

Chapter 92. Filling and Grading

[HISTORY: Adopted by the Town Board of the Town of Ossining 11-12-1980 by L.L. No. 4-1980. Amendments noted where applicable.]

GENERAL REFERENCES

Environmental quality review — See Ch. **85**.

Excavations — See Ch. **87**.

Freshwater wetlands — See Ch. **105**.

Streams and watercourses — See Ch. **169**.

Subdivision of land — See Ch. **176**.

Fees — See Ch. **A203**.

§ 92-1. Legislative intent.

The Town Board of the Town of Ossining, in order to provide for the proper use of land in the Town and to remove the dangers caused by soil erosion, filling operations, the stripping of soil and alteration to the natural contour of earth as it presently exists in the Town, thereby resulting in detriment to the health, welfare and safety of persons and property in the Town, the depletion of trees, soil and natural vegetative cover, damage to agricultural crops and depreciation in value of and physical damage to properties adjacent to such dangers, has enacted this Filling and Grading Law.

§ 92-2. Declaration of policy.

It is hereby declared to be the policy of the Town Board to provide for the proper use of land and to regulate or prohibit filling up, draining, cleaning, operating and using any land, whether for commercial or noncommercial purposes, in a manner which:

- A. Tends to create hazardous or dangerous conditions by creating pits, holes or hollows in the earth, by creating or leaving unprotected banks or ledges of exposed earth or by permitting or creating conditions which cause the collection of water.
- B. Impairs the usefulness of the property involved or any surrounding properties, fails to take into consideration the relation of residential and commercial areas and the contouring of land with relation to remaining portions of the land affected or neighboring areas and tends to reduce the value of the property in question or other property in the Town.
- C. Causes soil erosion which depletes the land of vegetative cover and supply of organic material and results or tends to result in the washing of the soil, erosion or interference with normal drainage.
- D. Diverts or caused water to collect on the property of others, interferes with or overloads any existing or planned drainage facilities of the Town and causes unnatural runoff or results in the collection of pools of water, with the possibility of health and safety hazards or the lowering of value of the property affected.

§ 92-3. Geographical applicability.

This chapter shall apply only to lands located in the unincorporated area of the Town of Ossining.

§ 92-4. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

FILLING OR GRADING

The placing or moving of soil, earth, sand, rock, gravel or other similar substance on the ground in excess of five cubic yards.

PERSON

Any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind.

§ 92-5. Exempt properties and uses.

The following uses shall be exempt from the provisions of this chapter:

- A. Any filling or grading operation where a building permit shall have been duly issued, provided that it is limited in area and bulk to that strictly essential for, and limited to the extent of, the foundation, walls and basement of such building or for the construction of a wall, driveway, sidewalk, swimming pool, service connections or other structure or underground tank, and which, excluding from consideration soil removed which is actually replaced by a basement foundation, wall, swimming pool, tank or other underground structure, does not involve any change in the existing grade and contour.
- B. Any filling or grading operation in connection with a site plan or subdivision plan which has been duly approved by the Planning Board and which makes specific provision for filling, grading, contouring and drainage in the manner deemed by the Planning Board appropriate to carry out the declaration of policy set forth in § 92-2.
- C. Any filling or grading operation which shall constitute repair, maintenance or resurfacing of an existing sidewalk, walk or driveway, provided that such sidewalk, walk or driveway is not enlarged or extended.
- D. Nothing in this chapter shall be construed as to prevent the owner or occupant of a premises used as a residence from placing or moving topsoil for lawn maintenance or repair or for landscaping purposes, provided that no power tools are used other than a garden tractor not exceeding six horsepower.

§ 92-6. Permit required; application; requirements for issuance.

- A. General. Prior to commencing any filling or grading, the owner, or his duly constituted agent, of any premises subject to the provisions of this chapter must obtain a filling and grading permit therefor from the Building Inspector.
- B. Application for permit. Each application for issuance of a permit under this chapter shall be on a form prepared by the Building Inspector, shall be filed in duplicate, shall be signed by the owner or lessee, or agent of either, or by the building contractor, engineer or architect employed in connection with the proposed work, and shall contain or shall be accompanied by the following:
 - (1) The name and address of the property affected.
 - (2) A description of the property in sufficient detail to identify the same and a statement as to the zone in which the property is located and a statement that the use in question is permitted in such zone.

