

ORDINANCE NO. 19-04

AN ORDINANCE REPEALING AND REPLACING ARTICLE XII OF CHAPTER 16 ENTITLED BERM REGULATIONS AND DESIGN STANDARDS

WHEREAS, pursuant to Article 23, Title 31 of the Colorado Revised Statutes, the Town of Blue River ("Town") has authority to regulate the development of land within the Town for the purposes of promoting the public health, safety, convenience, and the general welfare of the community; and

WHEREAS, the Town currently regulates the design and construction of berms through the provisions in Article XII of Chapter 16 entitled "Berm Regulations and Design Standards"; and

WHEREAS, the Planning and Zoning Commission has reviewed those provisions and recommended revisions to the Board of Trustees; and

WHEREAS, the Board of Trustees of Blue River desires to amend Chapter 16 of the Blue River Municipal Code to repeal and place Article XII entitled "Berm Regulations and Design Standards" in accordance with those recommendations.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BLUE RIVER, COLORADO:

Section 1. Repeal and Replace Article XII of Chapter 16. Article XII, *Berm Regulations and Design Standards* is hereby repealed and replaced to read in full as follows:

ARTICLE XII Berm Regulations and Design Standards

- Sec. 16-12-10. Policy statement and applicability.**
- Sec. 16-12-20. Design and construction standards.**
- Sec. 16-12-30. Permit required; financial guarantee.**
- Sec. 16-12-40. Contents, timing and review of application.**
- Sec. 16-12-50. Inspection of berm; approval of construction.**
- Sec. 16-12-60. Sight distance triangle.**
- Sec. 16-12-70. Existing berms.**
- Sec. 16-12-80. Variances.**

Sec. 16-12-10. Policy statement and applicability.

It is the purpose and intent of the Town to ensure that all berms are designed and constructed to appear natural using plants, trees and other landscaping materials that match the existing natural areas within the Town. For the purposes of this Chapter, a "berm" shall mean a non-naturally occurring mound of earth greater than two (2) feet in height (as measured from original ground level), or larger than four hundred (400) square feet of surface area. All berms within the Town shall comply with the provisions in this Article.

Sec. 16-12-20. Design and construction standards.

- (a) Every berm within the Town shall be designed and constructed in accordance with the following:
 - (1) Maximum height shall not exceed eight (8) feet, as measured from existing grade to the top of the crown of the berm at its highest point.
 - (2) Maximum slope shall not be greater than two to one (2:1) as a horizontal run to vertical rise.
 - (3) The entire length of the perimeter of the berm shall be tapered so the berm appears to be naturally tied into and a natural part of the existing grade.
 - (4) The area of the berm shall be contained within a single lot.
 - (5) No part of a berms shall be constructed upon or enter into any pedestrian, trail, utility or other easements or road, public right-of-way or public property.
 - (6) The entire berm shall be landscaped as follows:
 - (i) Grass, shrubs, perennials, groundcovers, annuals or trees shall cover eighty percent (80%) of the surface area. All grass seed mixes, perennials, groundcovers, annuals, and trees are limited to those identified in the Summit County Required Plant Materials List in Appendix 16-A of this Chapter.
 - (ii) Natural landscaping materials, including logs, stumps, decorative dead trees and boulders of varying sizes, must be incorporated into the site.
 - (7) Landscaping of all berms shall take into account and be designed to be protected from snow storage areas and from snow sliding off of roofs. Hardy landscaping plants that will not be damaged by snow storage shall be located in those areas so affected by snow piled upon or against the berm.
 - (8) Berms shall not be located within a site distance triangle described in this Article.
 - (9) The applicant shall take into consideration if there are legally available water rights for use on the landscaped areas in case additional water is necessary for supplementing natural precipitation. Appendix 16-A lists the types of vegetation to use for three (3) different ranges of precipitation.
- (b) The following additional construction standards apply to all berms.
 - (1) A berm shall be compacted prior to planting, landscaping or revegetation.

