
Excavation Law

Chapter 115, EXCAVATIONS

[HISTORY: Adopted by the Board of Trustees of the Village of Briarcliff Manor 7-15-1976 by L.L. No. 1-1976.

Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention -- See Ch. 127.

Street excavations -- See Ch. 186, Art. I.

Subdivision of land -- See Ch. 190.

Street and sidewalk excavations -- See Ch. 186, Art. III.

115-1. Intent, title and purpose.

A. Intent. It is the established policy of the Village of Briarcliff Manor that the natural topography of the land of the Village and the safe and natural flow and drainage of waters there through are public assets which should be preserved and safeguarded, and that hazardous, indiscriminate or uncoordinated excavation, filling and regrading pose substantial dangers to the public health, safety and welfare which ought to be minimized for the safeguarding of the citizenry. This chapter is adopted for the purpose of promoting such policy. It is hereby declared that the various features of such topography, including the topsoil and other materials which are naturally a part of the land, the shape or contour of the land, and plant life that is fostered upon the land and the water or flow thereof upon the land, are of prime concern to the people of the Village of Briarcliff Manor, and it is intended by this chapter that no changes shall be permitted in such topography except those which are reasonably necessary in order to permit the proper and appropriate use of the land, and then only in such manner as will adequately safeguard the public health, safety and welfare. [Amended 4-7-2005 by L.L. No. 3-2005]

B. Title and purpose. This chapter shall be known as the "Excavation Law" of the Village of Briarcliff Manor, and shall regulate the manner of excavation, stripping and removal of topsoil, earth, sand, clay, gravel, humus, rock and other mineral deposit from land within the Village of Briarcliff Manor.

115-2. Definitions and word usage.

A. **Definitions.** The following terms, as used in this Excavation Chapter, shall have the meanings as indicated below for the purpose of this Excavation Chapter:

BOARD OF TRUSTEES, BUILDING INSPECTOR, PLANNING BOARD, SUPERINTENDENT OF PUBLIC WORKS, VILLAGE ATTORNEY, VILLAGE CLERK, VILLAGE ENGINEER -- The Board of Trustees, Building Inspector, Planning Board, Superintendent of Public Works, Village Attorney, Village Clerk and Village Engineer of the Village of Briarcliff Manor.

EXCAVATED PREMISES -- The whole of any premises or property from which topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit is excavated and/or removed, or from which it is proposed that such materials be excavated and/or removed. For all intents and purposes of this chapter, "filled premises" shall be deemed "excavated premises." [Amended 4-7-2005 by L.L. No. 3-2005]

EXCAVATION WORK -- The whole of an operation for the excavation and/or removal of any materials from any excavated premises, and shall include the grading and seeding of said excavated premises and the construction of a legal improvement or legal improvements on said excavated premises. For all intents and purposes of this chapter, "fill work" shall be deemed "excavation work." [Amended 4-7-2005 by L.L. No. 3-2005]

FILL -- The act of depositing upon any premises or property topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit or man-made materials, including but not limited to bricks, block, broken concrete and asphalt, whether such materials have been brought to the said premises or property or are from areas within such premises or property. [Added 4-7-2005 by L.L. No. 3-2005]

FILLED PREMISES -- The whole of any premises or property upon which topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit is deposited or upon which it is proposed that such materials be deposited whether such materials have been brought to the said premises or property or are from areas within such premises or property. [Added 4-7-2005 by L.L. No. 3-2005]

FILL WORK -- The whole of an operation for the deposit and/or fill of any materials and shall include the grading and seeding of said filled premises and the construction of a legal improvement or legal improvements on said filled premises. [Added 4-7-2005 by L.L. No. 3-2005]

IMPROVEMENT -- A building, wall, structure, parking area, playground, walk, driveway, street, highway or road.

LEGAL IMPROVEMENT -- An improvement that complies, or would, if constructed, comply, wholly with the provisions of all pertinent zoning, building, fire prevention and other ordinances, rules, regulations, laws and statutes affecting such improvement, including pertinent ordinances, rules, regulations, laws and statutes of the Village.

