

Chapter 124: FILLING AND GRADING

GENERAL REFERENCES

Excavations — See Ch.
Soil Removal — See Ch.
Streets and sidewalks — See Ch.
Subdivision of land — See Ch.
Zoning — See Ch.

§ 124-1. Legislative intent.

The Village Board of Trustees hereby finds that the uncontrolled and unregulated excavation, filling, and grading of soil has resulted and will result in conditions detrimental to the public safety, health and general welfare, deterring substantially the efforts of the Village to promote and effectuate the general purpose of municipal planning.

§ 124-2. Definitions.

Unless specifically defined below, words or phrases used in this section shall be interpreted so as to give them the meaning they have in common usage and to give section its most reasonable application.

APPROVING AUTHORITY — The board or official designated by this chapter to receive and review soil permit applications and to issue soil permits, i.e., Zoning Board of Appeals, Planning Board and Village Engineer and, in the event of an appeal, the Mayor and Village Board.

DEVELOPMENT — Improvement of a lot by the construction or erection of one or more buildings for residential, commercial or industrial purposes and improvement of lands through conservation and flood control. The term improvement shall mean that work done as part of an approved permit from the Building Inspector, Planning Board or Zoning Board of Appeals.

ENFORCEMENT OFFICER — The Building Inspector, and Code Enforcement Officer serving the Village of South Blooming Grove shall have the power, right and authority to issue an appearance ticket, as the same is defined in Article 150 of the Criminal Procedure Law of the State of New York, for the violation of any section of this article.

EXCAVATOR — Any person who shall move or remove soil, as the terms are hereinafter defined.

FILLING — The placement of soil, rubble, spoils, rocks and/or any other appropriate fill on any property for the purpose of raising or elevating any portion of a property. Filling shall not include the burying of garbage, trash or hazardous materials of any kind. Non-hazardous refuse, demolition or construction waste originating within the Village may be deemed to be acceptable fill material. No refuse or construction and demolition debris, which originates outside the Village of South Blooming Grove may be used as fill material.

GRADING — The changing or alteration of the surfaces or slopes of lawns or grounds on a site.

HAZARDOUS MATERIALS — Those materials as defined by either federal or state law as "hazardous" and/or including petroleum and petroleum products.

MAJOR SOIL FILLING, GRADING, MOVEMENT — The movement of soil in amounts exceeding 300 cubic yards over the course of a twelve-consecutive-month period.

MINOR SOIL FILLING, GRADING, MOVEMENT — The movement of soil, in amounts equal to or less than 300 cubic yards but greater than 30 cubic yards, over the course of a twelve-consecutive-month period.

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MOVE, MOVAL, or MOVEMENT — To dig; to excavate; to remove; to deposit; to place; to fill; to grade, re-grade, level or otherwise alter or change the location or contour; to transport; or to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

SOIL — Any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter.

§ 124-3. Permit required; and exceptions.

