

Chapter 198. Zoning

Article XII. Excavations; Topsoil Removal

§ 198-78. General requirements; special use permit required.

No sandpit or gravel pit shall be operated and maintained, and no topsoil shall be removed from any premises, and no land or other premises shall be used for any excavation or for the removal of sand, gravel, stone, topsoil or other minerals therefrom, except where a currently effective special use permit shall have been issued by the Zoning Board of Appeals in conformance with the requirements of this article or where such operation is listed as exemption in § 198-79. The Zoning Board of Appeals shall in no case issue any such permit for land in any district other than a General Industry District.

§ 198-79. Exemptions.

The following operations involving the excavation, removal or moving of sand, gravel, stone, topsoil or other minerals on or from any land or other premises are exempted from the requirements of this article:

- A. Operations conducted on premises owned or leased by the Town of Huntington or the State of New York.
- B. Operations incident to the construction of a street, sidewalk or driveway, provided that topsoil shall not be removed from the premises.
- C. Operations incident to the construction of a stormwater basin, recharge basin or drainage sump, provided that:
 - (1) Topsoil shall not be removed from the premises.
 - (2) A fence or suitable barrier shall be erected around the area of such excavation in accordance with plans and specifications approved by the Director of Engineering Services prior to the commencement of any excavation.^[1]
[Amended 2-6-1979 by Ord. No. 79-ZC-91; 7-13-2021 by L.L. No. 35-2021]
[1] Editor's Note: For additional provisions pertaining to the guarding of catch basins, recharge basins and sumps, see Ch. 156, Property Maintenance; Nuisances, Art. I.
- D. The moving of topsoil or other earth from one part to another of a premises where incident to building, farming or landscaping. For the purpose of this subsection, the following terms shall have the meanings indicated:
[Amended 2-3-1970 by Ord. No. 70-ZC-6]

BUILDING

The necessary excavation that does not substantially affect the topography and contour of the land that is incident to the erection of a building.

FARMING

The necessary removal of vegetation incidental to the harvesting and planting of crops that does not affect the topography and contour of the land.

LANDSCAPING

The planting or removing of trees, shrubs, bushes, grass or other vegetation that does not substantially affect the topography and contour of the land.

- E. Removal of excess topsoil or other earth from any area shown on a plot which is subject to the jurisdiction of the Planning Board, when authorized by special order in writing issued by authority of such Board, on receipt of a certification of excess yardage from a registered engineer or land surveyor and a written verification from the Department of Engineering Services.
[Amended 7-13-2021 by L.L. No. 35-2021]
- F. Removal of topsoil or other earth where incident to the business of operating a nursery or sod farm.
- G. Removal of earth, exclusive of topsoil, where incident to the construction or erection of a building.
- (1) This exemption shall not apply:
- (a) To nonresidential construction otherwise subject to the jurisdiction of the Planning Board.
 - (b) Where any portion of the material to be removed is more than five (5) feet above the grade of abutting streets or highways.
 - (c) Where rehabilitation of the premises is necessary for the protection of adjacent property.
- (2) In cases involving removal of material more than five (5) feet above the grade of abutting streets incident to residential construction on premises not subject to subdivision requirements, no building permit shall be issued unless the Planning Board shall find that the provisions of § 198-81 will be substantially complied with.
- H. Removal of and piling of earth incident to the installation, enlargement or repair of a cesspool, septic tank, dry well or swimming pool, provided that a fence or suitable barrier not less than four (4) feet in height shall be erected around the area of such excavation if the area is unguarded.^[2]
[Amended 2-3-1970 by Ord. No. 70-ZC-6]
- [2] *Editor's Note: For additional provisions pertaining to the guarding of excavations, see Ch. 156, Property Maintenance; Nuisances Arts. I and II.*

§ 198-80. Permit application requirements.

[Amended 2-6-1979 by Ord. No. 79-ZC-91; 7-13-2021 by L.L. No. 35-2021]

- A. Before any excavation for which a special use permit is required shall be commenced, an application shall be submitted to the Director of Engineering Services on a form prescribed by him. Site plans and statements shall accompany such application as follows:
- (1) A detailed statement of the proposed operation.
- (2) A plan of the premises or site, prepared by an engineer or land surveyor currently licensed by the State of New York, drawn to scale and showing:
- (a) A boundary survey.
 - (b) The area or areas proposed for excavation or topsoil removal.
 - (c) Condition of the premises before operations are commenced.
 - (d) Proposed condition of the premises after work is completed.
 - (e) Streets which adjoin or lie within two hundred (200) feet of the property.
 - (f) Location, size and use of existing buildings on the premises.