MATERIALS -- Topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit.

VILLAGE -- The Village of Briarcliff Manor and the land within its corporate limits.

B. Usage. Words of the masculine gender as used in this chapter shall include the feminine and the neuter genders and may refer to a firm, company or corporation. Under this chapter, the use of the terms "excavation" or "excavate" shall be deemed to include the term "fill", "excavating" to include the term "filling" and "excavated" to include the term "filled." [Amended 4-7-2005 by L.L. No. 3-2005]

115-3. Permit required; exceptions.

A. It shall be unlawful for any person or entity to excavate, strip, move, remove, grade, fill or deposit any topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit, from, upon or within any land within the Village, unless: [Amended 4-7-2005 by L.L. No. 3-2005]

- (1) An excavation permit under § 115-3B, or a land modification permit under § 115-3C shall have been duly issued by the Building Inspector pursuant to the provisions of this Excavation Chapter; and
- (2) Such excavation work, in its entirety, shall be undertaken, performed and completed in accordance with all applicable provisions of this Excavation Chapter; or
- (3) The aggregate amount of topsoil, earth, sand, clay, gravel, humus, rock or other mineral deposit is not greater than 15 cubic yards.

B. An excavation permit shall be required where said materials to be excavated or removed from the excavated premises aggregate 150 cubic yards or more. No excavation permit shall be issued unless the excavation or removal from the excavated premises of the excavated materials is performed: [Amended 4-7-2005 by L.L. No. 3-2005]

- (1) In connection with a duly issued building permit for the excavated premises or in connection with an existing legal improvement or improvements on the excavated premises; or
- (2) Upon the issuance of a permit for a driveway issued pursuant to Chapter 186 of this Village Code if the excavated premises is located on a Village street or for a curb cut permit or similar type approval issued by the County of Westchester if the excavated premises is located on a county road or the State of New York if the excavated premises is located on a state road, as the case may be, so long as no further approvals from the Village Planning Board, Zoning Board of Appeals, Board of Trustees, or any other federal, state or local municipal entity are necessary in order to obtain a building permit for the excavated premises.

C. For excavation activities involving the moving of soil under 150 cubic yards, but greater than 15 cubic yards, a land modification permit shall be required. An application for such a land modification permit shall be submitted to the Building Inspector and shall be accompanied by a site plan showing all proposed land and modifications, at a level of detail considered appropriate for review in a manner as normally required for the review of site plans under Chapter 220, Zoning. Plowing, discing and similar agricultural and horticultural pursuits shall not require a land modification permit. In reviewing an application for a land modification permit, the Building Inspector shall consult with the Village Engineer and Planning Board and shall be guided by the principles set forth in §§ 115-1 and 115-5A of this chapter. In addition, §§ 115-8, 115-9, 115-10, 115-11, 115-12, 115-13, 115-14 and 115-16 of this Excavation Chapter shall be applicable to land modification permits.

115-4. Application for excavation permit.

The application for an excavation permit required under the provisions of this Excavation Chapter shall be on a form approved by the Board of Trustees, shall be duly executed and verified by the owner of the excavated premises, and shall be filed, in duplicate, in the office of the Building Inspector. Such application shall furnish all data and information as shall be required by the Building Inspector respecting the proposed excavation work, the nature of the proposed legal improvement to be constructed on the excavated premises, the time required to complete the proposed excavation, and the approximate aggregate number of cubic yards of materials to be excavated or removed from the excavated premises. Such application so filed shall be accompanied by the following:

A. A topographical map prepared by either a land surveyor or an engineer duly licensed in the State of New York, on a scale of not less than one inch to 50 feet, and referred to United States Coast and Geodetic Survey Data, showing both as to the lot and as to all of said surrounding lands:

- (1) The dimensions of the lot and the lot and block number of the lot itself and of each lot abutting the premises in question, as shown on the Tax Assessment Map of the Village.
- (2) The existing elevations of all lands as shown on a map by contours at two-foot intervals.