- A. Major soil filling, and grading permit.** Anyone engaged in the movement of soil classified as a major soil filling, and grading movement shall require a permit to be issued by the Village Planning Board, unless the soil moving is part of an application brought before the jurisdiction of the Village Zoning Board of Appeals when, under those circumstances, the Village Zoning Board of Appeals may issue the major soil moving permit.
- B. Minor soil filling, and grading permit.** Anyone engaged in the movement of soil classified as a minor soil filling, and grading movement shall require a permit to be issued by the approving authority, subject to the Official's right to refer applications to the Planning Board and unless the soil moving is part of an application brought before the jurisdiction of the Village Planning Board or Zoning Board of Appeals when, under those circumstances, the Village Planning Board or Zoning Board of Appeals may issue the minor soil moving permits.
- C. Wetlands or Floodplains.** Anyone engaged in the movement of soil within a designated wetlands or floodplain.
- D. Exceptions.**
- (1) No soil permit shall be required:**
- (a)** For any person engaged in a soil conservation program of the United States Department of Agriculture Soil Conservation Service and for which lands an approved farm plan has been established by the agency, provided that all soil-moving operations in and upon such lands are performed in accordance with such approved farm plan.
 - (b)** For moving, filling, and grading of soil in amounts less than or equal to 30 cubic yards, during any twelve-consecutive-month period.
 - (c)** When the soil to be moved filled, and graded is in accordance with approved plans for development, provided that no soil is removed from or brought onto the development from another location.
 - (d)** For movement on commercial property of a business engaged in retail or wholesale distribution of soil.
 - (e)** For landscaping, grading lawn areas, normal repairs to occupied property, correcting hazards representing an imminent threat to life or property, removal of dead wood, customary agricultural operations.
- (2)** In the event of soil movement as part of a development application, nothing contained in this subsection, entitled "Exceptions," shall be construed to preclude the Building Inspector from determining that, by reason of the size or complexity of the contemplated soil movement, a major or minor soil permit would be required.
- E.** Any movement of soil, including that exempt from the provisions of this chapter, must include the representation that said soil movement shall have no adverse impact on the property owners and shall not increase water runoff.

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§ 124-4. Application requirements.

The following information or exhibits are required in order to secure a permit.

- A. Engineering drawings showing the tax lot upon which the activity will be conducted and all contiguous tax lots.
- B. The names and addresses and the section, block and lot numbers of all contiguous property owners, and the names and addresses and section, block and lot numbers of all property owners located within 500 feet of the proposed site.
- C. A plan showing all existing and proposed contour lines, amount of fill to be placed or displaced, location of trees over eight inches in diameter measured four feet from the ground, and road access to the site.
- D. An erosion control plan.
- E. Preliminary copies of any contracts to perform such filling and grading, which contract shall state that it is subject to this chapter, and a copy of this chapter shall be affixed to and become a part of such contract.
- F. Documentation regarding permit status with the New York State Department of Environmental Conservation prior to the issuance of a permit. Any required New York State Department of Environmental Conservation permit must be in effect prior to the Village issuing a permit.
- G. Proof of insurance adequate to cover the intended work pursuant to the terms of the permit. The Village shall be named as an additional insured on the applicant's policy. The application shall by a separate instrument agree to indemnify and hold harmless the Village from any claims arising out of the intended activity.
- H. Completion date and any other information, which the Zoning Board of Appeals or Planning Board deems reasonable in reviewing the application.
- I. All applicants are hereby placed on notice that their intended activities may require an excavation permit pursuant to Excavations, of this Code.
- J. A notice shall also be affixed to all copies of all contracts stating the Village's Weight restriction for travel on all Village owned roadways
- K. The Zoning Board of Appeals may refer the application and supporting documentation to the Planning Board and to other Village agencies for review and recommendation. The Zoning Board of Appeals and/or Planning Board may engage the services of an independent consultant to review the application and supporting documentation, the fees for which shall be paid by the applicant. The Village Board may for this purpose require the applicant to deposit funds in advance in a reasonable amount and any surplus shall be returned to the applicant. Within 30 days after the date of said referral, the Planning Board and any other agency should report its recommendations to the Zoning Board of Appeals. If no report is made within such period of time, the Zoning Board of Appeals may render a determination on the application.
- L. Filling and grading shall be done in such manner as not to result in an [increase of surface water runoff](#) onto any other properties and shall not result in any conditions, which increases erosion or results in any unstable conditions upon the site, adjacent properties or wetlands.
- M. The Village Board, or its designee, may contract appropriate surveillance of the site on a twenty-four-hour, seven-day-week basis, until the activity is completed. The applicant shall be required as a condition of the permit to sign the permit authorizing the Village Board, its employees or agents, to enter onto the applicant's property to conduct the appropriate surveillance. The Village Board prior to the issuance of a permit will estimate any and all costs for this service and the applicant will then be required to post a certified check to cover

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such costs.

