

ARTICLE 30- CUT AND FILL REGULATIONS

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SECTION 3001: PURPOSE:

The purpose of this section is to safeguard life, limb, property and the public welfare, and the preservation of the natural environment and the stability of hillsides by regulating excavating and filling of land.

SECTION 3002: DEFINITIONS:

For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARCHITECT. An architect registered in the State of Ohio to practice in the field of architecture.

BORROW. Earth material acquired from an off-site location for the use in grading on a site.

DISPOSAL. Any earth material removed to another location.

EARTH MATERIAL. Any rock, fill, or natural soil and/or combination thereof.

ENGINEERING GEOLOGIST. A full member in good standing of the Association of Engineering Geologists or the American Institute of Professional Geologists.

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

EXCAVATION. Any artificial or mechanical act by which earth, sand, rock, or other similar material is dug into, cut, quarried, uncovered, removed, displaced, relocated, or bulldozed and shall include the conditions resulting there from.

FILL. Any artificial or mechanical act by which earth, sand, gravel, rock, or any other material is placed, pushed, dumped, pulled, transported, or moved to a new location above the natural surface of the ground or on top of the stripped or excavated surface and shall include the conditions resulting there from. The difference in elevation between a point on the original ground and a designated point of higher elevation on the final grade. The material used to make a fill.

NATURAL TERRAIN. Existing ground as shown on the most recent published editions of the Village of New Richmond and Clermont County Topographic Survey sheets prior to the date of this section.

REGISTERED PROFESSIONAL ENGINEER. A Civil Engineer registered in the State of Ohio to practice in the field of civil engineering.

SEDIMENT. Solid material both mineral and organic, that is in suspension, is being transported or has been moved from its original site or origin by air, water, or gravity as a product of erosion.

SITE. Any lot or parcel of land or contiguous combination thereof, upon which excavation or filling is, has been, or will be preformed.

SLOPE. An inclined ground surface, the inclination of which is expressed as the arc tangent of vertical distance “y” to horizontal distance “x”, where “x” and “y” are per the same linear measuring units.

SOIL SCIENTIST. A full member in good standing of the Soil Science Society of America and who has special knowledge and training in the physical, chemical, and biological sciences applicable to soil.

SOIL ENGINEERING. The application of the principles of soil mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.

SOIL ENGINEER. A Civil Engineer experienced and knowledgeable in the practice of soil engineering.

VILLAGE ENGINEER. The persons, firms, or corporations, or their authorized agents or employees, employed or designated by the Village to perform engineering services for the Village.

ZONING INSPECTOR. The person employed by the Village in the capacity of Zoning Inspector or their authorized agents or employees, to perform specific duties in the review and enforcement of the section.

SECTION 3003: ISSUANCE OF PERMITS AND EXEMPTIONS:

(A) No person, the owner of any property or in possession or control of any property, shall cause, permit or allow any excavation or filling to be done on such property unless a permit has been issued by the Zoning Inspector for such excavating or filling except that no permit shall be required for:

- (1) Normal cemetery operations of opening or closing graves;
- (2) Public work performed by or under control of the Village, except for excavating or filling performed outside the project work limits;
- (3) Exploratory excavations under the direction of a registered professional engineer, soil engineer, engineering geologist, soil scientist, or architect where incidental to the practice of architecture and exploratory excavations by a contractor or builder provided they are not made in a slope steeper than one vertical to five horizontal units and are promptly and properly filled.
- (4) Temporary excavations for wells, tanks, vaults, tunnels, sign foundations, and trenches for sewers, water lines, gas lines, electric lines and other underground utilities;
- (5) Subject to the provisions of Section 3011, any excavation that does not exceed five feet in vertical depth at its deepest point or 100 cubic yards per each 5,000 square feet of site area, whichever is the more restrictive.
- (6) Subject to the provisions of Section 3011, any fill that does not exceed five feet in vertical depth at its deepest point or 100 cubic yards per each 5,000 square feet of site area, whichever is the most restrictive, and is placed on natural terrain with a slope flatter than one vertical to five horizontal units and does not result in a finished slope steeper than one vertical to three horizontal units;
- (7) Subject to the provisions of Section 3011, any excavation for a basement and footings of a building authorized by a valid building permit, provided the excavation does not exceed eight feet in vertical depth , at its deepest point or 350 cubic yards per each 5,000 square feet of site area, whichever is the more restrictive, and is made in existing terrain with a slope flatter than one vertical to ten horizontal and the subsequent filling with this excavated material on the same site, provided the fill does not exceed five feet in vertical depth at its deepest point or 350 cubic yards per each 5,000 square feet of

