

## Chapter 120, EXCAVATION, FILLING AND TOPSOIL REMOVAL

### ARTICLE I, General Provisions

#### § 120-1. Declaration of policy. [Amended 4-8-1968]

It is hereby declared to be the policy of the Board of Trustees of the Village of Croton-on-Hudson that the natural topography of the land of the village is a public asset which should be preserved and safeguarded; that topsoil, trees or other materials which constitute the land, its plant and wild life are of vital concern to the people of the village; and that no changes shall be permitted in such topography, except those which are absolutely necessary in order to permit the proper and appropriate use of the land and water. It is the intent of this chapter to regulate or prohibit excavation, the removal of trees, topsoil or other materials or the filling up, draining, cleaning, operating and using of any land, whether for commercial or noncommercial purposes, in any 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 for the purposes for which it was zoned, 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, interferes with the zoning plan of the village and tends to reduce the value for taxation purposes of the property in question or other property in the village.
- 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 causes water to collect on the property of others, interferes with or overloads any existing or planned drainage facilities of the village, causes unnatural runoff or results in the collection of pools of water, with the possibility of health and safety hazards or the lowering of taxable value of property affected.

#### § 120-2. Definitions.

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

##### EXCAVATION:

- A. A lowering of existing grade in excess of three feet, regardless of the area involved in such change, or any lowering of existing grade or stripping of topsoil over an area of 5,000 square feet or more, regardless of whether or not, in either such case, any topsoil or fill is removed from the premises for commercial sale or otherwise.
- B. Any excavating operation in which fill or other material is removed from the premises, except, as to both Subsections A and B:
  - (1) Where a building permit shall have been duly issued, excavation 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, including 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 in excess of three feet, regardless of the area involved in such change, or any change in the existing contour and grade over an area of 5,000 square feet or more, shall not require a permit. Any change in the existing grade and contour in excess of three feet or over an area of 5,000 square feet or more, regardless of the depth of the cut, shall be permitted only if the applicant has demonstrated to the satisfaction of the Village Engineer that an excess amount of excavation is necessary and proper in order to permit reasonable use of the property and will not contravene the policy set forth in § 120-1, and the Village Engineer shall so endorse the building permit and may impose conditions appropriate, in his discretion, to carry out the policy set forth in § 120-1.
  - (2) In connection with a subdivision plan which has been duly approved by the Planning Board and which makes specific provision for grading, contouring and drainage in the manner deemed by the Planning Board appropriate to carry out the declaration of policy set forth in § 120-1.
  - (3) Nothing in this chapter shall be construed so to prevent the owner or occupant of premises from moving topsoil, excavating or filling his property by his own handwork, provided that no power tools,

other than garden tractors not exceeding six horsepower, are used and that materials are not removed for the purposes of sale or enhancing the value of other property.

Notwithstanding the exceptions provided for by Subsection B(1), (2) or (3) above, if the operation as carried out creates conditions contrary to the policies specifically enumerated in § 120-1A, C or D, the Village Engineer or the Planning Board, either on his or its own motion or upon complaint, may require that a permit be issued under the appropriate Article subject to the imposition of conditions as therein provided, and the Village Engineer on his own motion may, or upon request of the Chairman of the Planning Board shall, issue a stop order pending the issuance of a permit and, if the person in question does not choose to apply for a permit, may compel restoration of the premises and may require corrective action with respect to drainage, exposed banks and other conditions to the extent necessary to fulfill the policy considerations set forth in § 120-1A, C or D, and failure to comply with such stop order or requirements shall constitute a violation of this chapter.

**FILLING OPERATION** -- A raising of the existing contour of the land in excess of four feet, regardless of the area involved in such change, and any raising of such existing contour in excess of two feet over an area of 500 square feet or more, and any raising of existing contour over an area of 1,000 square feet or more, regardless of whether the filling operation is carried out by placing on the land fill or other materials from other properties or redistributing the earth and soil on the land itself, by bulldozer or other means, except that in connection with construction for which a building permit shall have been issued, fill in excess of those limits shall be permissible if the applicant has demonstrated that it will not contravene the policy set forth in § 120-1.

**GRADE or CONTOUR** -- The actual existing grade or contour of the land involved at any point thereof and shall not mean the grade of the street or streets adjoining said land.

