

## Chapter 83

### CLEARING AND GRADING

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[HISTORY: Adopted by the Town Board of the Town of Newburgh 9-4-1990 by L.L. No. 5-1990. Amendments noted where applicable.]

#### GENERAL REFERENCES

Blasting — See Ch. 66.  
Environmental quality review — See Ch. 100.  
Flood damage prevention — See Ch. 109.

Subdivision of land — See Ch. 163.  
Zoning — See Ch. 185.

#### § 83-1. Title.

This chapter shall be known and may be cited as the "Clearing and Grading Control Law of the Town of Newburgh."

#### § 83-2. Purpose.

It is the purpose of this chapter to protect the public health, safety and welfare in the Town of Newburgh by providing for the proper use of land and regulating timber harvesting, site preparation, construction activities and other activities impacting on the land, including excavation, filling, grading and clearing, so as to protect the natural environment, prevent the indiscriminate and excessive cutting of trees and natural vegetation and prevent problems related to erosion, sediment or drainage. In relation to this purpose, this chapter is intended to:

- A. Preserve the quality of the natural environment from such adverse effects of activities impacting on the land as:
- (1) Pollution of lakes, ponds and watercourses from silt or other materials.
  - (2) Unnecessary destruction of trees and other vegetation.
  - (3) Excessive exposure of soil to erosion.

- (4) Unnecessary modification of natural topography or unique geological features.
  - (5) Failure to restore sites to an attractive natural condition.
- B. Protect people and properties from such adverse effects of activities impacting on the land as:
- (1) Increased runoff, erosion and sediment.
  - (2) Increased threat to life and property from flooding or stormwaters.
  - (3) Increased slope instability and hazards from landslides and sloughing.
  - (4) Modifications of the groundwater regime that adversely affect wells and surface water levels.
- C. Protect the Town and other governmental bodies from having to undertake, at public expense, programs of repairing roads and other public facilities and of providing flood-protection facilities.

### **§ 83-3. Compliance required.**

Upon the approval of this chapter by the Town Board, all site preparation and construction activities requiring a permit under this chapter shall be in conformance with the provisions set forth herein.

### **§ 83-4. Conflict with existing regulations.**

Where this chapter imposes greater restrictions or requirements than are imposed by the provision of any law, ordinance, including Chapter 185, Zoning, regulation or private agreement, this chapter shall control. Where greater restrictions or requirements are imposed by any law, ordinance, including Chapter 185, Zoning, regulation or private agreement than are imposed by this chapter, such greater restrictions or requirements shall control.

### **§ 83-5. Definitions.**

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

**AGRICULTURAL OPERATIONS** — All activities directly related to the growing or raising of crops or livestock for the sale of agricultural produce and dairy and meat products, including horticultural and fruit operations.

**APPEAL** — A request for a review of the authorized official's interpretation of any provision of this chapter or a request for a variance.

**AUTHORIZED OFFICIAL** — The Town Building Inspector or other person designated by the Town Board to administer and maintain the provisions of this chapter.

**CLEARING** — Any activity which removes or significantly disturbs living trees, brush, grass or any other kind of vegetation, excepting the products of agricultural operations, in an area of any size.

**CLEARING DEBRIS** — Any residue associated with clearing, including but not limited to stumps, trunks, logs, treetops and branches.

**CRITICAL ENVIRONMENTAL AREA** — A specific geographic area designated by the state or Town having exceptional or unique characteristics that make the area environmentally important.

**DRAINAGE** — The gravitational movement of water by surface runoff or subsurface flow.

**EROSION** — The wearing away of the land surface by action of wind, water, gravity or other natural forces.

**EXCAVATION** — Any activity which removes or disturbs rock, gravel, sand, soil or other natural deposits to a depth greater than six inches.

**FILLING** — Any activity which deposits natural or artificial material so as to modify the surface or subsurface conditions of land, lakes, ponds or watercourses to a depth greater than six inches.