- (2) Berms shall contain soil in sufficient quantity to ensure the survival of the grass, shrubs, perennials, groundcovers, annuals or trees. At a minimum, a berm must have at least two (2) inches of topsoil. If topsoil is not used, the applicant may use two (2) inches of mulch (straw, hay, wood cellulose, etc.) prior to seeding. The topsoil or mulch must be tilled at least four (4) inches deep into the soil prior to seeding. Straw and hay shall be certified as free of noxious weeds and shall not be in a state of decomposition so as to smother or retard the growth of natural grasses or groundcovers used by the applicant.
- (3) Any groundcovers shall be free from weeds identified as invasive, noxious or otherwise nuisance weed species in the Summit County Weed Management Guide in effect on the date construction of an approved berm commences.
- (4) Plantings of grass, groundcovers or flower seeds shall occur within ten (10) days following the surface soil preparation.
- (5) Construction materials, concrete, bricks and garbage cannot be used as fill material to construct a berm.
- (6) Existing trees shall not be buried or incorporated into the berm.

Sec. 16-12-30. Construction permit required; financial guarantee.

- (a) A permit for the construction of a berm is required. Such permit may be issued upon approval of the Building Official as described in this Article. Such permit shall expire eighteen (18) months after issuance.
- (b) A financial guarantee in the form of a cash bond, in an amount of 150% of the cost estimates, shall be paid to the Town, prior to the issuance of a permit to construct a berm. Such bond will be refunded upon approval by the Town of the full completion of the construction of the berm, including required landscaping. The Town shall hold these funds in a non-interest-bearing account. The funds may be commingled with other Town funds. If the construction of the berm, including landscaping, is not completed within eighteen (18) months from the date of issuance of the permit, the Town may contract for the completion, including landscaping, and deduct any incurred expenses from the bond. Any unused funds shall be returned to the applicant upon final completion of the berm, including landscaping.

Sec. 16-12-40. Contents, timing and review of application.

- (a) The applicant shall submit an application to the Town that includes the following items:
 - (1) Town berm permit application form with the property address and name and address of the owner of the property, a narrative describing the project and an estimated time of completion;

- (2) A depiction of the property showing the property lines, easements, structures, driveways, snow storage areas, utilities, septic system, site distance triangle described in this Article, location of the proposed berm(s) and location and identification of type of existing trees that will be affected by the proposed berm;
 - (3) A list of the revegetation and other landscape materials to be used on the proposed berm;
 - (4) A sketch of the proposed berm meeting the design standards of this Article, with items shown as close to scale as possible (including the placement of the listed materials, along with any natural materials used, such as trees, stumps, large rocks, etc.);
 - (5) Other permits that may be required by the Town to complete the work; and
 - (6) A fee for the review of the application in an amount set by resolution or other form of the Town Board of Trustees.
- (b) Building Official review. The Building Official shall administratively review the application to determine that it is complete and meets the requirements of this Article. The Building Official may:
- (1) Find that the application is complete and review the proposed berm project. If the proposed berm meets the design standards and other requirements of this Article, the Building Official shall approve the construction of the proposed berm. If the proposed berm does not meet the design standards or other requirements of this Article, the Building Official may ask the applicant to revise the application or deny the application.
 - (2) Ask the applicant to complete the application.
 - (3) Ask the applicant to supplement the application by submitting additional plans and details, including, for example, an Improvement Location Certificate (ILC) or other survey documentation. The applicant shall comply with requests of the Building Official to complete or supplement the application.
- (c) Denial of application.
- (1) The Building Official is authorized to deny an application for a berm construction permit if:
 - (i) The application is incomplete.

- (ii) The applicant fails to supplement the application as requested by the Building Official.
 - (iii) The application fails to meet the design standards or other requirements of this Article.
- (2) The denial of an application shall be in writing, identifying the reasons for the denial, and sent to the applicant at the mailing address shown in the application by first class mail, postage prepaid.
- (d) Appeal of denial. The applicant may seek administrative review of the decision by the Building Official by submitting an appeal to the Planning and Zoning Commission. Any appeal of the denial of an application must be submitted in writing within fourteen (14) days of the date of mailing of the denial letter. If the applicant fails to meet that deadline, the Planning Commission shall not hear the appeal. An appeal must identify in detail the reasons for the appeal. The Planning and Zoning Commission shall render an administrative decision following review as to whether the Building Official's decision was reasonable and in accordance with this Article.