**ARTICLE II, Excavation, Tree Removal or Topsoil Stripping Permits**EN  
§ 120-3. Permit required. [Amended 4-8-1968]

Excavation of land, removal of trees or stripping of topsoil as defined in § 120-2 above, subject to the exceptions therein set forth, where fill or other material is to be removed from the premises, shall be unlawful without a permit for the purpose granted in accordance with the provisions of §§ 120-4 through 120-9 which permit shall be a permit issued by the Planning Board as a special permit under the rules and regulations governing issuance of special permits contained in the Croton-on-Hudson Zoning Ordinance of 1963, as amended. EN No permit shall be granted under this Article II with respect to property situated in any zone other than an M District Zone where industrial or light manufacturing uses are permitted unless the Planning Board finds that the permit is necessary in order to make possible a reasonable use of the property, and in such event the extent of the excavation tree, removal or topsoil removal shall be limited to the minimum amount consistent with a reasonable use of the property.

§ 120-4. Application for permit. [Amended 4-6-1968]

Each application for an excavation permit or site plan approval shall contain the specific location of all live trees six inches in diameter or larger, measured at a point three feet above existing ground level, prior to regrading the area and along the twenty-five-foot wide boundary strip around the grading area, with a note for each tree indicating removal or not. Each application shall be on a form prepared by the Planning Board and approved by the Planning Board, 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 be verified and shall contain or shall be accompanied by the following:

- A. The name and address of the property affected.
- B. 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 notation by the Village Engineer of the village that the use in question is permitted in such zone.
- C. The name and address of the person or corporation who will carry out the operation.
- D. A description of the proposed operation; the extent, in three dimensions, of the proposed excavation; the volume of material proposed to be removed; and the condition of the premises before the commencement of and the proposed condition of the premises after the completion of the proposed operation.
- E. 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 five-foot levels, showing distances from street or highway lines,

distances from boundary lines of other owners, the proposed location, size and use of any existing buildings 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; provided, however, the Village Engineer shall have the right to waive the necessity of furnishing a topographic map.

F. A duly acknowledged written consent of the owner and mortgagee, if any, of the premises to the proposed operation.

G. Certificates of the Village Treasurer and the Receiver of Taxes of the town showing payment of all taxes and assessments to date against the premises.

H. A certificate of the Village 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 village and 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 is not contrary to the policy of § 120-1 above.

#### § 120-5. Fees.EN

The application shall be accompanied by a filing fee in an amount set by resolution of the Board of Trustees.EN

#### § 120-6. Bond or cash deposit.

Before issuing any permit under this article, the Planning Board shall require the applicant to file with the village a suitable surety bond, payable to the village, in an amount fixed by the Planning Board and in a form approved by said Board, with a surety company as surety and conditioned upon the faithful performance of the conditions contained in this Article, the observance of all municipal ordinances and performance of conditions imposed in connection with the granting of the permit to indemnify the village for any damages to village property and to cover the cost to the village of completing the work in accordance with the approved grading or restoring the premises and/or the replacing of topsoil and reseeding in the event that the applicant fails to do so. In lieu of such bond, a deposit of cash or negotiable securities may be made with the Village Clerk upon the same conditions.

#### § 120-7. Release of bond or deposit.

A. Any surety bond filed or deposit made in accordance with the foregoing shall be released when there shall have been filed with the Village Clerk a certificate of the Village Engineer to the effect that, in all respects, the work proposed under the approved plan has been satisfactorily completed in full compliance with all provisions of this chapter.

B. If no such certificate shall have been filed within 60 days after completion of the operation or the end of the period for reseeding provided for pursuant to this chapter, whichever is later, the bond or the deposit shall be forfeited, and the village shall be entitled to the full amount thereof for the purpose of complying with the provisions of this chapter.

#### § 120-8. Permit conditions.

The operations under a permit granted pursuant to the provisions of this chapter shall be subject to the following conditions:

A. No excavation shall be made within a horizontal distance of 50 feet of any public road or highway or within a horizontal distance of 50 feet of any adjoining boundary line of other owners without the consent of the Board of Appeals.

B. No excavation shall be made below the grade of surrounding property to a depth greater than four feet, unless the excavation is properly guarded and protected by a substantial fence of proper height and strength which will prevent children from climbing over such fence and with gates, which gates shall be locked at all times when the property is not being worked.

C. All excavations and all conformations resulting from grading or filling operations shall be drained so that water or pools gathering in the bottom of such excavations shall not be greater in depth than one foot.

D. The excavated portions shall be refilled with clean, nonburning fill containing no garbage, refuse or deleterious matter and shall be graded to the level of the adjoining property and shall be reseeded with a mixture of ryegrass and clover sufficient to stabilize the soil.