**FLOODPLAIN** — Any area subject to submersion by water by reason of overflow, flood or storm or any area which has been mapped as such by the County Soil and Water Conservation District or the Federal Emergency Management Agency, unless the applicant's engineer can demonstrate to the Town Engineer's satisfaction that said mapped area is not in fact subject to submersion.

**GRADING** — The alteration of the surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling to a depth greater than six inches.

**LICENSED PROFESSIONAL** — A New York State licensed engineer, architect, landscape architect or land surveyor with the appropriate exemption under state law.

**MULCHING** — The application of a layer of plant residue or other material for the purpose of effectively controlling erosion.

**PROPOSED PUBLIC ROAD** — The right-of-way of any street providing legal access to a parcel of land as depicted on a plot or site plan approved by the Planning Board and dedicated to the Town.

**SEDIMENT** — Solid material, both mineral and organic, that is being transported, has been deposited or has been removed from its site of origin by erosion.

**SITE PREPARATION** — The activities of clearing, excavation, filling, grading, timber harvesting and any other activity impacting on the land, no matter what the purpose of these activities.

**SOIL** — All minerals, materials or nonliving organic material of whatever origin which overlies bedrock.

**THINNING AND CULL REMOVAL** — Forestry operations in commercial and noncommercial stands of trees designed to provide more growing room for better trees by the removal of poor quality, low vigor, injured, diseased or excessively crowded trees.

**TIMBER HARVESTING** — The cutting down, breaking, uprooting or other act causing the death of more than five live trees exceeding six inches in diameter, measured four feet from the ground, per 1/2 acre of ground surface during a one-year period.

**TOPSOIL** — The natural surface layer of soil, usually darker than subsurface layers, within an undisturbed area of soils.

**VARIANCE** — A grant of relief from the requirements of this chapter which permits site preparation in a manner that would otherwise be prohibited by this chapter.

**WATERCOURSE** — Any natural or artificial stream, river, creek, channel, canal, conduit, culvert, drainageway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and which has a definite channel, bed and banks.

**WETLANDS** — Areas of aquatic or semiaquatic vegetation or any areas which have been mapped as such by the County Soil and Water Conservation District or the New York State Department of Environmental Conservation under the Freshwater Wetlands Act.<sup>1</sup>

**§ 83-6. Activities requiring a permit.**

None of the following activities shall be commenced until a permit has been issued under the provisions of this chapter where the parameters as set forth under the definitions of § 83-5 are met or exceeded:

- A. Site preparation within wetlands or within a one-hundred-foot buffer strip of a wetland.
- B. Site preparation within the one-hundred-year floodplain of any watercourse.
- C. Excavation.
- D. Clearing.
- E. Grading.
- F. Filling.
- G. Timber harvesting.

**§ 83-7. Activities exempt from permit requirements.**

The following activities are exempted from permit requirements:

- A. Activities not meeting the criteria in § 83-6.
- B. Agricultural operations.

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1. Editor's Note: See Environmental Conservation Law § 24-0101 et seq.

- C. Repairs to occupied buildings.
- D. Correcting hazards representing an imminent threat to life or property.
- E. Removal of dead wood and diseased trees or cutting of trees on a scale which does not constitute timber harvesting.
- F. Clearing or timber harvesting for the purpose of cutting firewood for an individual's use in said individual's own household.
- G. Thinning and cull removal.
- H. Excavation or filling which affects less than 400 cubic yards of material within any parcel or any one subdivision in receipt of preliminary or final approval, except where said excavation or filling occurs within wetlands, within a one-hundred-foot buffer strip of a wetland or within the one-hundred-year floodplain of any watercourse or within a critical environmental area.
- I. Clearing or grading which affects less than 10,000 square feet of ground surface, except where said clearing or grading occurs within wetlands, within a one-hundred-foot buffer strip of a wetland or within the one-hundred-year floodplain of any watercourse or within a critical environmental area.
- J. Clearing of brush and undercover.
- K. Household gardening and activities related to the maintenance of landscape features on existing developed lots.
- L. Governmental activities, but only to the extent that such activities are exempted from the provisions of this chapter by law.
- M. Activities performed in conjunction with building permits issued prior to the effective date of this chapter.
- N. Activities performed in conjunction with site plan approvals and subdivision approvals granted by the Planning Board prior to the effective date of this chapter, provided that such activities are commenced within five years of the date of approval. **[Amended 11-6-1995 by L.L. No. 7-1995]**
- O. Activities performed in conjunction with the erection, structural alteration or movement of a structure or building for which a building permit is granted following the effective date of this chapter, so long as said activities are not commenced until after the grant of a permit/approval and so long as the application for said activities has been reviewed for conformance with this chapter and approval has been conditioned upon compliance with the standards set forth in § 83-10, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth in § 83-14.
- P. Activities performed in conjunction with site plan approvals and subdivision approvals granted by the Planning Board following the effective date of this chapter, so long as said activities are not commenced until after the grant of a permit/approval and so long as the application for said activities has been reviewed for conformance with this chapter