site area, whichever is the more restrictive, and is placed on existing terrain with a slope flatter than one vertical to ten horizontal units and does not result in a finished slope steeper than one vertical to three horizontal units.

- (B) Where a succession of small excavations or fills individually not requiring a permit constitutes a continuing operation on a property and the accumulation of such excavations or fills on that property will exceed five feet in depth or 100 cubic yards per each 5,000 square feet of site area, a permit **shall be required**. The most current Topography maps from Clermont County shall be used to determine elevations.
- (C) No excavating or filling pursuant to divisions (A) (1) through (A) (7) hereof shall cause any slope to become unstable, impose loads which may affect the safety of structures or slopes, interfere with adequate drainage for the site area and the drainage area of land tributary to the site, obstruct, damage, or adversely affect lawfully existing sewerage or drainage, public or private, cause a stagnant pond or water to form, or cause erosion or sedimentation.
- (D) The exemptions contained in division (A) do not apply to any operations pursuant to Section 3004.

SECTION 3004: CORRECTION OF HAZARDOUS CONDITIONS:

Whenever the Zoning Inspector, with the concurrence of the Village Engineer, determines that any existing excavation, fill, slope, or other condition has become a hazard, or endangers the public health and safety or any public or private property or adversely affects the safety, usability, or stability of any public way or drainage channel or has caused detrimental erosion or sedimentation, they shall order the owner or person(s) in control of the property on which such condition exists to correct the condition. The owner or person(s) in control of the property, upon receipt of the order of the Zoning Inspector shall, within ten days, apply for and obtain a permit and promptly proceed to correct the condition creating such hazard in accordance with the provisions of this Section. If conditions are not corrected within the ten-day period, a \$100.00 per day fine will be issued from the first day of the hazard.

SECTION 3005: PLANS AND SPECIFICATIONS:

- (A) The Zoning Inspector shall issue a permit for excavating or filling only on the basis of plans and specifications submitted to and approved by them and

approved by the Village Engineer. A separate permit shall be required for each site. Unless waived or modified pursuant to the provisions of Section 3007, the plans and specifications submitted with the permit application shall:

- (1) Include the owner's name and address
- (2) Include a plot plan, drawn to scale, showing the location of the proposed work;
- (3) Include a contour map of the affected area showing the existing and proposed contours at five foot intervals;
- (4) Show the proposed amount of excavation or fill in cubic yards;
- (5) Show the location of any existing and proposed streets on or adjacent to;
- (6) Show the location of any existing and proposed buildings or structures on the subject property and within 15 feet of subject property;
- (7) Show the location of any existing watercourses, drainage, and sewer systems serving the property;
- (8) Show existing and proposed drainage structures, walls, cribbing, and surface protection, and any necessary temporary earth restraining installations;
- (9) Show a plan for temporary and permanent drainage of the soils from erosion;
- (10) Describe the proposed method for the protection of the soils from erosion;
- (11) Show how surplus excavated fill will be disposed of;
- (12) Show additional information as may reasonably be required by the Zoning Inspector.

(B) Unless waived pursuant to the provisions of Section 3007, the plans and specifications shall be prepared by a registered professional engineer or an architect where the work contemplated by the plans and specifications is incidental to the practice of architecture and shall in addition to the requirements of division (A) herein:

- (1) Include a report showing the results of surface and subsurface exploration, conditions of the land, and procedures for performing the operation;
- (2) Show plans of all drainage provisions which shall be such design to adequately handle the surface runoff, together with a map showing the drainage area of all land tributary to the site, and estimated cubic foot per second runoff of the area served by any drain computed in accordance with current acceptable standards;
- (3) Include a specification for the borrow material or fill material and the method to be used for and the degree of its proposed compaction;
- (4) Show proposed preparation of existing ground surface to receive fill;
- (5) Show proposed terraces and ditches where necessary to control surface drainage and debris;
- (6) Show proposed subsurface drainage if necessary for stability;