- (3) A topographic survey of the premises showing contours at ten-foot intervals, based on Coast and Geodetic Survey datum and prepared by an engineer or land surveyor currently licensed by the State of New York. In cases where the Director of Engineering Services shall determine that adequate findings cannot be made with ten-foot contours, he shall specify more precise contour data, not to exceed two-foot intervals.
 - (4) A duly acknowledged consent for the proposed operation, executed by the owner of the premises and mortgagee, if any, including the addresses of such parties.
 - (5) Certification that all taxes and assessments against the property described in the application have been paid, in the form of receipted tax bills or photostatic copies thereof or a letter signed by the Receiver of Taxes of the Town or by the Suffolk County Treasurer or by a title insurance company licensed to do business in Suffolk County.
 - (6) The names and addresses of all owners of record of property within two hundred (200) feet of the exterior boundaries of the premises described in the application, except that where all contiguous properties are owned by the applicant, such lists shall be the names and addresses of all owners of record within two hundred (200) feet of the exterior boundary of all contiguous property owned or controlled by the owner or applicant.
 - (7) A proposed comprehensive plan for the rehabilitation of the premises, together with a schedule of progress therefor. Such plan shall indicate the proposed final grades and contours to be established at the completion of the operation and shall describe the areas to be refilled, topsoiled and seeded and shall specify the amount and extent of rehabilitation to be completed before December 31 of the year for which a permit or renewal of permit is requested.
 - (8) An estimate of the total number of cubic yards of material to be removed from the premises during the period for which a permit or renewal thereof is requested. Such estimate shall be prepared by an engineer or land surveyor currently licensed by the State of New York and shall be verified by the Department of Engineering Services.
 - (9) An application for a permit for a sod farm shall include a plan of the area to be used for the purpose, showing existing conditions and buildings and adjacent streets, and statements describing the proposed farming operation and the condition of the property after the operation is completed. In addition, only the information described in Subsection **A(4)** and **(6)** above of this section shall be required.
- B. The Director of Engineering Services shall review the application and supporting plans and engineering information and shall transmit such application to the Board of Appeals within thirty (30) days of the time that all required information is received in correct form.

§ 198-81. Issuance of permit; conditions.

The Board of Appeals may, after public hearing, authorize the issuance of a special use permit or a use regulated by this article. Such authorization shall not be granted unless all applicable provisions of this chapter have been met and unless the Board shall find that:

- A. The proposed operation will not interfere with the surface water drainage of the area nor endanger any street, road or highway.
- B. The plan is adapted to the location and terrain in such a way that rehabilitation can be accomplished, and the area will not become desert or wasteland on completion of the operation.
- C. The circumstances of location and terrain are such that the premises will not constitute an attractive nuisance or threat to the safety of children.
- D. The use will not cause undue traffic hazards.
- E. The use will not cause undue vibration, noise or windblown dust or sand.

- F. The use will not change the established character of the neighborhood nor depress the value of property in the neighborhood.

§ 198-82. Conditions and safeguards; regulations.

The Board of Appeals may impose any appropriate conditions and safeguards to assure that the intent and purpose of this chapter have been met, and shall require compliance with the following regulations as a condition of the issuance of an original permit and its continuing validity and of the validity of any renewal of the permit:

- A. Rehabilitation of the premises, when a rehabilitation plan has not been waived, on finding by the Board that such is necessary to further the intent and purpose of this chapter, shall be in accordance with a plan approved by the Board of Appeals and filed with the Director of Engineering Services, and a schedule of progress which requires partial rehabilitation in stages over the total time that the operation is conducted may be established by the Board. The rehabilitation plan need not show any delineation of streets.
[Amended 2-6-1979 by Ord. No. 79-ZC-91; 7-13-2021 by L.L. No. 35-2021]
- B. Barriers of chain link or cyclone fencing, or the equivalent, shall be required on finding that such protection is necessary for the public safety. The Board of Appeals shall consider the particular circumstances of terrain and location in relation to the need for fencing and shall specify height of fences and location and number of gates.
- C. Bank and pit excavations shall not extend into, and topsoil shall not be stripped from, the area within twenty (20) feet of an exterior property line, except where incident to a cellar excavation. A bank excavation which does not extend below the grade of an adjoining street may begin at the street line.
- D. All excavated slopes shall be maintained at all times at safe angles of repose so as to prevent lateral displacement of adjoining properties and to prevent erosion or collapse of the slopes or upper grade surfaces above. Final slopes shall not be inclined steeper than one (1) foot vertical on one and one-half (1 1/2) feet horizontal, and all slopes shall be protected against erosion by the installation of proper drainage ditches or berms back of the lip or edge thereof.
- E. Dust-down or a similar dust layer shall be spread on access roads and other traveled areas to protect the public and surrounding countryside from windblown sand and dust.
- F. Topsoil shall not be removed from the premises until rehabilitation of the site has been completed. Any topsoil in excess of that required to allow a cover of at least six (6) inches over areas to be rehabilitated may be removed after the completion of rehabilitation. The requirements of this subsection shall not apply to an approved sod farming operation.
- G. Upon completion of any operation, the excavation area shall be refilled and graded to a reasonable level as specified in the approved rehabilitation plan, and all material used as fill shall be free from garbage, refuse, offal or other combustible or deleterious material.
- H. Topsoil shall be respread in a uniform layer not less than six (6) inches deep over the land from which material has been removed, excepting areas laid out as streets and areas to be occupied by parking lots or buildings.
- I. All areas on which topsoil has been spread shall be prepared and seeded with grass or shall be covered with other plant material as specified in the approved rehabilitation plan.