and approval has been conditioned upon compliance with the standards set forth in § 83-10, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth in § 83-14. [Amended 11-6-1995 by L.L. No. 7-1995]

**§ 83-8. Permit application review; issuance and compliance procedures.**

- A. Before any activity requiring a permit under § 83-6 of this chapter is commenced, two copies of a permit application shall have been filed with the authorized official and this application shall have been approved and a permit shall have been granted pursuant to the provisions of this chapter.
- B. Upon filing an application for a permit, the applicant(s) shall pay to the Town a fee as set forth in Chapter 104, Fees.
- C. The authorized official shall have the authority to grant or deny permits for all activities subject to this chapter. The authorized official, however, shall not grant a permit for the following activities without approval by the Town Planning Board, to which he shall refer such applications, said Board acting with recommendations from the authorized official, Town Engineer, Building Inspector and Superintendent of Highways, who shall receive copies of the application:
  - (1) Clearing which affects more than one acre of ground surface or timber harvesting which affects more than one acre of ground surface within any parcel or any one subdivision, excluding proposed public roads.
  - (2) Excavation which affects more than 1,500 cubic yards of material within any parcel or any one subdivision, excluding proposed public roads.
  - (3) Filling which exceeds a total of 1,500 cubic yards of material within any parcel or any one subdivision, excluding proposed public roads.
  - (4) Grading which affects more than one acre of ground surface within any parcel or any one subdivision, excluding proposed public roads.
  - (5) Site preparation within wetlands, within a one-hundred-foot buffer strip of a wetland or within a critical environmental area which affects more than 20,000 square feet of ground surface or 400 cubic yards of material.
  - (6) Site preparation within the one-hundred-year floodplain of any watercourse which affects more than 20,000 square feet of ground surface or 400 cubic yards of material.
- D. The authorized official, Town Engineer, Building Inspector and Superintendent of Highways, when appropriate, shall submit their respective recommendations on an application referred to the Planning Board within 30 days of the date of filing. The Town Engineer, where appropriate, may forward a copy of the permit application to the Orange County Soil and Water Conservation District for its review of and recommendations on the erosion control plan. The applicant shall pay all fees charged by the Orange County Soil and Water Conservation District for its technical review.