- N. The applicant shall retain a professional engineer licensed to practice in the State of New York, who shall certify as to the contours of the site at regularly scheduled times to be established by the enforcement officer or his designee.
- O. Any monitoring and/or testing of fill material which is required during the course of operations will be performed by a licensed professional engineer and/or testing lab retained by the Village. The applicant shall reimburse all costs for this testing to the Village.
- P. The Zoning Board of Appeals and/or Planning Board may impose any other reasonable conditions on the permit such as screening, access controls, dust controls, site security, etc., which the Zoning Board of Appeals and/or Planning Board believes is necessary in order to adequately maintain the site.
- Q. The Zoning Board of Appeals and/or Planning Board may limit the duration of any permit issued pursuant to this chapter to 60 days or other period deemed reasonable by the Board.

§ 124-5. Application for permit.

- A. **Form of application.** On forms prescribed and supplied by the approving authority, the applicant shall set forth in triplicate:
 - (1) The name and address of applicant.
 - (2) The printed name(s) and address(es) of all owner(s) of the lot(s).
 - (3) The application shall be signed and sworn to by all the owners of the premises.
 - (4) A description of the lot in questions, identified as to the section, block and lot or lots on the current Tax Assessment Map of the Village of South Blooming Grove.
 - (5) The ultimate purpose or reason for excavating, moving or filling and grading of the soil.
 - (6) The kind and quantity, in cubic yards, of soil to be excavated, moved, or removed. In the case of soil to be brought in, the place from which the soil is to be brought and the kind and quality of the soil to be brought in shall be set forth.
 - (7) The proposed dates of commencement and completion of the work.
 - (8) The name, address, and telephone number of the person having direct charge, supervision and control of the proposed excavation work.
 - (9) The name, address and telephone number of the person having direct charge or control of the operation or removing the excavated material.
 - (10) A description of the equipment to be used in the excavation, filling and grading of the soil.
 - (11) A description giving the number and size of the trucks or other vehicles in filling or delivery of soil, their gross vehicle weights.
 - (12) A description of the route or routes to be used by the vehicles in removing the soil.
 - (13) In the event the delivery and filling of said soil is in connection with the development of a subdivision or site plan, all of the information required under the applicable Subdivision Code, Site Plan Code and/or Zoning Code of the Village of South Blooming Grove, together with evidence of Planning Board and/or Zoning Board of Appeals approval thereof.
 - (14) Evidence of compliance with applicable soil erosion and sediment control regulations and codes of the Village of South Blooming Grove, County of Orange and the State of New York.