§ 198-83. Public hearing; notice; advisory report.

- (A) The Board of Appeals shall hold a public hearing prior to authorizing the issuance of any original special use permit for a use regulated by this article, but such hearing need not be held on

renewals of permits previously issued, provided that the area covered does not extend beyond the area of operation previously approved.

- (B) At least twenty (20) days' notice of the time and place of public hearing shall be published in the official Town newspaper, and notice of the application for a special use permit shall be mailed to all owners whose names and addresses are set forth in the list submitted pursuant to § 198-80A(6) of this article.

[Amended 2-6-1979 by Ord. No. 79-ZC-91]

- (C) Notice of the public hearing shall be mailed to the Director of Engineering Services at least fifteen (15) days prior thereto, and he shall investigate the facts and circumstances of drainage, effect upon streets and roads and the need for rehabilitation incident to the proposed operation. The Director shall submit an advisory report in writing, which may be made public at the discretion of the Board of Appeals, but the content of such report or failure to submit shall not restrain the Board from acting upon the application.

[Amended 2-6-1979 by Ord. No. 79-ZC-91; 7-13-2021 by L.L. No. 35-2021]

§ 198-84. Permit term; renewal; fees.

[Amended 5-2-1972 by Ord. No. 72-ZC-311; 8-11-2015 by L.L. No. 33-2015]

- (A) A special use permit or renewals thereof may be issued for a period not exceeding one year, provided that successive renewals shall be based on submission of information required in § 198-80(A)(7) and (8), payment of fees based on material to be removed and furnishing any additional bond or security sufficient to ensure compliance with these regulations during the renewal period.
- (B) Before any permit is issued, the applicant shall pay to the Clerk of the Zoning Board the sum of \$25 for a permit for sod farming or for any other operation where a rehabilitation plan has been waived, and in all other cases an excess material fee in the amount established in the Subdivision and Site Plan Regulations per cubic yard of material to be removed during the period covered by the permit or renewal thereof. Regardless of amount of material to be removed, the yardage fee shall not be less than \$100.

§ 198-85. Bond or cash deposit.

- A. Before the issuance of a permit, the applicant and the owner of record of the premises shall execute and file with the Town Clerk a surety company bond approved by the Town Board as to form and sufficiency and conditioned upon the faithful and punctual performance of the work required to be performed by the approved plan of rehabilitation of the area covered by the permit and upon compliance with the other regulations contained in this article, and to indemnify the Town of Huntington and/or the Superintendent of Highways for any damage to Town property and for the cost of taking over such performance in case of default. In case of any default or failure to perform the work required to be performed and to furnish the materials required to be furnished by said approved plan of rehabilitation at or before the times specified in the schedule of progress approved in connection therewith, or to do any of the things required to be performed by this article, such bond shall be forfeit upon written notice of such default or failure being mailed by registered mail to the permittee at the address stated in the application and upon failure by the permittee to cure such default within sixty (60) days after the mailing of such notice. The sixty-day notice of such default or failure of performance may be given at any time after such default or failure of performance shall be deemed waived or excused by any delay or failure to mail notice thereof or by any subsequent renewal of a permit under this article.
- B. Said bond shall remain in full force and effect until released or until the original amount thereof is reduced by the Town Board upon issuance of a certificate of completion or of partial completion by the Town Engineer, certifying that all provisions of this article and conditions of the permit have been fully complied with. Application for such certificate shall be made by the permittee, owner,

lessee or his agent on forms to be furnished by the Town Engineer and shall be accompanied by a map drawn to a scale showing the affected property, giving elevations thereof at ten-foot intervals, prepared by a duly licensed engineer or land surveyor of the State of New York after the completion of the operations, who shall also certify as to the amount of topsoil remaining upon ground required to be spread with topsoil and that such area has been seeded in compliance with this article and that the other conditions of the approved plan of rehabilitation have been fulfilled.

- C. In lieu of such bond, a cash deposit or deposit of negotiable securities may be made with the Supervisor, subject to the approvals, conditions and forfeitures specified herein in the case of a bond.