E. In the case of a permit for the removal of topsoil, at least two inches of topsoil shall be left upon the surface from which topsoil has been removed, and the area from which said topsoil has been taken shall be reseeded with a mixture of rye and clover sufficient to stabilize the soil.

F. Processing of any kind or the erection or use of any structure, such as, but not limited to, hoppers, strainers, washers, crushers or sheds, shall be deemed to be a commercial use; provided, however, that where a permit has been issued under this chapter, power equipment for the purpose of excavation and loading shall be allowed.

G. In residence zones, no operations shall be permitted on Sundays or legal holidays nor before 7:00 a.m. or after 7:00 p.m. on other days. In other zones, the foregoing time limitations shall not apply, but the Planning Board may, in its discretion, prescribe any time limits it may deem necessary or desirable.

H. No excavation slope shall be cut in excess of the permanent stable slope of the soil involved, and the exposed slope shall be required to be seeded or protected by other means to prevent its subsequent erosion. In the event of any dispute as to the stability of the slope, the determination of the Planning Board shall be conclusive.

I. Dust down or similar dust layer shall be spread on access roads and any traveled areas used in connection with any work under this chapter to protect the public and surrounding area against windblown sand and dust. [Added 4-8-1968]

J. No removal of earth from the ground shall be made so as to prevent or interfere with the orderly development of residential, business, manufacturing or public purposes or other land in the vicinity or as to render unreasonable delay in travel from the place to place or to render unduly difficult or to substantially increase the cost of the installation of public utilities or other public services or as to substantially depreciate the value of property in the vicinity. [Added 4-8-1968]

K. No stripping of topsoil or tree removal shall be made within 10 feet of any property line unless permitted by the Planning Board. Permits by the Planning Board shall take into consideration the intent of this chapter regarding the replacement of topsoil and the restoration, reseeded and stabilization of the land. [Added 4-8-1968]

L. Such conditions as the Planning Board may deem appropriate as to the time in which the work is to be completed.

M. Such other conditions as the Planning Board may deem appropriate to carry out the purposes of this chapter and the broad statements of policy as enumerated in § 120-1 hereof, as if those purposes were specifically enumerated hereunder.

N. The Board retains the power to impose additional conditions during the terms of the permit if in its opinion or in the opinion of the Village Engineer additional conditions are necessary.

#### § 120-9. Duration of permit.EN

Permits under this Article shall be for a period of no longer than one year or such shorter period as may be prescribed by the Planning Board with a view to having substantially continuous operations in connection with the excavation covered by the permit, subject only to interruption of work caused by seasonal conditions, such permits to be subject to termination if work is interrupted for a period of more than 60 days due to causes other than the weather or other seasonal conditions. Where work under the initial or renewal permit issued under this chapter has been pursued with reasonable diligence, a renewal permit may be issued without a new application upon payment of a fee in an amount set by resolution of the Board of Trustees,EN provided that the required bond or cash deposit shall remain in force and that the other requirements in connection with the application are currently up to date.

#### § 120-10. Minor excavation.

Excavation involving the removal from the premises of less than one hundred cubic yards of fill or other material or the removal of topsoil from an area less than 5,000 square feet shall be governed by the provisions of Article III.

### ARTICLE III, Permits for Nonremoval of Fill or Filling Operations

#### § 120-11. Permit required.

Excavations not involving removal of fill or other material from the premises in excess of one hundred cubic yards or removal of topsoil from an area of more than 5,000 square feet and filling operations shall be unlawful without a permit for the purpose granted in accordance with the provisions of §§ 120-12 through 120-14, which permit shall either be a minor excavation or fill permit issued by the Village Engineer or a permit issued by the Planning Board as a special permit under the rules and regulations, to

the extent applicable, governing special permits in the Village of Croton-on-Hudson Zoning Ordinance of 1963.EN

§ 120-12. Application for permit.

Each application for issuance of a permit under this Article shall be made on the same form and in the same manner as an application for permit under Article II hereof, with such changes therein as may be required by the following modifications of those provisions.

A. All applications shall be made to the Village Engineer. If the amount of fill to be excavated and removed from the premises or brought onto the premises from outside the boundaries thereof does not exceed one hundred cubic yards, or 5,000 cubic yards if the excavation or deposit of fill is the result of a grading operation limited to the premises [in each case without considering material removed pursuant to exception under Subsection B(1) of the definition of "excavation" in § 120-2], or if the amount of topsoil to be moved does not exceed 5,000 square feet, the Village Engineer may, in his discretion, either issue a minor excavation or fill permit or refer the matter to the Planning Board for consideration of the issuance of a permit. In all other cases the Village Engineer shall refer the matter to the Planning Board for consideration of the issuance of a permit.