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- (15) In the event the contemplated work shall proceed in stages, a map showing the division of the tract into mining and fill sectors clearly indicating the order in which each sector is to be mined or filled and the length of time to be devoted to each sector.
 - (16) Hazardous materials/importation of fill material. Fill material procured from a site other than the site at which the fill is proposed to be used shall be free of hazardous substances, as defined by all federal, state and local regulations. This shall apply to all soil movement, which imports soil onto a lot within the Village, and regardless of its classification as "minor," "major" or "exempt." An owner seeking to import fill as part of a minor or major soil application shall submit, as part of the application, information required by the approving authority adhered as to the source, need, purpose and volume of the fill, including a description of the methods used to prove that it is free of hazardous substances, which shall include but will not be limited to a true copy of the fill shipper's delivery manifest. Methods used to ensure compliance with this section shall be in conformance with published field testing procedures as adopted by the New York State Department of Environmental Conservation. The Building Inspector and/or Village Engineer may request further information regarding compliance with this section before approving the permit application.
 - (17) Such other data as the approving authority may require, consistent with its review function and the standards governing said review.
 - (18) The applicant shall also include a copy of a survey delineating the approximate location and the dimensions of the amount of soil.
- B. Signature and endorsement.** The application shall bear the signature of the applicant and the endorsement of the owner or owners of the lands signifying approval of the application, consent of the applicant to perform the proposed work and consent to the Village, in the event of failure of the applicant to do so, to cause the proposed work to be completed or otherwise terminated in keeping with the purposes and objectives of this Chapter.
- C. Submission of application.** In the event that the moving, filling, and grading of soil for which a permit is required is in connection with property on which subdivision or site plan approval is being sought simultaneously, the application and all other documents and fees, which may be required, shall be submitted to the Planning Board. In all other cases, the said application, documentation and fees shall be submitted to the Zoning Board of Appeals.
- D. Referral to Planning Board.** By reason of the size or complexity of minor soil moving, filling and/or grading are contemplated by the applicant the Building Inspector and/or Village Engineer may, notwithstanding the provisions of the Subsection C above and § 124-3, within 10 days of the filing of the application, refer the application to the Planning Board for its approval and shall so notify the applicant. Upon such referral by the Building Inspector and/or Village Engineer, the Planning Board shall assume exclusive jurisdiction of the application.
- E. Topographic Map.** Accompanying all major soil moving, filling, and/or grading applications as well as minor applications referred to the Planning Board pursuant to Subsection D above, there shall be eight prints of a topographic map, prepared and certified by a licensed professional engineer and land surveyor of the State of New York, showing:
- (1) The dimensions and lot and block number of the lot upon which the soil-moving operations are to be conducted and of all surrounding lands within 200 feet of the perimeter of the subject lot.
 - (2) The existing grades of the subject lot and of all lots within 200 feet of the perimeter of the subject lot.
 - (3) The existing elevations of all buildings, structures, streets, bodies of water, and watercourses, natural or artificial, and all drainage features such as pipes, inlets, and manholes. Pipe sizes and invert elevations shall also be provided.

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- (4) The proposed final elevations at each point where existing elevations shown on the map are to be changed as a result of the completion of the proposed work.
 - (5) Existing surface water drainage and proposed facilities for surface water drainage and, where applicable, channels of any streams, bodies of water and watercourses, natural or artificial, including detailed cross-sections showing proposed channel widths, bank slopes and method of erosion control.
 - (6) Proposed slopes and lateral supports to adjacent properties and on the subject lot.
 - (7) The limits of disturbance of the area or areas within the subject lot within which the soil moving operations are to be conducted.
 - (8) Accurate cross-sections showing the locations and quantities, in cubic yards, of the soil to be moved.
 - (9) Such other pertinent data as the approving authority may require.
- F. Where, by reason of the simplicity of the application, the approving authority determines that all or part of the information set forth in Subsection E above is not necessary to make an informed determination on the application, the approving authority may waive all or part of the requirements set forth in said Subsection E.

§ 124-6. Filing fee.

- A. Simultaneously with the filing of the application, there shall be submitted to the Village Clerk-Treasurer a fee, payable to the order of the Village of South Blooming Grove, as provided in Schedule of Fees.
- B. In the event of refusal of the soil filling and grading permit, that portion of the fee in excess of the Village's engineering, legal, administrative and other expenses shall be refunded to the applicant.
- C. In the event that the fees posted by the applicant are insufficient to meet the reasonable engineering, legal and administrative expenses incurred by the Village in processing the application and monitoring the applicant's performance, then the applicant shall, upon the request of the Village, immediately pay such additional engineering, legal, administrative and other expenses incurred by the Village. In the event that the applicant does not pay all the fees required by this chapter, the sums due to the Village shall become an obligation of the owner of the property and shall become a lien upon the property and levied on the next real property tax levy on the Village's next years tax levy.

§ 124-7. Performance bond.