Sec. 16-12-50. Inspection of berm, approval of construction.

Upon completion of construction of the berm, the applicant shall provide notice to the Town. The berm shall be inspected by the Building Official to determine compliance with the approved berm permit application and this Article. If the Building Official determines that construction of the berm is not in accordance with the requirements of this Article, the applicant shall make the changes necessary to bring it into compliance. Any determination of the Building Official concerning the inspection of the berm may be appealed to the Planning and Zoning Commission, provided that notice of such appeal is presented in writing to the Town Clerk within fourteen (14) days of the action to be appealed. The Planning and Zoning Commission shall render an administrative decision following review as to whether the Building Official's decision was reasonable and in accordance with this Article.

Sec. 16-12-60. Sight distance triangle.

For safety and visibility purposes, a sight distance triangle shall be maintained at all street intersections and where driveways intersect Town streets (See Figure 1) or Colorado State Highway 9 (See Figure 2). No landscape materials, berm or other visual obstructions between three (3) feet and eight (8) feet shall be allowed within this sight distance triangle. The Town may request the Colorado Department of Transportation determine whether proposed or existing berms near driveways or road intersections with Colorado State Highway 9 conform to its requirements. Property owners may be required to reconstruct a berm if it fails to meet those standards. This regulation is a highway safety measure and is not intended to prohibit the planting of trees or retention of existing trees in the sight distance triangle, if they are pruned so that all branches are higher than seven (7) feet as measured from the ground surface.

Figure 1- Typical "Sight Distance Triangle"

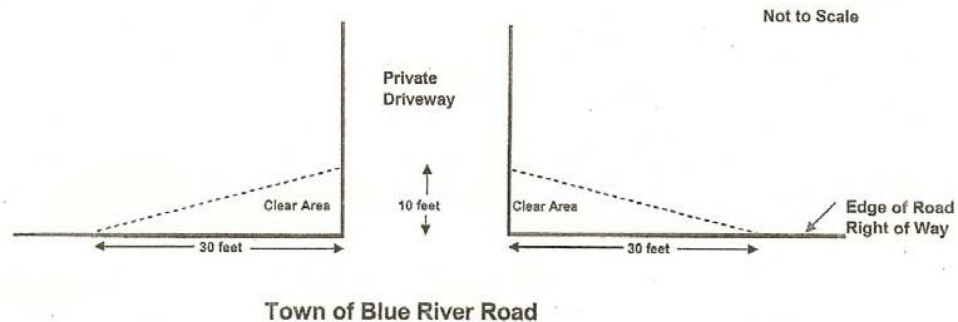


Figure 2 Example of "Sight Distance Triangle"
Based upon AASHTO State Guidelines used by CDOT for Driveway Access



Sec. 16-12-70. Completed berms.

- (a) Property owners are responsible for the establishment and maintenance of vegetation and landscaping on any berm in Town.
- (b) Berms constructed prior to the adoption of the ordinance codified herein must be brought into compliance with the provisions in this Article upon any change to the berm, replat of the property causing property lines to run through the berm, or other changes to the property requiring physical modifications to berm.
- (c) Berms located within any Town or CDOT right-of-way, site triangle or public easements may be removed by the Town.

Sec. 16-12-80. Variances.

Variances from the provisions in this Article may be granted by the Planning and Zoning Commission for any existing or new berm in accordance with Chapter 16, Article XI of this Code.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not

affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 5. Effective Date. The provisions of this Ordinance shall become effective thirty (30) days after publication following final passage.

INTRODUCED, READ, PASSED, ADOPTED AND ORDERED PUBLISHED
at a regular meeting of the Board of Trustees of the Town of Blue River, Colorado, held
on the ____ day of _____, 2019.

Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

Published in the Summit County Journal _____, 20____.