B. In the discretion of the Village Engineer, if the volume of the material to be excavated or fill deposited or placed on the premises shall not exceed one hundred cubic yards if the excavated material is to be removed from the premises or fill is to be brought onto the premises from outside the boundaries thereof or 5,000 cubic yards if the excavation or deposit of fill is the result of a grading operation limited to the premises [in each case without considering material removed pursuant to exception under Subsection B(1) of the definition of "excavation" in § 120-2] or, if topsoil is to be removed, the amount thereof does not exceed 5,000 square feet, the requirements that a licensed engineer or land surveyor present the material listed in § 120-4E may be eliminated, but the same basic information shall be required from the applicant.

§ 120-13. Minor excavation or fill permit.EN

Where application has been made for a building permit under the provisions of Chapter 86, Building Construction, and the documents submitted with that application show that, as an incident to the construction, fill is to be deposited, moved or placed on the premises or fill or material is to be excavated or topsoil moved in an amount not exceeding one hundred cubic yards if the excavated material is to be removed from the premises or fill is to be brought onto the premises from outside the boundaries thereof or 5,000 cubic yards if the excavation or deposit of fill is the result of a grading operation limited to the premises [in each case without considering material removed pursuant to exception under Subsection B(1) of the definition of "excavation" in § 120-2] or, if topsoil is to be removed, the amount thereof does not exceed 5,000 square feet, such application for building permit shall, without the payment of any additional fee, be considered an application under this Article III for a minor excavation or fill permit, and the pertinent provisions hereof shall be applicable thereto, including the reference of the application to the Planning Board and the payment of an additional fee in connection therewith, in an amount set by resolution of the Board of Trustees,EN if the Village Engineer, in his discretion, determines that the application shall be considered by the Planning Board.

§ 120-14. FeeEN

The application shall be accompanied by a filing fee in an amount set by resolution of the Board of Trustees.EN

§ 120-15. Bond or cash deposit release.

The provisions of §§ 120-6 and 120-7 of Article II shall be applicable in the event that the volume of material to be excavated, fill deposited or topsoil removed shall exceed 100 cubic yards if the excavated material is to be removed from the premises or fill is to be brought onto the premises from outside the boundaries thereof or 5,000 cubic yards if the excavation or deposit of fill is the result of a grading operation limited to the premises [in each case without considering material removed pursuant to exception under Subsection B(1) of the definition of "excavation" in § 120-2] or, if topsoil is to be removed, the amount thereof does not exceed 5,000 square feet and in such other cases as, in the discretion of the Village Engineer and/or Planning Board, bond is required.

§ 120-16. Permit conditions.

The operations under a permit granted pursuant to the provisions of this Article III of this chapter shall be subject to the following conditions:

A. No excavation shall be made below the grade of surrounding property to a depth greater than four feet unless the excavation is properly guarded and protected by a substantial fence of proper height and strength which will prevent children from climbing over such fence and with gates, which gates shall be locked at all times when the property is not being worked.

B. All excavations and all conformations resulting from filling or grading operations shall be drained so that water or pools gathering in the bottom of such excavations shall not be greater in depth than one foot.

C. No excavation shall be made nor shall any filling operation 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.

D. No filling operation shall be conducted within a horizontal distance of 50 feet of any public road or highway which raises the level of the filled land above the grade of the public road or highway nor within a horizontal distance of 50 feet of adjoining boundary lines of other owners which raises the level of the filled property above that of the adjoining owners, without the consent of the Planning Board.

E. 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 village, endanger any road, street or highway within the limits of the village or produce or enlarge areas from which water will not drain, and 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.

F. The filled or excavated portion shall be seeded with a mixture of rye and clover or, in appropriate cases, lawn grasses sufficient to stabilize the soil and shall be graded to the level of and in relation to the contour of adjoining property.

G. Such conditions as the Planning Board may deem appropriate as to the time in which the work is to be completed.

H. Such other conditions as the Planning Board may deem appropriate to carry out the purposes of this chapter and the broad statements of policy as enumerated in § 120-1 hereof, as if those purposes were specifically enumerated hereunder.

I. The Planning Board retains the power to impose additional conditions during the term of the permit if, in its opinion or in the opinion of the Village Engineer, additional conditions are necessary.  
§ 120-17. Duration of permit.