- (3) The existing elevations and accurate locations of all buildings, structures, streets, streams, bodies of water and watercourses, natural or artificial.
- (4) All existing surface and/or subsurface water drainage conditions and provisions therefor.
- (5) All wooded areas and all trees having a diameter of six inches or more at the base which are separate and apart from any wooded areas.
- (6) The limits of the area or areas within the lot or lots in question within which the soil-moving operations are to be conducted.
- (7) The proposed final elevations shown by contours at two-foot intervals.
- (8) Proposed slopes and lateral supports at the limits of the area during excavation and upon completion of the soil-moving operations.
- (9) Proposed provisions and facilities for surface water drainage, and, where applicable, channels or 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 during and after completion of the soil-moving operation.
- (10) Accurate cross sections showing the locations and quantities, in cubic yards, of soil to be removed.
- (11) Such other pertinent data as the Board of Trustees may, by resolution, require.

B. A written agreement, in duplicate, duly executed and acknowledged by the owner of the excavated premises, and in a form approved by the Village Attorney, covenanting and agreeing, on the part of such owner, to perform the proposed excavation work, in its entirety, in strict accordance with all ordinances, rules, regulations, laws and statutes, including those of the Village and including this Excavation Chapter and all amendments thereto, and consenting for himself, his heirs and successors, that in the event of any failure of such performance at any time, any officers, employees and duly authorized agents of the Village may, upon direction of the Board of Trustees, enter upon the excavated premises and take all action thereon as is deemed necessary and appropriate to the Board of Trustees to restore said premises to a safe, clean and properly appearing condition, and further that in the event of failure of such performance at any time, the Board of Trustees may declare any performance bond filed by the owner, pursuant to this chapter, to be in default, collect the sum payable thereunder and use such bond proceeds to defray the expense of the aforementioned restoration of the excavated premises.

C. A duly acknowledged written consent of all mortgagees holding mortgages, if any, on the excavated premises, consenting to the proposed excavation work.

D. A certificate of the Village Treasurer certifying that all taxes and assessments levied against the excavated premises have been paid as of the date of the application. [Amended 1-16-2003 by L.L. No. 1-2003]

E. A certificate of the Village Engineer certifying that the grades of the excavated premises after completion thereof will not interfere with or overload any existing or planned drainage facilities of the Village and will not endanger any street, highway or road within the Village; and

F. The amount of fee required for the issuance of the excavation permit applied for. Said fee shall be as set forth by resolution of the Village Board of Trustees in the Master Fee Schedule, which may be amended. [Amended 1-16-2003 by L.L. No. 1-2003]

115-5. Requisites for issuance of permit.

A. Before the issuance of any permit under this chapter, the Building Inspector shall make a careful examination of the application therefor and all accompanying documents required to be filed, the excavated premises and all premises abutting thereof, and shall make such further investigation and study as shall be required under the circumstances. In making such investigation and study, the Building Inspector shall have the right to require from the applicant such additional maps, plans and data as shall be necessary to him for the purpose of reviewing the application. In considering and reviewing the application, the Building Inspector shall be guided by general purpose of municipal planning, and shall take into consideration the following factors:

- (1) Soil erosion by water and wind.
- (2) Surface and/or subsurface water drainage.
- (3) Soil fertility.
- (4) Lateral support of abutting streets and lands.
- (5) Public health and safety.
- (6) Land values and uses.
- (7) Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Village.