- A. The applicant shall be required to post a cash bond in an amount to be determined by the Zoning Board of Appeals and/or the Village Engineer, which bond shall be posted with the Village Clerk-Treasurer and acceptable to the Village Attorney to guarantee the satisfactory restoration and reclamation of the site and repair of any Village roads or other public property which might be damaged as a result of filling, moving, and grading the activities of the applicant. In the event that the applicant fails or refuses to make the necessary repairs, the Village Board shall after notice and public hearing pursuant to § 124-19 forfeits the cash bond in order to cover the expense in making such repairs.
- B. No soil permit for over 100 cubic yards shall be issued unless the applicant has posted with the Village a cash bond acceptable to the Village Attorney, conditioned upon full and faithful performance by the principal, within the time specified in the application, of all the proposed work in accordance with the provisions of this chapter and of the permit. In the event that the

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applicant fails to post the required performance bond within 60 days, the approval of the approving authority shall be automatically rescinded.

§ 124-8. Inspections and tests by Village Engineer.

At the request of the approving authority, the Village Engineer shall make an inspection of any site within the Village, from which soil is to be filled, graded, or moved and shall make such engineering studies as may be required to determine the effect of the filling, moving, or grading of soil from the location as it relates to soil erosion by water and wind, surface and subsurface water drainage, soil fertility, lateral support of abutting streets and lands, public health and safety and any other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the village. He shall also inspect the site to determine whether stakes have been placed on each corner and whether grades stakes have been placed at the existing elevation points designated on the topographical map.

§ 124-9. Factors to be considered by approving authority.

In considering and reviewing the application, the approving authority shall be guided by the general purpose of municipal planning and shall take into consideration that the change will not adversely affect any other property and these other factors:

- A. Soil erosion by water and wind.
- B. Drainage.
- C. Lateral support, slopes, and grades of abutting streets and lands.
- D. The effect of flooding, and the impact on floodplain areas, if any.
- E. Whether the proposed soil movement, filling and / or grading will create a nuisance or danger.
- F. The overall appearance of the subject property after moving of soils.
- G. The creation of sharp declivities, pits or depressions.
- H. Traffic congestion and the effect upon the roads within the Village.
- I. Danger to the environment or the general welfare from the presence of hazardous materials.
- J. The effect that the proposed work would have on current and future Village sanitary sewerage disposal systems.
- K. The negative effect on Village's and private wells.
- L. Such other factors as may bear upon the general welfare of the Village of South Blooming Grove and its citizens.
- M. The negative effect on Village infrastructure (storm drains and piping, culverts, streams, water mains, sewer mains).

§ 124-10. Decision of the approving authority.

- A. The approving authority shall, within 60 days after the filing of the application and the topographical map containing all of the information required pursuant to the provisions of this chapter and the payment of the requisite fee, grant or deny the application. The approving authority, in approving said application, may attach such reasonable conditions to said approval, as it may deem necessary.
- B. Prior to the issuance of a permit, the Zoning Board of Appeals or the Planning Board shall

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hold a public hearing on five days' notice. Notice of the hearing shall be posted at the Village Hall and published in the official newspaper. Further, written notice of the hearing shall be given five days prior thereto by the applicant at the applicant's sole cost and expense to all abutting property owners and all other owners of property within 500 feet of the intended site.

- C. Proof of such notice shall be given by certified mail, return receipt requested, and at the time of the public hearing the applicant shall file proof of mailing of the notice of public hearing.
- D. In the event a public hearing is so ordered by the approving authority, the time for the making of its decision shall be extended to not later than 60 days after the date of the hearing.
- E. Failure of the approving authority to act within the time specified herein shall be deemed a denial of the application.
- F. Nothing herein contained shall prohibit the extension of the time periods herein set forth by the written consent of the applicant.

§ 124-11. Appeals.