- E. The Town Planning Board may, upon its discretion, conduct public hearings which may be held in conjunction with hearings held during the environmental review or the preliminary review process on any permit applications and shall conduct public hearings which may also be held in conjunction with hearings held during the environmental review or the preliminary review process on permits for the following activities, which hearings shall be fixed at a reasonable time and shall be given notice by the official newspaper of the Town at least 10 days prior to the date thereof. In addition to publication, the notice shall be subject to the same mailing and posting requirements established for hearings by the Zoning Board of Appeals in § 185-55 of Chapter 185. The applicant shall be responsible for the cost of publication, posting and mailing of such notice. [Amended 4-1-2013 by L.L. No. 2-2013]
- (1) Clearing or timber harvesting which affects more than five acres of ground surface within any parcel or any one subdivision, excluding proposed public roads.
  - (2) Excavation which affects more than 3,000 cubic yards of material within any parcel or any one subdivision, excluding proposed public roads.
  - (3) Filling which exceeds a total of 3,000 cubic yards of material within any parcel or any one subdivision, excluding proposed public roads.
  - (4) Grading which affects more than five acres of ground surface within any parcel or any one subdivision, excluding proposed public roads.
  - (5) Site preparation within wetlands, within a one-hundred-foot buffer strip of wetlands or within a critical environmental area which affects more than one acre of ground surface or 1,500 cubic yards of material.
  - (6) Site preparation within the one-hundred-year floodplain of any watercourse which affects more than one acre of ground surface or 1,500 cubic yards of material.
- F. The authorized official shall grant or deny all permits within 60 days of the date of filing of the application thereof, unless the applicant and the authorized official consent to a time extension.
- G. Prior to granting or accepting a permit, the authorized official or Town Planning Board shall determine that the request is in harmony with the purpose and standards set forth in this chapter.
- H. In granting a permit, the authorized official shall fix a reasonable time limit for the termination of the permit and may attach any conditions which he or the Planning Board deems necessary, including any performance guaranty, to assure compliance with the provisions of this chapter. The permit shall not exceed one year in duration.
- I. Major modifications of the terms of approved permits shall follow the same application, review and approval procedures as those set forth in this section for the original permit.
- J. It shall be the responsibility of the authorized official to inspect sites as frequently as necessary to assure compliance with the terms of approved permits and the provisions of this chapter and to submit written notification of any violations of these terms or provisions to the Chairman of the Town Planning Board.

**§ 83-9. Permit application materials.**

A property owner(s) or the property owner's agent(s) may initiate a request for a permit or the modification of a permit by filing with the authorized official two copies of an application. Maps and plans accompanying the application requiring Planning Board approval shall be prepared by a licensed professional, and maps and plans accompanying all other applications shall be of a form which meets the approval of the authorized official, who may require they be prepared by a licensed professional. The authorized official or Town Planning Board may require that additional copies of the application be filed, and they may modify the requirements concerning materials to accompany the application by waiving or adding such requirements as they deem appropriate to the nature and scope of the proposed activities. The authorized official or Town Planning Board may require the applicant(s) to reconstruct application materials if they are deemed to be of insufficient scale or quality or do not meet the standards of this section.

- A. Excepting for modifications authorized or required by the authorized official, each application not required to be submitted to the Town Planning Board shall contain the following material:
- (1) Name, address and phone number of the property owner and section(s), block(s) and lot number(s) of the proposed site.
  - (2) Statement of the nature and purpose of the proposed activity.
  - (3) Drawings showing the boundaries of the parcel upon which the activity will be conducted.
  - (4) A plan showing areas proposed to be cleared, filled or graded or subjected to timber harvesting and the nature of the vegetation affected.
  - (5) An erosion control plan.
  - (6) Documentation regarding permit status with the New York State Department of Environmental Conservation prior to the issuance of a permit. Any New York State Department of Environmental Conservation permit required must be in effect prior to the Town's issuing a permit.
  - (7) Plans must show the type of vegetation to be destroyed by the proposed activities along with the planned disposition of the destroyed material.
  - (8) Completion date and any other information which the authorized official or Planning Board deems reasonable in reviewing the application.
  - (9) Drainage computations prior to site preparation and after site preparation may be required.
  - (10) An agreement to indemnify and hold harmless the Town from any claims arising from the proposed activity.
- B. Excepting for modifications authorized or required by the authorized official or Town Planning Board, each application required to be referred to the Town Planning Board



shall contain the materials listed in Subsection A above and, in addition, the following material:

- (1) The names and addresses and the section, block and lot numbers of all contiguous properties and owners, whether within or outside the Town, and of those property owners on the opposite side of any public street contiguous with the parcel.
- (2) Area location maps.
- (3) A plan showing all existing and proposed contour lines, amount and nature of fill to be placed or displaced, all vegetation areas on the site, including areas of grass and cropland, areas of brush, wooded areas and an estimate of their average diameter at breast height of the trees within wooded areas, areas proposed to be cleared, filled or graded, the nature of the vegetation affected and road access to the site.
- (4) Drawings and plans must show the boundary of the one-hundred-year floodplain, together with designated wetland boundaries and one-hundred-foot buffer and all watercourses and water bodies, where applicable.
- (5) Drawings must be engineering drawings and must show all structures and roads within a distance of 100 feet of the parcel upon which the activity is proposed.
- (6) A detailed erosion control plan with engineer's report describing the plan, methods and implementation of said plan and cost estimate for all measures taken.
- (7) The depth to bedrock on the site proposed for site preparation activities.
- (8) The depth to permanent groundwater aquifers on the site proposed for site preparation activities.
- (9) Soil types to be disturbed by the proposed activity.
- (10) Operations map(s) at a scale no smaller than one inch equals 100 feet showing existing topography of the site at a contour interval of not more than two feet, which presents a complete plan and which indicates:
  - (a) All site preparation activity proposed to be undertaken, identified as to the type of activity proposed and the depth, volume and nature of the materials involved.
  - (b) All clearing, identified as to the nature of vegetation affected.
  - (c) All areas where topsoil is removed and stockpiled and where topsoil will be ultimately placed, identified as to the depth of topsoil in each such area.
  - (d) All temporary and permanent vegetation to be placed on the site, identified as to planting type, size and extent.
  - (e) All temporary and permanent drainage, erosion and sediment control facilities, including such facilities as ponds and sediment basins, identified as

to the type of facility, the materials from which it is constructed, its dimensions and its capacity in gallons.

- (f) The anticipated pattern of surface drainage during periods of peak runoff, upon completion of site preparation and construction activities, identified as to rate and direction of flow at all major points within the drainage system.
  - (g) The location of all roads, driveways, sidewalks, structures, utilities and other improvements.
  - (h) The final contours of the site in intervals of no greater than two (2) feet.
- (11) Time schedule which is keyed to the operations map(s), indicating:
- (a) When major phases of the proposed project are to be initiated and completed.
  - (b) When major site preparation activities are to be initiated and completed.
  - (c) When the installation of temporary and permanent vegetation and drainage, erosion and sediment control facilities is to be completed.
  - (d) The anticipated duration (in days) of exposure of all major areas of site preparation before the installation of erosion and sediment control measures.
- C. For any application referred to the Planning Board, an estimate of the costs of providing temporary and permanent vegetation and drainage, erosion and sediment control facilities shall be prepared by the applicant's licensed professional, accepted by the Town Engineer and approved by the Planning Board.

#### **§ 83-10. Standards for granting permit.**

In granting a permit under this chapter, the standards and considerations taken into account shall include but not be limited to the following:

- A. Excavation, filling, grading, clearing and timber harvesting shall be permitted to be undertaken only in such locations and in such a manner as to minimize the potential of erosion and sediment and the threat to the health, safety and welfare of neighboring property owners and the general public.
- B. Site preparation and construction shall be fitted to the vegetation, topography and other natural features of the site and shall preserve as many of these features as feasible.
- C. The control of erosion and sediment shall be a continuous process undertaken as necessary prior to, during and after site preparation and construction.
- D. The smallest practical area of land shall be exposed by site preparation at any given time.
- E. The exposure of areas by site preparation shall be kept to the shortest practical period of time prior to the construction of structures or improvements or the restoration of the exposed areas to an attractive natural condition.