B. No excavation permit shall be issued by the Building Inspector until all of the following requirements shall have been complied with:

- (1) The pertinent application and accompanying documents, along with all additional data required by the Building Inspector, shall have been filed with him in proper form, and the appropriate amount of fee for the excavation permit applied for shall have been paid to him, pursuant to all of the provisions of this chapter.
- (2) The Building Inspector shall have determined that the proposed excavation work in its entirety is:

- (a) Necessitated in connection with a duly issued building permit for the excavated premises or an existing legal improvement or improvements on the excavated premises for which no additional approvals shall be required from the Planning Board, Zoning Board of Appeals or Board of Trustees or any other federal, state or local municipal entity having jurisdiction thereof; and [Amended 4-7-2005 by L.L. No. 3-2005]
- (b) Will not disturb the shape or contour of the land, nor the plant life fostered on the land nor the drainage of water from the land, nor the flow of watercourses through or across the land, except to the extent necessary to accomplish the construction of such legal improvement or legal improvements, unless the Board of Trustees shall have waived such requirements pursuant to § 115-6 of this chapter.
- (3) The owner of the excavated premises shall have filed with the Village Clerk a suitable performance bond, in an amount as determined below, issued by a bonding or surety company approved by the Board of Trustees and also approved by the Village Attorney as to its form, sufficiency and manner of execution, conditioned for the faithful performance by said owner of the proposed excavation work, in its entirety, in accordance with all terms, conditions and provisions of this chapter and of the agreement executed by said owner pursuant to § 115-4B of this chapter.

Total number of cubic yards to be excavated or removed	Amount of bond required
50,000 or less, but more than 150	\$5,000
Between 50,001 and 100,000, inclusive	\$10,000
Between 100,001 and 200,000, inclusive	\$15,000
Between 200,001 and 500,000, inclusive	\$20,000
In excess of 500,000	\$25,000

115-6. Waiver of certain requirements.

In the event that the Building Inspector shall in any instance determine that the proposed excavation work or any part thereof is not necessitated for the purpose of constructing a legal improvement or legal improvements on the excavated premises, or that the proposed excavation work or any part thereof will disturb the shape or contour of the land or the plant life that is fostered on the land, or the drainage of water from the land or the flow of water through or across the land, more than is reasonably necessary to accomplish the construction of a legal improvement or legal improvements on the excavated premises, the owner of such excavated premises may apply to the Board of Trustees for a waiver of the requirement set forth in § 115-5B(2) of this Excavation Chapter. Upon receipt of such application, and after due consideration of all pertinent documents filed with the Building Inspector and of the report of the Building Inspector relating to the application and after a public hearing, held on notice as provided in Chapter 220, Zoning, the Board of Trustees shall have the right to waive the requirement set forth in § 115-5B(2) of this Excavation Chapter upon such terms and conditions as may be deemed appropriate to the Board of Trustees, including the right to increase the amount of performance bond required under this Excavation Chapter. The notice of any public hearing held pursuant to this section shall be sent, by certified mail, by the applicant, at his expense, at least 10 days before said hearing to the owners of all property abutting that of the applicant and to all other owners whose property is within 200 feet thereof.

115-7. Denial of permit.

The Building Inspector may reject any application which does not fully comply with the requirements of § 115-4 or 115-5, or deny a permit if the proposed excavation work violates the principles set forth in § 115-1, 115-4 or 115-5.

115-8. Performance of work; expiration of permit.

Upon the issuance of an excavation permit pursuant to this Excavation Chapter, the excavation work, permitted thereby, in its entirety, shall be undertaken, performed and completed in accordance with all the provisions of this chapter. The excavation permit so issued shall expire six months from the date of its issuance and shall be nontransferable.

115-9. Topsoil removal.

No topsoil shall be excavated or removed from any excavated premises pursuant to an excavation permit except within the construction lines of a legal improvement, the construction of which necessitates the removal of such topsoil or pursuant to a land modification permit as approved by the Building Inspector. Before any earth, sand, clay, gravel, humus, rock or other mineral deposit is excavated or removed from any part of the excavated premises, the topsoil thereon shall be separated, stripped and neatly piled on the excavated premises so that such topsoil may be restored to such part of the excavated premises upon completion of the grading thereof pursuant to 115-14 of this chapter.

115-10. Amount of material to be removed.