- A. **Filing of appeal.** Any person aggrieved by the decision of the approving authority may, not later than 30 days after said decision, appeal that decision to the Mayor and Village Board.
- B. **Public hearing.** The Mayor and Village Board may, in its discretion, require a public hearing on said appeal and, if so required, shall cause a notice setting forth the time and place thereof to be published in an official newspaper of the borough at least 5 days prior to the date set for the public hearing.
- C. **Consideration of appeal; decision.** The Mayor and Village Board shall consider the matter de novo and shall decide the appeal within 45 days from the filing of the appeal or from the public hearing, whichever is later. The Mayor and Village Board may reverse, remand or affirm, wholly or in part, or may modify the decision of the approving authority. The affirmative vote of a super majority of the Village Board shall be necessary to reverse, remand or modify the decision of the approving authority.

§ 124-12. Contents and duration of permit.

- A. **Contents of permit.** The permit shall be in such form as may be prescribed by the approving authority, signed by the Secretary and the Chairman of the Planning Board and/or Zoning Board of Appeals or the Building Inspector and/or Village Engineer, as the case may be, and shall contain any special conditions set forth in the decision of the approving authority.
- B. **Duration of permit.** The permit shall be dated as of the date it is actually issued, and the term of the permit shall not exceed one year. All permits shall automatically expire on the termination date unless an application for renewal has been made and approved by the Planning Board and/or Zoning Board of Appeals in writing extending the permit. No such extension shall exceed two years.

§ 124-13. General rules for excavation.

All excavation, filling, and grading of soil in the Village shall be performed subject to the following conditions, regardless of whether or not a permit is required:

- A. All boulders, tree stumps and other debris shall be removed from the property.
- B. In dry weather, the person conducting such operation shall dampen the ground where operations are conducted to prevent dust.

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- C. No trucks used shall be loaded above the level of the sides of the truck, to prevent spillage, and all streets shall be cleaned, at the applicant's expense, each day, of any spillage or soil on such streets resulting from truck operation.
- D. All truckloads shall be covered with tarpaulin and, if necessary, treated by water or chemical to prevent flying dust.
- E. No trucks, machinery or any part of the operation shall be conducted before 8:00 a.m. or after 5:00 p.m. on weekdays, before 9:00 a.m. or after 5:00 p.m. on Saturdays, nor at any time on Sunday or federal or state legal holidays.
- F. All vehicles engaged in such operations shall use as routes only those village streets, which have been approved by the Planning Board, Zoning Board of Appeals, Village Board and/or Village Engineer.
- G. The entire area covered by the work shall be maintained and left in such a manner as not to create or maintain a nuisance or condition hazardous to life and limb or to the health or general welfare of the inhabitants of the Village of South Blooming Grove.
- H. All excavation and other mandatory ground cover work proposed in the application and map, including restoration of property to final grades and subsequent seeding, must be completed within one year from the date of the permit.
- I. No more soil shall be removed than is reasonably necessary for the development and use of the land.
- J. No soil, filling, grading shall be allowed which shall cause damage to adjacent properties or detrimentally affect the values of adjacent properties.
- K. The operation must be conducted in a phased fashion so that one sector of the tract is minded and covered with planting prior to the commencement of filling, grading, operations in another sector of the tract.
- L. The Village Engineer or other authorized representative of the Village shall be permitted to inspect the seeding and planting and general conduct of the operation to assure that the same is being conducted in a manner that shall assure the satisfactory control of erosion and that it is being conducted in full accordance with the remainder of this chapter.
- M. Excavation shall not be below the grade levels shown in the topographical map.

§ 124-14. Storage and replacement of soil.

- A. Whenever any developer or excavator shall move topsoil in or on any lot, provision shall be made for the storage of the topsoil within the boundary lines of the lot.
- B. Except as provided, all of the topsoil so stored shall be uniformly replaced over the entire area or surface of the lot on or before the completion date set forth in the soil permit, so that the final grade or grades of replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map.
- C. No developer or excavator shall remove to any point beyond the boundary lines of the lot any topsoil whatsoever unless and until topsoil not inferior in quality to that to be removed shall first have been replaced uniformly to a depth of not less than six inches, measured from the proposed final grades as shown on the topographical map, over the entire, surface or area of the lot, excepting only such portions thereof as shall be or shall have become, since the date of filing of the topographical map, permanently covered by a building or structure, street pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway. In no event shall the developer or excavator remove from the lot more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil.