- F. Following initial soil disturbance or redisturbance, permanent or temporary stabilization shall be completed within seven calendar days. The remaining disturbed area of the development shall be stabilized within 14 calendar days except for those areas in which actual construction activities are currently being performed.
- G. Where slopes are to be revegetated in areas exposed by activity subject to permit, the slopes shall not be of such steepness that vegetation cannot be readily established or that problems of erosion or sediment may result.
- H. Revegetation activities shall avoid the planting of trees with the characteristics of willows and Lombardi poplars within seventy-five (75) feet of existing or proposed public water or sewer mains or drains.
- I. Activity subject to permit shall not adversely affect the free flow of water by encroaching on, blocking or restricting watercourses.
- J. Existing hills, trees and ground cover fronting along adjacent property and watercourses shall be preserved, maintained or supplemented by selective cutting, transplanting and the addition of new trees, shrubs and other ground cover for the purpose of providing a buffer when one is required by Chapter 185, Zoning, or elsewhere in the Town's Municipal Code.
- K. The proposed activity shall not adversely affect soil fertility, drainage and lateral support of abutting land or other properties.
- L. All fill material shall be of a composition suitable for the ultimate use of the filled land, free of rubbish and carefully restricted in its content of clearing debris, rocks, frozen material and soft or easily compressible material.
- M. Fill material shall be compacted sufficiently to prevent problems of erosion.
- N. All topsoil which is excavated from a site shall be stockpiled and used for the restoration of the site, and such stockpiles, where necessary, shall be seeded or otherwise treated to minimize the effects of erosion within the time period stipulated by the authorized official or Planning Board.
- O. Prior to, during and after site preparation and construction, an integrated drainage system shall be provided which at all times minimizes erosion, sediment, hazards of slope instability and adverse effects on neighboring property owners.
- P. The natural drainage system shall generally be preserved in preference to modifications of this system, excepting where such modifications are necessary to reduce levels of erosion and sediment and adverse effects on neighboring property owners.
- Q. All drainage systems shall be designed to handle adequately anticipated flows both within the site and from the entire upstream drainage basin.
- R. Sufficient grades and drainage facilities shall be provided to prevent the ponding of water, unless such ponding is proposed within site plans, in which event there shall be sufficient water flow to maintain proposed water levels and to avoid stagnation.

- S. There shall be provided where necessary to minimize erosion and sediment such measures as benches, berms, terraces, diversions and sediment, debris and retention basins.
- T. Drainage systems, plantings and other erosion or sediment control devices shall be maintained as frequently as necessary to provide adequate protection against erosion and sediment and to ensure that the free flow of water is not obstructed by the accumulation of silt, debris or other material or by structural damage.
- U. All clearing debris, boulders and other debris resulting from site preparation activities or related operations shall be disposed of by methods accepted by the authorized official or Planning Board.
- V. Timber harvesting for a commercial purpose and, when feasible, other site preparation activity shall be avoided within fifty (50) feet of a stream, river, creek, gully or ravine, and all clearing or other debris shall be removed from watercourses.
- W. Skidding logs up or down a watercourse is prohibited, and skidders shall be kept at least fifty (50) feet from a watercourse, and logs that lie closer or on steep slopes shall be winched off to prevent soil disturbance.
- X. All crossing of watercourses during site preparation activities shall be at points having low stable banks, a firm bottom and gentle slopes along the approaches.
- Y. The design and construction of sediment control practices and site preparation work, plus specifications and timing schedules, including extensions of previously approved plans, shall comply with provisions for erosion and sediment control in accordance with standards and specifications contained in a manual entitled "New York Guidelines for Urban Erosion and Sediment Control," published by the United States Department of Agriculture Soil Conservation Service, as it may be revised. Said manual shall be on file at the authorized official's office. In the event of conflict with this chapter, the provisions herein shall prevail.

**§ 83-11. Site requirements.**

- A. Site preparation activities shall be conducted only between the hours of 7:30 a.m. and 6:00 p.m. when within 1,500 feet of any residence. No site preparation activity shall be conducted on Sundays or public holidays without express consent with the permit.  
[Amended 11-6-1995 by L.L. No. 7-1995]
- B. Any contract to perform site preparation activities shall state that it is subject to this chapter of the Code.
- C. As a condition of its permit, the applicant shall be required to sign a permit authorizing Town officers, employees or agents to enter onto the site to perform appropriate surveillance.
- D. The authorized official or Planning Board may impose any other reasonable conditions, including but not limited to screening, access controls, dust controls and site security, believed to be necessary.