No materials shall be excavated or removed from any excavated premises in excess of the maximum amount shown on the excavation or land modification permit issued for such excavation work. If a topographical map shall have been filed by the owner of the excavated premises pursuant to any provision of this chapter, the excavation work on the excavated premises shall be performed in strict accordance with such filed topographical map and in the following manner:

- A. No materials shall be excavated or removed except from those areas and portions of the excavated premises as are expressly indicated for excavation or removal on said topographical map;

B. No materials shall be excavated or removed from any area or portion of the excavated premises at any depth below the proposed grade shown for such area or portion on said topographical map; and

C. The grades and slopes of the excavated premises shall be finished in accordance with all details shown on said topographical map.

115-11. Protection of abutting property.

No excavation nor filling shall be made closer than 25 feet to any abutting property line of the excavated premises with an angle of slope exceeding 35°, unless a suitable masonry retaining wall or other suitable wall or terrace, designed by an engineer duly licensed in the State of New York, and approved by the Building Inspector, is constructed to protect such abutting property. If such wall or terrace is over five feet in height, a suitable iron or pipe guardrail, approved by the Building Inspector, shall be installed on top of said wall or terrace.

115-12. Slope of excavation; barricades.

Where the depth of an excavation is more than five feet in height, the banks shall be broken down at the end of each working day so that the slope shall not exceed 45°. The Building Inspector shall have the right and authority to require adequate safeguards where an excavation is liable to damage any existing building or wall, and to require suitable barricades around any open excavation when necessary.

115-13. Removal of debris from streets.

Any mud, dust or debris carried onto any public street, highway or road as a result of any excavation work shall be scraped and swept broom clean at the end of each working day.

115-14. Topsoil replacement, seeding, etc.

After the grading of the excavated premises has been completed, topsoil shall be replaced and spread evenly over the graded portion of the excavated premises. In addition a seed mixture containing 40 pounds of perennial rye grass, 25 pounds of chewing fescue and 10 pounds of mixed clover per 100 pounds, or similar coverage, shall be sown on said portion of the excavated premises, at the rate of 100 pounds per acre, and the seed shall be brushed in lightly and rolled firm. All boulders and loose rock shall be buried or removed from the excavated premises, and all tree stumps, brush and other debris shall be removed from the excavated premises.

115-15. Additional requirements.

In any case where excavation work will be, is being or has been performed on excavated premises, whether or not an excavation permit has been or is required to be issued therefor, the Board of Trustees and/or the Building Inspector shall have the right and authority to impose the following requirements on the owner of the excavated premises:

A. The Board of Trustees and/or the Building Inspector shall have the right to require from the owner of the excavated premises such data, information, maps and plans as shall be necessary to determine whether excavation work will be, is being or has been performed pursuant to the provisions of this chapter.

B. The Building Inspector shall have the right to require the owner of the excavated premises to submit thenceforth to the Building Inspector sworn periodical reports setting forth the amount of materials that have been or shall have been excavated or removed from the excavated premises, and to place such stakes and markings on the excavated premises as shall be required by the Building Inspector for the purpose of inspection.

C. The Board of Trustees shall have the right to require the owner of the excavated premises to employ such inspector as may be designated by the Board of Trustees, without any cost or expense to the Village, to supervise and inspect any excavation work thereon for purposes of determining whether such work is being performed pursuant to the provisions of this chapter.

D. The Board of Trustees shall have the right to require the owner of the excavated premises to deposit with the Village a fixed amount of cash security or to file an increased or decreased performance bond in the manner required under § 115-5 of this chapter, and to impose such other terms and conditions upon said owner as are deemed appropriate to the Board of Trustees to guarantee the carrying out of the faithful performance of the excavation work in accordance with the provisions of this chapter.

115-16. Renewal of permits.

The Building Inspector may renew any permit for an additional six months' period, provided:

A. The owner of the excavated premises shall have diligently and lawfully proceeded with the excavation work permitted under the original permit, and with all work in connection therewith, during the period of the original permit; and

B. The owner of the excavated premises shall have filed with Building Inspector an application for renewal of such excavation permit, stating the reasons for such application, and all applicable requirements set forth in §§ 115-4 and

115-5 shall have been complied with in respect to the renewal application. If the original excavation permit had been issued after action of the Board of Trustees pursuant to § 115-6, in waiving the requirement set forth in § 115-5B, the Building Inspector shall not renew such original excavation permit until the Board of Trustees shall have approved such renewal, and all additional terms and conditions, which the Board of Trustees shall hereby have the right to impose in connection with such renewal, shall have been complied with.