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§ 124-15. Digging below final grade.

No developer or excavator shall, at any time in the course of the work, dig or excavate more than six inches below the proposed final grades as shown on the topographical map, unless:

- A. The permit specifies otherwise and the performance bond makes specific provision for replacement, on or before the completion date, of soil of sufficient quantity and kind to restore the final grades to those shown on the topographical map.
- B. After issuance of the permit, the developer or excavator, before digging or excavating below the minimum level, shall apply to the approving authority and be granted an amendment of the application and topographical map then in effect, which amendment may be granted upon such terms as the approving authority may deem necessary to assure adherence to the purpose and objectives of this chapter.

§ 124-16. Raising of grade.

No developer or excavator shall deposit soil upon, fill in or raise the grade of any lot without first making provision for:

- A. The use in the work of soil or such other materials as will not result in deviation from the proposed final grades or the uniformity thereof by reason of abnormal shrinkage or settlement.
- B. The collection and storage upon the lot of the original topsoil, to the end that the topsoil shall not be buried beneath soil or other material be inferior quality, and the uniform replacement of the topsoil so stored over the entire area or surface of the fill soil or other material so that the final grade or grades of the replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map. In the event that such provision is not practicable, provision shall be made for the uniform placement over the entire area or surface of the fill soil or other material, excepting only such portions thereof as shall be or shall have become permanently covered by a building or structure, street, pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway, of a layer of topsoil not inferior in quality to that of the original topsoil, to a depth of not less than six inches, measured from the proposed final grades as shown on the topographical map.

§ 124-17. Administration and enforcement.

For the purpose of administering and enforcing this chapter, any duly authorized enforcement officer, agent or employee of the village shall have the right to enter into or upon any lands in or upon which soil-moving operations are being conducted to examine and inspect such lands.

§ 124-18. Emergency suspension of permit.

Notwithstanding the provisions of § 124-19, when, in the judgment of the Mayor or the Mayor and Village Board, the filling, moving and grading of soil causes a serious emergent and continued impediment to the passage of public traffic or endangerment to the public health, safety or welfare, the Mayor or the Mayor and Village Board may temporarily halt such operation until the emergent danger to the public's health, safety or welfare is abated, but in no event shall such emergency suspension of operations exceed 30 days.

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§ 124-19. Violations and penalties.

A. Any activities in violation of this chapter shall be deemed a public nuisance.

B. Liability for violations.

- (1) **Civil liability.** A person who violates any of the provisions of this chapter or terms of any permit issued hereunder or who fails to perform any duty imposed by this chapter shall be liable to a penalty not to exceed \$1,000 per day of such violation and, in addition, such person may be ordered to abate such violation. Violation of a permit condition shall constitute grounds for abatement and for revocation of such permit.
- (2) **Criminal liability.** Any person who, having any of the culpable mental states defined in § 15.05 of the New York State Penal Law, violates any of the provisions of this chapter or terms of any permit issued hereunder or who fails to perform any duty imposed by this chapter shall be guilty of an unclassified misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$2,500 nor more than \$10,000 per day of violation, or by imprisonment for a term of not more than 90 days, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment for not more than six months, or by both.
- (3) In addition to or in lieu of the above penalties, the Village may enter upon the premises and correct the conditions caused by the violation of any provision of this chapter or permit issued hereunder. In such event, the property owner shall reimburse the Village in an amount equal to 125% of the actual costs incurred in correcting said conditions, which amount includes, but is not limited to, administrative, legal and engineering costs incurred as a result of said violation.
- (4) This chapter expressly supersedes any inconsistent provision of the New York State Village Law and any other special law.