- (7) Show plans for all retaining walls, cribbing, vegetative provisions, erosions and sediment control measures, together with location of temporary or permanent fencing and other protective devices to be constructed in connection with, or as a part of the proposed plan.
 - (8) Show a timing schedule and sequence indicating starting and completion dates of the development sequence-stripping or clearing, rough grading and construction, final grading, and vegetative establishment and maintenance and the time of exposure of each area prior to the completion of effective erosion and sediment control measures.
- (C) If the Zoning Inspector and Village Engineer shall be satisfied that the proposed excavation or fill will not cause any of the hazards described in Section 3007 (A) through (F) hereof, then in such event the Zoning Inspector shall issue a permit authorizing the excavation or fill.

3006: SUPERVISION BY REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT:

Unless waived pursuant to the provisions of Section 3007, excavation and fill in the field shall be supervised by a registered professional Engineer or Architect representing the owner or developer. The registered professional Engineer or Architect shall submit a summary report to the Zoning Inspector upon the completion of operations. The Zoning Inspector may require interim reports from the Engineer or Architect when the operations extend beyond a month. Cost of supervision is to be borne by the owner or developer.

3007: WAIVER OR MODIFICATION OF SUBMISSION OF PLANS AND SPECIFICATIONS:

The Village Engineer may waive or modify the requirements of this section for plans and specifications and field supervision and summary report if the application for a permit or a certification in writing of a registered professional engineer or architect where incidental to the practice of architecture states to the satisfaction of the Village Engineer that the proposed excavation or fill will not:

- (A) Interfere with adequate drainage for the site area and the drainage area of land tributary to the site;
- (B) Obstruct, damage, or adversely affect existing sewerage or drainage, public or private;
- (C) Cause a stagnant pond of water to form;

- (D) Create slope stability problems on subject and adjacent property;
- (E) Cause detrimental erosion or sedimentation; or
- (F) That the proposed excavation or fill is in an isolated self-contained area and that there is no apparent danger to adjacent public or private property.

3008: PROHIBITION OF CERTAIN EXCAVATIONS, FILLS OR GRADES:

No permit shall be issued for the excavation or fill to be made with a face steeper in slope than one vertical to three horizontal except that the Zoning Inspector, with the written approval of the Village Engineer, may permit an excavation or fill to be made with steeper face if an applicant demonstrates satisfactorily by means of appropriate soil exploration and analysis and the written opinion of a registered professional engineer or architect where incidental to the practice of architecture that the materials are capable of standing on a steeper slope without creating any of the hazards described in Section 3003 and 3004.

3009: SETBACKS OF TOPS AND TOES:

The tops and toes of slopes created by excavation or fill shall be set back from property boundaries and structures as far as necessary as determined by the Village Engineer to ensure the safety and stability of adjacent property, including but not limited to, foundation support and to prevent damage as a result of water runoff or erosion.

3010: PROTECTION AGAINST EROSION:

All excavations and fills shall be performed so as to minimize soil erosion and sedimentation.

3011: PROTECTION AND RELOCATION OF SEWERS:

- (A) If it is necessary to adjust, relocate, add to or otherwise modify the existing sewer system serving the area affected by an excavation or fill operation, for the purposes of providing drainage of the affected area or protecting the existing sewer system from damage, the Zoning Inspector shall issue a permit in accordance with this Section only if the applicant for the permit obtains a permit to provide, relocate, or modify the sewer system for the

affected area at the expense of the applicant and grant such easements as may be necessary.

- (B) In places where existing sewerage is adequate, but in the opinion of the Village engineer is of doubtful strength to carry additional loading, the Zoning Inspector shall issue a permit in accordance with this Section only if the applicant for the permit provides a bond of corporate surety authorized to do business in the State of Ohio naming the Village as “obligee” thereof, covering replacement cost of the sewer and guaranteeing that the proposed fill will not damage the sewer for a period of one year after the fill is completed.

