

4.2 Earth Removal, Earth Moving, and Addition of Fill.

No person shall remove "earth" from or add "fill" to any land within the Town of Burlington, except in conformance with this section.

4.2.1 Definitions:

4.2.1.1 For the purpose of this Bylaw, "earth" shall include soil, loam, sand, gravel, clay, peat, rock or other earth product.

4.2.1.2 For the purpose of this Bylaw, "fill" shall include "earth" and all nonorganic solid materials.

4.2.1.3 For the purpose of this Bylaw, "Board" shall mean Board of Selectmen.

4.2.2 Administration Procedure

4.2.2.1 No earth shall be removed from nor fill added to land in the Town without a written permit from the Board. Notwithstanding this section, no permit is required for landscaping, gardening, and planting in the usual use of land.

4.2.2.2 Any person wishing to obtain or renew a permit shall file an application in such form as the Board may require, together with a topographical plan showing existing and finished grades. A filing fee of Two Hundred Dollars (\$200.00) shall accompany the application form when a hearing is required.

4.2.2.3 No permit shall be issued, except as provided in Section 4.2.6 below, until a public hearing has been held by the Board, notice of which shall be given at least fourteen (14) days in advance in a newspaper of local circulation and the posting of copies thereof on municipal bulletin boards. Abutters and other parties in interest as determined by the Board shall be notified by certified mail.

4.2.2.4 No permit is transferable.

4.2.2.5 Each permit shall automatically expire upon the completion of the project for which it was issued or at such other time as may be specified by the Board. In no case shall a permit be issued for a period longer than eighteen (18) months.

4.2.2.6 The Board may waive the issuance of a permit for the moving of earth entirely within an individual parcel if not in violation of any Bylaw of the Town, provided that all minimum standards and limitations of this section are complied with, under the following circumstances: in the construction of a building, of a road (public or private); as part of a farm, garden, nursery, or cemetery; and when incidental to landscaping, construction of a swimming pool, or similar activities in connection with an existing building.

4.2.2.7 The Board may waive the public hearing when application for permit is submitted for the following purposes:

- (a) In connection with those activities listed under 4.2.2.6 when an excess of earth has been created which is unnecessary and unusable at the site.
- (b) When such earth excess is created in connection with the construction of a building, the amount to be removed shall be limited to the volume of the foundation and basement excavation for the building.
- (c) When such earth excess is created in connection with the construction of a road, the amount to be removed shall be limited to the excess of cut and fill required to satisfy Planning Board standards with respect to construction of ways.

4.2.2.8 No permit or waiver of permit for earth moving, removal or fill shall be issued within the 100-Year Flood Plain District, as defined in the Zoning Bylaw, unless the Board of Selectmen determine that all requirements of the 100-Year Flood Plain District will be fulfilled for the proposed work.

Note: Adopted Art. 18 TM 1/23/85. App. A.G. 4/12/85. Pub. Burl. News 4/25, 5/2/85.

4.2.2.9 The Board of Selectmen may waive strict compliance with the standards in Section 4.2.4, 4.2.5 and 4.2.6 when the applicant demonstrates that doing so serves the public interest and will not compromise the goals and objectives of this bylaw.

Note: Adopted Art. 20 TM 5/20/13. App. A.G.. July 29, 2013 Posted: 8/1 – 11/1/13

4.2.3 General Limitations

No permit shall be issued, remain in force or be renewed for a project that will endanger the public safety or health, or constitute a nuisance.

4.2.4 Standards

The following requirements shall be the minimum operating standards for all earth moving or addition of fill.

4.2.4.1 No excavation or filling shall take place within 200 feet of existing public ways unless specifically permitted by the Board; and no excavation or filling shall take place within 50 feet of any adjoining lot where excavation or filling is not permitted. Natural vegetation shall be left and maintained on the undisturbed land.

4.2.4.2 Operations shall take place only between 7:30 a.m. and 5:00 p.m. Monday thru Friday.

4.2.4.3 All loaded vehicles shall be covered to prevent dust and spilling of contents.

4.2.4.4 All trucking routes shall be subject to approval by the Chief of Police.

4.2.4.5 All unpaved access ways shall be treated with oil, stone, or other suitable material to reduce dust and mud.

4.2.4.6 During operations, when an excavation is located closer than 200 feet from a residential area or public way and where the excavation will have a depth of more than 15 feet with a slope in excess of 1:1, a nonclimbable fence at least 6 feet high shall be erected to limit access to this area.