- (3) The name and address of the person or corporation who will carry out the operation.
 - (4) A description of the proposed operation, the volume of material proposed to be placed or moved and the condition of the premises before the commencement of, and the proposed condition of the premises after the completion of, the proposed operation.
 - (5) A site plan, prepared by a licensed engineer or land surveyor, drawn to scale, showing the location and dimension of the premises to a point 10 feet beyond the boundaries thereof and showing existing and proposed contours at two-foot intervals, showing distances from street or highway lines, distances from boundary lines of other owners, the proposed location, size and use of any existing building thereon and cross sections and elevations appropriate to indicate the effect of the operation upon the contour and grade of the premises and upon the relationship in contour and grade between the affected portion of the premises and the remainder of such property and any abutting land and highways after completion of the operation.
 - (6) A duly acknowledged written consent of the owner and mortgagee, if any, of the premises to the proposed operation.
 - (7) A certificate of the applicant's engineer approving the proposed site plan and stating that the proposed operation and the finished grades of the premises after the completion thereof will not interfere with or overload any existing or planned drainage facilities of the Town, will not cause erosion or other problems, will not cause water to accumulate and will not result in the outpouring of water or otherwise have an adverse effect on any thoroughfares or on the lateral stability or drainage of adjoining properties and that it's not contrary to the policy of § 92-2.
 - (8) The manner in which the work is proposed to be done and the material and methods to be used for proper dust control.
 - (9) The period of time to complete such work, including restoration, rehabilitation and the filling of pits, excavations and other depressions in the earth caused by operations, which in no event shall exceed two years.
- C. Procedure. Within 60 days after the filing of the application in proper form, the Building Inspector shall either issue the permit or deny same, subject to prior review and approval by the Planning Board, pursuant to the following standards:
- (1) The work will not interfere with surface drainage, endanger any street, road, highway or municipal facility or interfere with support or drainage of adjoining properties.
 - (2) The property can be restored and rehabilitated so that it will not cause soil erosion, drainage problems or create disturbance of land in conflict with the established purposes of this chapter.
 - (3) The work or its result will not cause substantial traffic hazards, vibrations, noise, dust or sand.
 - (4) The work or its result will be in conformity to the natural topography of land and will not change the established character of the neighborhood or depress the value of lands generally in such neighborhood.
 - (5) The period of time and the methods for the completion of the work are reasonable.
 - (6) Accessibility of the property involved in the application to fire and police protection; access of light and air to the property and to adjoining properties; traffic conditions; transportation requirements and facilities; the general safety, health, peace, comfort and general welfare of the community at large; and whether the location and size of the proposed use, the nature and intensity of the operations involved, the size of the site in relation to the use, the location of the site with respect to existing or future streets giving access to it and parks and drainage systems shall be such that it will be in harmony with the Master Plan and Zoning Ordinance of the Town of Ossining and that the location, nature and height of buildings, retaining walls and

fences will not discourage the appropriate development and use of adjacent land, uses, structures and buildings or impair the value thereof.

- (7) Operations in connection with any use shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or lights than would be the operations of any use permitted by right.

D. Requirements. The Building Inspector is herewith empowered to grant a permit, after prior review and approval by the Planning Board, subject to the following conditions where the Board determines that the nature of the work requires same:

- (1) The establishment of the permitted period of time for the completion of the work.
- (2) The establishment of hours and days of operation, taking into account the nature of the area in which the work is to be performed.
- (3) The construction of fencing and other safety precautions, specifying the height and type of fencing or precaution and the location of same.
- (4) The maximum slope and depth of any fill and the height and slope of any material moved or removed. All excavations and all conformations resulting from grading and filling operations shall be drained so that there shall be no water or pools gathering in the bottom of such property.
- (5) The provision of access roads or other adequate means of access or ingress, which shall have a surface satisfactory to the Planning Board.
- (6) The establishment of the minimum horizontal distance from any public road or highway or from any adjoining boundary line of other owners for any work to be performed.
- (7) No filling operation shall be conducted which results in the deposit of topsoil, earth, sand, gravel, rock or other substance upon or shall interfere with any natural watercourse on or the natural drainage of the property; and at the termination of the permit, the premises shall be roughly graded and, if necessary, other provisions made of a permanent nature so that the natural drainage shall be fully restored.
- (8) There shall be no interference with existing drainage, nor shall the filling operation divert or cause water to collect on the property of others or interfere with or overload any existing or planned drainage facilities of the Town, endanger any road, street or highway within the limits of the Town or produce or enlarge areas from which water will not drain; any provision shall be made for the temporary drainage of the property during the filling operation and for the restoration of permanent drainage to be effective upon completion of the operation.
- (9) The execution of a payment and performance bond or cash deposit in an amount sufficient to secure the rehabilitation of the site and/or to guarantee the faithful performance of the work in accordance with the approval of the permit and all ordinances, laws and regulations of the Town of Ossining and all plans and specifications filed with the application for the permit. Such bond shall be approved by the Town Attorney as to form and manner of execution and sufficiency of sureties and shall run for the same term as the term of the permit. Default on such bond or deposit shall be declared by the Town Board upon recommendation of the Building Inspector.
- (10) Such other conditions or requirements as the Planning Board in its discretion shall determine to be necessary for the protection of the health, safety and welfare of the public.

§ 92-7. Fees.

[Amended 9-11-2007 by L.L. No. 8-2007]

Fees for filling and grading permit applications and applications for a certificate of completion shall be set by resolution of the Town Board in the Fee Schedule.^[1]

[1] *Editor's Note: See Ch. A203, Fees.*

§ 92-8. Certificate of completion.

Every permit holder shall apply for an inspection of the premises covered by the permit, by the Building Inspector, at least 30 days prior to the termination date of any issued permit, together with the fee set forth in § 92-7. Upon inspection of the premises, the Building Inspector shall approve the application and issue a certificate of completion or shall disapprove same, specifying his reasons therefor, in writing, served upon the holder of the permit and setting forth a time period for correction. Upon failure of the permit holder to so correct within the time set forth, the Building Inspector shall request that the Town Board authorize a proceeding for violation of this chapter. Failure to apply for a certificate of completion within the time period set forth in this section shall be deemed to be a prima facie violation of the terms of this chapter.

§ 92-9. Notice of violation; failure to comply.

- A. Whenever the Building Inspector determines that a violation of this chapter or of the terms of any permit or order issued hereunder has occurred, he shall serve a notice of violation by certified mail upon the holder of any permit or, if none, the last known owner of the property or properties as shown in the records of the Tax Assessor and shall give the violator at least 10 days to correct such violation plus three days for mailing.
- B. The Town Board shall, upon recommendation of the Building Inspector, authorize commencement of a proceeding to enforce any violation of the terms at any time after the period of time for correction of a violation has passed.
- C. Whenever the Town Board determines that failure to comply with a violation notice constitutes a nuisance or safety hazard, it shall notify the holder of the permit or the record owner of the property of its findings by certified mail. If a period of at least 10 days elapses from service of the finding and there has been no correction of the violation, the Town Board may proceed to take whatever action is necessary to abate the nuisance. The total expense of such abatement may be assessed by the Town Board on the real property on which such violation exists or was found, and the expense so assessed shall constitute a lien charge on the real property on which it is levied until paid or otherwise satisfied or discharged and shall be collected in the same manner and at the same time other Town charges, or the Town Board may institute a suit to recover such expenses against any person liable therefor, in addition to such action taken pursuant to §§ 92-9 and 92-10.

§ 92-10. Penalties for offenses.

[Amended 5-25-2010 by L.L. No. 1-2010]

Any person violating this chapter may be subject to a civil penalty or to a criminal penalty, enforceable and collectible by the Town in an amount of not less than \$100 nor more than \$1,000 or 15 days' imprisonment, or both fine and imprisonment. Each week's continued violation shall be considered a separate violation. Nothing contained in the preceding section of this chapter shall prevent the Town Board from maintaining an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provisions of this chapter or any rule or regulations promulgated hereunder.