115-17. Time for completion of work.

No excavation made for the purpose of constructing an improvement on the excavated premises shall remain open for more than 90 days from the date of the beginning of such excavation, unless the foundation of a building constituting a legal improvement, or the construction of a legal improvement other than a building, shall have been commenced; any such excavation which shall remain open for more than 90 days shall be deemed abandoned and, within 30 days after written notice by the Building Inspector, any materials which have been excavated or removed from the excavated premises shall be replaced on the excavated premises by the owner thereof and said excavated premises shall be graded to the original grades and seeded in accordance with the specifications set forth in § 115-14 of this chapter. No building foundation constructed or in the process of construction shall remain open more than six months from the date of the beginning of the excavation therefor, unless that portion of the building above the foundation shall be in progress of construction. All improvements constructed shall be completed within two years from the date of issuance of the excavation permit relating to such improvement, whichever date is the earlier. In the case of undue hardship, the Board of Trustees shall have the right to vary the provisions of this section without a public hearing.

115-18. Cancellation of performance bond.

Upon the completion of any excavation work permitted under this Excavation Chapter, the owner of the excavated premises may apply to the Building Inspector for the cancellation of any performance bond filed with him, forwarding with such application a topographical map prepared by either a land surveyor or an engineer duly licensed in the State of New York, showing all conditions existing on the excavated premises after the completion of the excavation work, and a certificate of such owner certifying that all the provisions of this chapter have been fully complied with. Such topographical map shall be drawn to the same scale and based on the same datum plan as the topographical map filed with the application for the excavation permit pursuant to § 115-4A of this chapter. The Building Inspector shall thereupon inspect the excavated premises and complete a report thereon, certifying as to whether all the provisions of this chapter have been fully complied with. The Building Inspector shall then forward to the Board of Trustees such report, along with his recommendation as to whether said performance bond should be canceled, whereupon the Board of Trustees may, if satisfied with the performance and completion of the excavation work, cancel the performance bond filed.

115-19. Denial of permit; refund.

If an application for an excavation permit shall be finally rejected or denied by the Building Inspector, he shall, upon the written request of the applicant, refund to such applicant the portion of the fee paid by him which is in excess of \$25.

115-20. Filling of excavations.

A. Upon the direction of the Board of Trustees, the Superintendent of Public Works shall have the right and power to fill in any excavated premises, provided:

- (1) The Board of Trustees, after a public hearing thereon, shall have deemed that the existence of such excavated premises constitutes a hazard to public safety; and
- (2) After 30 days' notice given by the Village Clerk by registered mail addressed to the owner of record of such excavated premises at the address shown on the last preceding assessment roll of the town, such excavated premises shall not have been filled in by or on behalf of such owner.

B. The cost of filling such excavation shall be assessed against the excavated premises.

115-21. Penalties for offenses.

Any violation of this Excavation Chapter shall be punishable by a fine of not less than \$250 for any offense. Each day on which said violation continues shall constitute a separate offense. Nothing in this Excavation Chapter shall be construed as depriving the Village or the Board of Trustees or any officer thereof, of the right to maintain an action or proceeding to compel compliance with, or to restrain by injunction any violation of this Excavation Chapter or the right to employ any other legal remedy.

115-22. Repealer.

Village Ordinance No. 176, dated January 21, 1971, and all prior ordinances, or portions of prior ordinances, in conflict with this Excavation Chapter are hereby repealed, with the exception that this Excavation Chapter shall not repeal or vary any provisions of the Land Subdivision Regulations of the Village, Ordinance No. 92, and Local Law No. 1-1973 of the Village or any amendments or regulations thereto heretofore adopted.