Except for a minor excavation or fill permit in connection with a building permit, as provided for in § 120-13 of this Article, which shall be coextensive with the building permit, permits under this Article III shall be for a period of no longer than three months or such shorter period as may be prescribed by the Village Engineer or the Planning Board, as the case may be, with a view to having substantially continuous operations covered by the permit. The permit may be renewed by the Village Engineer or, if granted by the Planning Board, without hearing for a single additional period of three months without additional application or the payment of a new fee upon presentation of reasons deemed sufficient by the Village Engineer or Planning Board as to why the work could not be completed during the original period.

#### ARTICLE IV, Commercial Excavations [Added 11-18-1968]

##### § 120-18. Permit required; conditions.

Clay, sand, gravel, topsoil or other natural mineral deposits may not be excavated for commercial purposes except by a temporary special permit issued after public hearing by the Planning Board and subject to compliance with the following conditions:

A. The surface of all spoil banks wherein topsoil has been stripped or removed shall be graded so as to reduce the peaks thereof and reduce the depressions between the peaks of such spoil banks to a gently rolling, sloping or terraced topography, as may be appropriate, which grading shall be done in such a fashion as will minimize erosion due to rainfall, break up long uninterrupted slopes, leave the surface free of large rocks or other obstructions and make the surface suitable for revegetation and as nearly level as possible.

B. Loose refuse and debris on the bottom of a final cut shall be graded so that a uniform topography, level and suitable for revegetation, is present.

C. Drainage of water from the spoil bank or cut harmful to any adjoining streams or land is prohibited.

D. Trees, shrubs, legumes or a mixture of rye and clover, together with any other material which, in the opinion of the Planning Board, is necessary to stabilize the soil, shall be planted upon the spoil banks and upon final cuts.

E. Appropriate drainage shall be constructed so that no noxious liquid or water is permitted to accumulate in any final cut.

F. As a condition precedent to the issuance of temporary special permit by the Planning Board as herein provided, the owner, lessee or agent thereof of the land in question shall file a preliminary plan for the reclamation of the land proposed to be excavated which plan must be approved by said Board. The Board shall have the right to offer an alternative plan.

G. The preliminary plan shall contain a certification of the amount of land involved, an estimate of the duration of the excavation and a time schedule for the reclamation and subsequent replanting of the land. The reclamation of land shall commence after the excavation of 10 acres.

H. To insure adherence to the reclamation and planting plan, the owner, lessee or agent shall forward to the village a surety bond in the amount of \$500 for each acre of land involved.

I. No surety bond required under this Article shall be discharged or released until final approval of the reclamation and planting by the Planning Board, without limitation as to time.

J. The village, upon recommendation of the Planning Board, shall have the right, if the final reclamation and planting are found by the Zoning Board as not likely to be successful and after rejection by the owner, lessee or agent concerned, of an alternate plan suggested by the Planning Board to enter upon the land reclaim and replant it and assess the entire cost of such reclamation and replanting, plus costs and expenses, against the said land, and all costs shall be a lien thereon enforceable in the same manner as any lien or real property tax.

#### ARTICLE V, Enforcement

##### § 120-19. Protection of adjoining property.

Whether or not a permit is required under this chapter, any person causing any excavation to be made shall provide such sheet piling and bracing as may be necessary to prevent the earth of adjoining property from caving in before permanent supports have been provided for the sides of such excavation, and, whenever provisions are lacking for the permanent support of the side of an excavation, the person causing or having caused such excavation to be made shall build a retaining wall at his own expense on his own land, such retaining wall to be carried to a height sufficient to retain the adjoining earth and to be in accordance with specifications acceptable to the Village Engineer.

##### § 120-20. Powers of Village Engineer.

The Village Engineer shall have the same duties, powers, rights of inspection, power to issue stop orders, right to revoke permits and other rights, duties and powers with respect to enforcement of this chapter as those possessed by him under Article I of Chapter 86, Building Construction.

##### § 120-21. Penalties for offenses.EN

It shall be unlawful for any person, including the owner, general agent or contractor of a building with respect to the premises concerned, the lessee or tenant of the premises or any part thereof and the general building contractor, general agent, architect, engineer or any person who owns, permits, takes part or assists in or who maintains any premises in which any violation of this chapter shall exist, to violate any provision of this chapter, the requirements of the Village Engineer and/or Planning Board pursuant to this chapter and the acts of the Village Engineer pursuant to § 120-20, and any such person who shall violate this chapter shall be subject to the penalties provided by § 1-12 of Chapter 1, General Provisions. Each and every day that such violation continues shall constitute a separate offense.