls must also

ORDINANCE 2025-35

conform to the requirements of (Section 3.1.11, and Retaining walls that involve placement of fill in floodways shall meet the requirements of subsection 15.28.050(C)(1) of the Township Code and N.J.A.C. 7:13.

11. For increases of impervious cover greater than 500 square feet, the minimum design and performance standards for groundwater recharge shall be as follows:
 - (a) Demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100% of the average annual preconstruction groundwater recharge volume for the site; or
 - (b) Demonstrate through hydrologic and hydraulic analysis that the increase of stormwater runoff volume from preconstruction to post-construction for the two- year storm is infiltrated.
12. The lot grading plan shall fully comply with the Township's Tree Management Code in Chapter 12.16 of the Township Code. If applicable, a tree permit must be obtained.
13. The lot grading plan shall fully comply with the Township's present code, Chapter 12.30 of the Township Code. As applicable, a road opening permit must be obtained for work within the municipal right-of-way.
- H. Completion of review. The Township Engineer shall approve or disapprove a lot grading plan or revised plan within 20 business days after the plan or revised plan is submitted. If additional information is needed to completely evaluate the impact of the application, the Township Engineer shall notify the applicant. From the date the Township Engineer sends such notification until the date of response from the applicant, the time for completion of review of the application is tolled. The Township Engineer shall furnish a written statement of the reasons for disapproval. If the Township Engineer's written statement does not, in the opinion of the applicant, address their concerns, a review by the Township Administrator will be conducted to resolve any remaining issues concerning the application.
- I. Temporary measures. Whenever the Township Engineer considers it necessary or appropriate, he may require that a lot grading plan include temporary measures to be taken during the performance of any construction work to prevent adverse effects upon abutting lands.
- J. Violations. The failure of an owner of property to comply with an approved lot grading plan for such property, including any temporary measures to be taken during the performance of construction work, shall constitute a use of the subject property in violation of this section. If a notice of violation is issued the applicant shall submit an amended lot grading plan within 10 days of the notice. Failure to resubmit an amended lot grading plan within the specified timeframe shall result in an immediate stop-work order and void the lot grading plan approval. The amended plan shall identify the cause of the violation and revise the lot grading plan accordingly to

ORDINANCE 2025-35

prevent a reoccurrence of the violation. The amended plan shall be resubmitted regardless of the extent of the change required. The issuance of an amended plan shall void prior approvals.

- K. Adverse conditions. In the event that the Township Engineer determines that current conditions do not permit the completion of work to effectuate full compliance with a lot grading plan, The Township Engineer shall so state in the engineer's report and shall also set forth the following:
1. All work remaining to be performed in order to effectuate full compliance with the lot grading plan;
 2. The estimated cost of each phase of the work to be performed; and
 3. The date by which all remaining work shall be completed.
- L. Performance bond. Notwithstanding any other provision of this section, the Township Engineer may issue an occupancy/zoning permit prior to full compliance with a lot grading plan if the Township Engineer received written evidence of the existence of a cash performance bond in the amount of the estimated cost effecting full compliance with the plan as determined by the Township Engineer, and if the Township Engineer receives a written statement from any contract-purchaser requesting the issuance of a certificate of occupancy pursuant to the provisions of this section. If a certificate of occupancy is issued for a property prior to full compliance with a lot grading plan and full compliance is not affected by the date set forth in the report of the Township Engineer, then continued occupancy of such property after such date shall constitute a use of such property in violation of this section.
- M. Notice to proceed. All SESC measures (silt fence, tracking pad, and all other approved measures.) shall be installed prior to the start of any land disturbance. SESC measures must be inspected by a Township representative and a notice to proceed issued before the next phase of construction may commence.
- N. Inspections. Neither an occupancy/zoning permit nor a certificate of occupancy shall be issued for any property which is the subject of a lot grading plan until the applicant's engineer certifies in writing that the property conforms to the lot grading plan. The Township Engineer shall make an inspection and issue a report within five days after notification of an application for a certificate of occupancy.
- O. Penalties for violations. Any person who violates any provision of this section shall upon conviction, be liable to the penalty stated in Chapter 1.08. Each day that a violation is permitted to exist or continue to occur shall constitute a separate offense.

SECTION III. Section 3.1.13, "As-Built Surveys," of "Appendix A – Municipal Land Use Procedures Ordinance," "Part 3- General Regulations," "Article 3.1 – Application of General Regulations Applicable to All Districts," of the Township Code of the Township of Berkeley

ORDINANCE 2025-35

Heights is created as follows:

Section 3.1.13 –As-Built Surveys

A. As-Built Foundation Survey. Upon construction of the foundation, and prior to framing or other further construction, the applicant shall submit an "as-built" foundation survey to the Township Construction Official. The As-Built foundation survey shall show the following:

1. Confirm the first-floor elevation of the building is within the 18 inches of the first-floor elevation as shown on said approved subdivision plat. If the property is not the subject of a grading plan on an approved subdivision plat, the as-built foundation survey shall confirm that the first-floor elevation is located within 18 inches of the elevation as shown on the lot grading plan.