4.2.4.7 No area shall be excavated or filled so as to cause or permit the accumulation of freestanding water. Permanent drainage shall be provided as required by the Board.

4.2.4.8 All topsoil and subsoil shall be stripped from the operation area and stockpiled for use in restoring the area. No loam shall be removed from the Town.

4.2.4.9 Any temporary shelters or buildings erected on the premises shall be removed within 30 days after the expiration of the permit.

4.2.4.10 No excavation or filling shall be allowed within 50 ft. of a waterway unless specifically permitted by the Board.

4.2.4.11 No material shall be used for filling except "fill" as defined in this section.

4.2.4.12 No excavation or filling shall be allowed within four (4) feet above the high water table.

4.2.4.13 Within the Aquifer and Water Resource Districts as defined by the Zoning Bylaw, only clean fill shall be allowed. Clean fill is of granular material, well graded from fine to coarse with a maximum size of 6 inches, obtained from natural deposits. It shall not contain vegetation, masses of roots, or individual roots more than 18 inches long or more than 1/2 inch in diameter. It shall be substantially free from loam and other organic matter and clay.

It shall be free from chemical contaminants and other fine or harmful substances.

Note: Amended Art. 15 TM 1/12/83. App. A.G.3/22/83. Pub. Burl. News 3/31, 4/7/83.

4.2.5 Restoration Standards

4.2.5.1 No slope shall be left steeper than one (1) foot vertical to two (2) feet horizontal.

4.2.5.2 All debris, organic material, and boulders shall be removed from the site or disposed of as required by the Board.

4.2.5.3 Prior to the expiration date of the permit, ground levels and grades shall be established as shown on the completed topographical plan.

4.2.5.4 Topsoil shall be spread over the disturbed area to a minimum depth of four (4) inches. This soil shall be treated with fertilizer and seeded as required. Trees or shrubs shall be planted as required. The planted area shall be protected from erosion during the establishment period.

4.2.5.5 "As built" drawings shall be prepared by a Registered Engineer or Land Surveyor at a scale of 1" equals 40' or a scale acceptable to the Board showing final grades; location of monuments and their elevation; location and size of underground drainage and other utilities installed, the location boundaries, and depth of organic fill areas; the location of access roads; and similar permanent improvements when the site is completed. Such "as built" drawings shall be prepared and submitted to the Board before any release of performance guarantee.

4.2.6 Performance Guarantee

A cash deposit, a bank deposit, or certified check will be required in an amount sufficient to comply with the terms of the permit and this section. In the event that the permit holder does not complete all work covered by the terms of the permit, the Town may use all or part of the security deposit to complete such work. The security deposit or the balance thereof will be released only after the land has been restored as outlined above and sufficient time has elapsed to indicate that the seeding and planting are established and the drainage is satisfactory.

4.2.7 General Administration

4.2.7.1 The Board and its agents shall be permitted access to inspect the premises at all times.

4.2.7.2 Upon petition of the permit holder, the Board, after public hearing, may reissue and/or modify the permit.

4.2.7.3 The Board, after notice to permit holder and a hearing, if requested, may order the revocation or suspension of a permit if the conditions established thereunder are not complied with; but the permit holder in such situation shall not be relieved of his obligations thereunder.

4.2.7.4 Any earth moving, earth removal, or filling project in progress, or authorized by a permit under any other Bylaw at the time this section becomes effective, shall forthwith be subject to the provisions of this section, and the owner of the involved land shall, within 30 days after the effective date of this section, submit an application for a permit as prescribed. The effective date of such permit shall be the effective date of this section.

4.2.8 Violations

4.2.8.1 The Board, if it concludes that there has been a violation of this Bylaw, shall send to the offender by certified mail, a notice ordering immediate compliance with the terms of the permit and this section.

4.2.8.2 The penalty for violation of this Bylaw shall be a fine of not more than Fifty Dollars for the first offense, not more than One Hundred Dollars (\$100.00) for the second offense; and not more than Two Hundred Dollars (\$200.00) for any subsequent offense. Each day a violation continues, after notification, shall be a separate offense, except that each truckload of earth or portion thereof removed from the premises shall be considered a separate offense.

Note: Amended Art. 17 TM 2/24/75. App. A.G. 5/20/75. Pub. BTU 6/12, 6/19, 6/26/75.