3012: BOND REQUIREMENT:

Prior to issuing the permit a bond or cash in escrow shall be required to cover the estimated cost of restoration of any affected land or to cover the cost of performance of the operations under such permit. The minimum bond or cash escrow will be \$500.00 and will be determined by the Zoning Inspector and the Village Engineer.

3013: FEE SCHEDULE:

- (A) Before issuing a permit, the Zoning Inspector or their designee shall collect a fee, the amount of which shall be \$50.00 for the first 100 cubic yards (or fraction thereof) plus \$25.00 for each 1,000 cubic yards (or fraction thereof) in excess of 100 cubic yards of earth materials moved. There shall be no fee collected for work performed by any public agency.
- (B) Before accepting a request for a waiver or modification, or application for a permit, pursuant to Section 3007 or 3008, the Zoning Inspector or their designee shall collect from the person making such request or application a deposit of \$250.00 to be applied to the charges of the Village Engineer for the engineering services provided pursuant to such Sections; and no waiver or modification shall be given, or permit issued, until all charges of the Village Engineer have been paid by the person making the request or application. Should the charges of the Village Engineer be less than \$250.00, the unused portion of the deposit shall be returned to the person who made such deposit.

3014: PERMIT EXPIRATION:

Excavation and fill permits shall be valid for one year from the date of issuance. However, any permit may be renewed two times for a fee of \$100 each time it is renewed subject to the approval of Zoning Inspector and Village Engineer. The full bond or escrow account must remain in effect in order to renew the permit. A letter of proof will be required at time of renewal.

3015: NOTIFICATION BY PERMIT HOLDER:

The person to whom a permit is issued shall notify the Zoning Inspector:

- (A) Of the time of commencement of operations under such permit, 48 hours in advance of such time where excavation will enter a public right-of-way, and in all other instances 24 hours in advance of the time of commencement of operations;
- (B) Immediately of any delay in the time of commencement of which notification has been given as provided in division (A);
- (C) When the operation is completed;
- (D) Prior to commencement of operations, of the locations of any borrow sites or any disposal sites for excess materials.

3016: SUSPENSION OF OPERATIONS:

The Zoning Inspector shall order operations under a permit for excavation or fill suspended whenever they determine, with the concurrence of the Village Engineer, that such operations are endangering the public health or safety.

Such suspensions shall remain in effect until the condition or conditions causing same are successfully remedied to the satisfaction of the Zoning Inspector and Village Engineer. The Zoning Inspector, with the concurrence of the Village Engineer, shall also have the authority to order stopping any operations contrary to the terms and conditions of a permit issued under this Section. Such stoppage shall remain in effect until the operations are remedied to be in conformance with this Section.

3017: VILLAGE LIABILITY;

Issuance of a permit or any action by the Zoning Inspector under this Section shall not create in the Village, its officers, agents, or employees and liability or responsibility for injury to persons or property caused by operations or conditions created pursuant to such permits. Nothing in the Section shall be construed to relieve the owner or person in control of property from liability for injury to persons or property.

3018: BUILDING PERMIT ISSUANCE:

The Zoning Inspector shall withhold the issuance of any permit under their authority for operations on property subject to an excavation or fill operation until the owner or the persons in control have complied with all provisions of this Section.

3019: APPEAL TO BOARD OF ZONING APPEALS;

(A) An appeal of any decision made by or action taken by the Zoning Inspector in order to enforce Article 30 of this Zoning Ordinance may be taken to the Board of Zoning Appeals pursuant to Sections 508 through 519 of the Village of New Richmond Zoning Ordinance. Any such appeal shall be filed within thirty (30) days of any decision or action of the Zoning Inspector as pursuant to Section 512 of the Village of New Richmond Ordinance.

(B) There shall be a \$400.00 filing fee for the hearing due at the time of application,

3020: PENALTY

Any person being owner, agent of the owner, or having control of any property, who violates or assists in the violation of any of the provisions of the Section or fails to conform to any of the provisions thereof, or fails to obey any order of the Zoning Inspector or their duly authorized agent, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a penalty of a fine of not less than \$100. Each and every day on which such person continues to violate any of the provisions of the Section after having been once notified of such violation shall constitute a separate offense.