**§ 83-12. Performance guaranty.**

- A. After the approval of the application and before the issuance of any permit subject to the approval of the Planning Board, the applicant shall file with the Town Clerk, in an amount of the estimated cost of the project as submitted under § 83-9 of this chapter and verified by the appropriate official, one of the following performance guaranties, which must be approved by the Town Attorney as to form:
- (1) A certified check; or
  - (2) A letter of credit from a bank.
- B. The Town Planning Board may grant a waiver of such guaranty if it deems the proposed activities to be of minor scope and to be consistent with the provisions of this chapter.
- C. The party or parties filing the performance guaranty shall provide that either upon termination of the permit or the operation, whichever may come first, the project shall be in conformity with both the approved specific requirements of the permit and the provisions of this chapter. In the event of default of such and violation of any other applicable laws, such performance guaranty shall be forfeited to the Town. The Town shall return to the applicant any amount that is not needed to cover the costs of restoration, administration and any other expenses incurred by the Town as a result of the applicant's default. Such performance guaranty shall continue in full force and effect until a certificate of compliance shall have been issued by the authorized official after such consultation with any agencies or individuals as he deems necessary to ensure that all provisions of the chapter and of the permit have been met.

**§ 83-13. Appeals.**

- A. The Zoning Board of Appeals, as established by Chapter 185 of the Town of Newburgh Code, shall hear and decide appeals.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the authorized official or Planning Board in the enforcement or administration of this chapter or when it is alleged that failure to grant a variance will result in exceptional hardship to the applicant or results inconsistent with the purposes of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and whether unnecessary hardships or results inconsistent with the general purpose of this chapter or certain provisions thereof will result from the enforcement of those standards.

- E. Upon consideration of the factors of Subsection D above and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of appeals as it deems necessary to further the purpose of this chapter.
- F. The authorized official shall maintain the records of all appeal actions, including technical information.
- G. Variances shall only be issued after the applicant's permit application procedure has been completed and upon a determination that the variance is the minimum necessary to afford relief.
- H. Variances shall only be issued upon receiving written justification of:
  - (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) A determination that the granting of a variance will not result in increased runoff, erosion or sedimentation; unnecessary destruction of vegetation; additional threats to property, the environment or public safety; or extraordinary public expense or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

**§83-14. Inspections and enforcement; penalties for offenses.**

- A. It shall be the responsibility of the authorized official or his designee to inspect the sites as frequently as necessary to assure compliance with the terms of approved permits and the provisions of this chapter.
- B. In the event that any of the activities described in § 83-6 are undertaken by any person who has not been issued a permit or if work undertaken under a permit is not in compliance with the terms of the permit or of this chapter, the authorized official shall notify the on-site personnel or the permittee, in writing, of the violation and shall be authorized to issue, either or both, a stop-work order and an order to remedy describing the required corrective action and the time period in which to have the violation corrected and to require such further compliance with this chapter as is necessary to effect its purpose and goals. The authorized official may issue a second stop-work order if it appears corrective action is not being undertaken or if the violation persists after the date specified for completion of corrective action in the order to remedy. The authorized official shall determine the extent to which work is stopped, which may include all work on the site except that work necessary to remedy the violation.
- C. For any and every violation of the provisions of this chapter by the owner or responsible agent or party, the violator shall be subject to a fine of not less than \$100 and not exceeding \$500 or to imprisonment for not more than six months, or both, and each and every day the violation of a stop-work order continues or the violation persists after the date specified for the completion of corrective action in an order to remedy shall be deemed to be a separate and distinct violation. In addition, any such person who violates any provision of this chapter or omits or refuses to perform any and every act hereby

required shall forfeit and pay a civil penalty to the Town of no less than \$250 and not exceeding \$2,500 per lot or double the cost of correcting the violation to the extent possible, whichever is greater, for each and every such violation and nonperformance.

- D. If at any time during the effective period of a permit or if upon its expiration the terms of the permit are violated, the authorized official may revoke the permit and may require that any performance guaranty be forfeited to the Town.
- E. If the applicant shall be unable to complete the project or any phase thereof within the specified time, he shall, 30 days prior to the specified date of completion, present in writing a request for an extension of time, setting forth therein the reasons for the request. If, in the discretion of the authorized official, such an extension is warranted, he may grant additional time for the completion of the work.