The foundation as-built survey must demonstrate the applicant has complied with all applicable approvals and agencies having jurisdiction over same, i.e. size, location and conformance with setback requirements.

B. As-Built Site Survey. Prior to the issuance of a Temporary Certificate of Occupancy/Certificate of Occupancy, the applicant shall be required to submit full as-built surveys of the project constructed, signed and sealed by a licensed Professional Land Surveyor, which must include but is not limited to the contours of the newly shaped lot(s). The as-built site survey shall show:

1. No re-grading of a lot has been conducted inconsistent with that of the lot grading plan submitted to the Township Engineer prior to construction. Also, confirm there shall be no negative effects to surrounding properties.
2. Illustrate the as-built location of the drywells, rain guardians, or other drainage improvements, etc. Any exceptions shall be noted in the surveyor's certification.

No further construction shall be authorized unless the lot grading is consistent with the lot grading plan submitted to the Township Engineer pursuant to Section 3.1.12, "Lot Grading Plan."

C. Certification by Surveyor Required. The As-Built surveys must be certified by a licensed surveyor, based on field inspections, and as necessary, laboratory tests, that the site is in full compliance with the approved lot grading plan and that permanent soil stabilization, including soil preparation, acceptable top soil and proper vegetative cover including compaction of fill meeting New Jersey Soil Erosion and Sediment Control Standards must be provided prior to final grading inspection. Any exceptions to the requirements of the approved lot grading plan shall be included in the certification.

ORDINANCE 2025-35

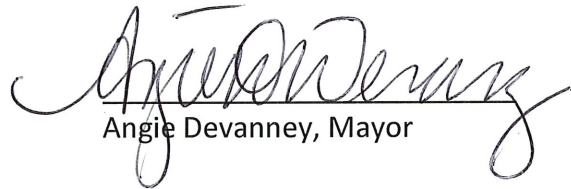
D. Violations. In the event the as-built surveys show changes in elevation different from the pre-construction plans submitted to the Township Engineer pursuant to Section 3.1.12, the owner of property shall be subject to a penalty as described herein.


E. Penalties for violations. Any person who violates any provision of this section shall upon conviction, be liable to the penalty stated in Chapter 1.08. Each day that a violation is permitted to exist or continue to occur shall constitute a separate offense.

SECTION IV. Should any clause, sentence, or paragraph of this Ordinance be declared invalid or unconstitutional for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and, to this end, the provisions of this Ordinance are hereby declared severable.

SECTION V. All Township Ordinances or parts of Ordinances inconsistent with this enactment are hereby repealed to the extent of such inconsistency.

SECTION VI. This Ordinance shall take effect after passage and publication in the manner provided by law.


 Angie Devanney, Mayor

Introduction						Councilperson	Final Adoption					
Moved	Sec.	Aye	Nay	Abs.	NP		Moved	Sec.	Aye	Nay	Abs.	NP
		X				Manuel Couto	X		X			
X		X				John Foster		X	X			
		X				Margaret Illis			X			
		X				Bill Machado			X			
		X				Andrew Moran			X			
	X	X				Susan Poage			X			
Introduced: December 2, 2025						I hereby certify the above ordinance was adopted by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey on the aforementioned date. <div style="text-align: right; margin-top: 10px;">  Angela Lazzari, Township Clerk </div>						
Final Adoption: December 16, 2025												

TOWNSHIP OF BERKELEY HEIGHTS

NOTICE OF INTRODUCTION

Ordinance 2025-35

ESTABLISHING AN ORDINANCE REQUIRING LOT GRADING PLANS AND AS-BUILT SURVEYS

I, Angela Lazzari, Township Clerk of the Township of Berkeley Heights, do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on **December 2, 2025** and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on **December 16, 2025 at 6:30** p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk's office in said Municipal Building, to the members of the general public who shall request the same.

Angela Lazzari
Township Clerk

TOWNSHIP OF BERKELEY HEIGHTS

NOTICE OF FINAL ADOPTION

Ordinance 2025-35

ESTABLISHING AN ORDINANCE REQUIRING LOT GRADING PLANS AND AS-BUILT SURVEYS

I, Angela Lazzari, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above titled Ordinance was adopted on Final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on December 16, 2025.

**Angela Lazzari, RMC
Township Clerk**