C. Notice of violation; service.

- (1) Wherever the enforcement officer determines that a violation exists, a notice of violation shall be issued. Such notice shall state the nature of the violation; the provision or term violated; and a reasonable time to abate such violation. Nothing herein shall be construed so as to prevent the Village from requiring the immediate abatement of a violation. The time to remedy shall be measured from the date the Village determines a violation may exist.
- (2) A notice of violation shall be served upon a person of suitable age and discretion either residing or employed at the premises where the violation exists; or by service by certified mail upon the owner indicated on the current tax role of the Village to the address indicated therein and by posting a copy of the notice at the premises where the violation exists.

D. Administrative appeal and hearing.

- (1) Any person or owner of property who is served a notice of violation shall have the right to make an appeal to the Village Board. All appeals shall be made within seven days of service of a notice of violation and shall be simultaneously submitted to the enforcement officer and the Village Board. The making of an appeal shall not stay an order to abate contained in the notice of violation.
- (2) The Village Board shall set a date and time for a public hearing on any appeal. A notice of hearing shall be made by mailing a copy of such order by certified mail to the addresses of those persons having a recorded interest in real property in the premises as shown by the records of the County Clerk and by posting a copy of such order on

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said premises. The failure to provide notice to each such person shall not invalidate subsequent proceedings pursuant to this chapter. The public hearing shall be set for a date not less than 15 days after the notice of hearing is mailed.

(3) Public hearing; determination.

- (a)** The Village Board shall conduct a public hearing at the time and place specified in the notice of hearing. The hearing may be adjourned from time to time and shall continue until all interested persons in attendance are heard. No formal rules of evidence need apply nor shall a stenographic transcript be required.
 - (b)** The property owner shall have the right to present evidence and examine witnesses to show why penalties should not be assessed and/or why an order to abate should be suspended.
 - (c)** The Village Board shall make findings and make a determination. Such determination shall indicate the basis and rationale of the decision shall state the dollar amount of fines and shall be supported by substantial evidence.
 - (d)** Any fines imposed and the costs to the Village of the proceeding in such event shall be immediately due and payable and shall be paid within 15 days of their imposition.
 - (e)** If such violations are not eliminated within the said 30 days, the permit shall be deemed to be automatically revoked and the bond declared forfeit without any further action by the Mayor and Village Board.
 - (f)** No fee or other charge, or portions thereof, shall be refunded following revocation or suspension of any permit.
- (4)** This section is hereby made a part of each and every permit hereafter issued by the Mayor and Village Board, and acceptance of such permit shall constitute complete acquiescence by the principal and surety on said bond.
- (5)** The determination of the Village Board may be reviewed in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, provided that such proceeding is commenced within 30 days of such determination. Judicial review shall not stay any order to abate or stay payment of any fine imposed.

§ 124-20. Fees.

Permit application fees may be established and amended from time to time by resolution of the Village Board.

§ 124-21. Judicial review.

Any persons aggrieved by any decision or determination made by the Village Board pursuant to this article may bring a proceeding to review such determination in the manner provided by Article 78 of the Civil Practice Law and Rules.

§ 124-22. Application.

No statement in this article shall be construed to interfere with any additional requirements that may be imposed by any federal, state or local health authority having jurisdiction.

Chapter 124: FILLING AND GRADING

§ 124-23. Supersession of other laws.

This chapter supersedes, and is in derogation of, Chapter 124 of the Code of the Town of Blooming Grove, County of Orange, and State of New York. In addition, it is not intended that this chapter supersede the authority of the County of Orange Department of Health.

§ 124-24. Authority.

This chapter is enacted by authority of § 20, Subdivision 5, of the Municipal Home Rule Law and any other law referenced herein as authority herefor.

§ 124-25. Repeal.

All ordinances, local laws and parts thereof inconsistent with this local law are hereby repealed.

§ 124-26. Effective Date.

This local law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.