

SECTION 64 – EXCAVATION AND GRADING

64.1 Purpose:

In accordance with the procedures, standards and conditions hereinafter specified, though Commission may permit, on any lot, the filling, excavation, grading and removal of any earth, loam, topsoil, sand, gravel, clay, or stone, any or all of which shall be collectively referred to in this section as “earthen material”. The purpose of this section is to protect the ecological processes which are dependent upon nature, minimize surface remove of rainfall and melt-water, preserve the ground water supply, preserve a cover crop on the land to prevent erosion, control any excavation or landfill that may create a safety or health hazard to the public or to adjacent property owners or be detrimental to the immediate neighborhood or to the Town of Middlebury and to designate areas for the deposit and/or disposal of landfill so as to create the least amount of damage to the ecology of the community. For the purposes of this section “landfill” shall not be deemed to include vegetation.

64.2 Filling or Removal by Permit Only:

The filling, excavation, grading or removal on any lot of any earthen material, including the dredging or filling of any water course, is hereby expressly prohibited unless the Commission grants a Certificate of Zoning Compliance or Special Exception under the standards and conditions contained in subsection “Standards and Conditions” of these Regulations, in order to prevent damage to adjoining property and to protect the health, safety and convenience of the community. For the purpose of this section, water course shall mean any river, stream, brook, waterway, lake, pond, marsh, swamp, bog, drainage system, or other body of water, natural or artificial, public or private. In the event of refusal of the Commission to issue a Certificate of Zoning Compliance or Special Exception the applicant may file an appeal with the Zoning Board of Appeals for its action under the provisions of these regulations.

64.2.1 Any other provisions of this section to the contrary notwithstanding, no activity including but not limited to filling, excavation, grading or removal shall be conducted within one hundred (100) feet of Long Meadow Brook, Long Swamp Brook, Mashaddock Brook, Goat Brook, Hop Brook, Long Meadow Pond, Lake Elise, Lake Quassapaug, Turtle Pond, Fenn’s Pond, Atwood Pond or Sperry Pond. Where it is necessary to protect flood plains or water recharge areas, the Zoning Commission may require a greater setback. The filling, excavation, grading or removal for driveway, road and/or utility crossings that have been approved by the Commission are exempt from this provision.

- 64.2.2 Notwithstanding any other provisions of this Section to the contrary, no septic system or leech field shall be constructed or installed within 100 feet of the shores of Lake Quassapaug; provided, however, if the soils in the area are not well drained sandy soils, but are, for example, clay, rock, marsh or situated on steep slopes, then the Commission may require a further setback from said lake or brook of up to 500 feet. In making such determination, the Commission shall consult with the Town Sanitary Officer and may consult with a knowledgeable professional concerning the appropriate distance based on actual slough and slopes.
- 64.2.3 An application for a Certificate of Zoning Compliance or Special Exception to undertake such filling, excavation, grading or removal shall be filed with the Zoning Enforcement Officer.
- 64.2.4 Such application shall contain full and complete information as to the exact project which is proposed, as set forth in subsection “Application Requirements” below.

64.3 Exclusions:

Unless prohibited under the provisions of Subsection 64.2.1 under “Filling or Removal” above, the following activities shall be excluded from the application of this section:

- 64.3.1 Necessary filling, excavation, grading or removal in direct connection with construction or alteration on a lot for which a Certificate of Zoning Compliance has been issued, and which involves the movement of no more than one thousand (1,000) cubic yards of earthen material.
- 64.3.2 Necessary filling, excavation, grading or removal in direct connection which construction of the road for which plans have been approved by the Commission and Board of Selectmen and a performance guarantee in the form and amount of a Surety acceptable to the Board of Selectmen as specified in the Road and Drainage requirements.
- 64.3.3 Necessary shall an excavation, and grading or removal resulting from a single family residential construction operation and does not exceed one thousand (1,000) cubic yards that is being excavated on the premises for which a zoning permit has been issued for the installation of foundations, driveways, sanitary sewer, approved subsurface sanitary disposal systems, water lines, public utilities, sidewalks, fences and walls.

- 64.3.4 Necessary filling, excavation, grading or removal in connection with the resurfacing of an existing roadway or parking lot.
- 64.3.5 The removal by or for the owner from one part of the property to another of topsoil and subsoil when such removal is for the purpose of landscaping, farming, or otherwise improving the property to a maximum of not more than one hundred (100) and cubic yards of material.
- 64.3.6 Tests to determine soil beneath characteristics such as a borings, test pits, and its percolation tests.

64.4 Application Requirements Certificate of Zoning Compliance:

Application for a Certificate of Zoning Compliance under this section shall be submitted in writing and applicant form to the Commission. Such application will be required for any filling, excavation, grading or removal of more than 100 cubic yards but less than 1,000 cubic yards during any calendar year. The application shall include:

- 64.4.1 Details of final grading and planting of the site to prevent erosion on the site both during the operation and at its conclusion.
- 64.4.2 The location and design of structural and non-structural sediment control measures, such as diversion, waterways, grade stabilization structures, debris basins, check dams, water breaks, silt fences and of the like; and the location of temporary and permanent erosion control measures.
- 64.4.3 A detailed statement of the proposed work to be performed on the premises, including an estimate of the number of cubic yards of material to be filled, excavated, graded or removed.
- 64.4.4 The proposed date of the commencement and completion of work.
- 64.4.5 A signed statement by the applicant to agree to comply with and fulfill all of the requirements and provisions of these regulations pertaining to their application for a Certificate of Zoning Compliance under Section 64.
- 64.4.6 The names and signatures of the owner(s) of the premises involved.
- 64.4.7 Applicant will pay a fee twenty-five (25) cents and per cubic yard of material to be removed from the site and ten (10) cents per cubic yard to remain on site.
- 64.4.8 Any other additional information as deemed necessary by the Commission.

64.5 Application Requirements Special Exception:

Application for a Special Exception under this section shall be submitted in writing in duplicate to the Commission. Such application will be required for any filling, excavation, grading or removal of more than one thousand (1000) cubic yards during any calendar year. The application shall be accompanied by maps and plans prepared by and bearing the seal of a land surveyor and/or professional engineer licensed by the State Board of Registration for Professional Engineers and Land Surveyors of the State of Connecticut. The Application shall conform to all requirements of Section 52 and shall include:

- 64.5.1 The location and exterior of limits of the area to be filled, excavated or graded.
- 64.5.2 Property lines and streets adjoining a lot, location of buildings and structures on adjoining parcels and the names of owners of property adjoining the lot.
- 64.5.3 Existing and proposed contour lines on a lot to be filled, excavated or graded, drawn to a scale of not more than forty (40) feet to the inch and with a contour interval not exceeding five (5) feet; and within fifty (50) feet of the excavation.
- 64.5.4 Existing and proposed drainage, lot and existing rivers, streams, water courses, ponds, and swamps and wetlands on and within one hundred (100) feet of a lot. A narrative shall be submitted prepared by a licensed professional civil engineer licensed in the State of CT identifying any risk to water resources, best management practices to use to prevent any such risk, and supporting documentation including calculations to show compliance with these regulations.
- 64.5.5 The location on the parcel of any wooded area, rock outcrops and existing and proposed buildings and structures.
- 64.5.6 An estimate of the maximum number of cubic yards of material to be filled, excavated, graded or removed.
- 64.5.7 Adjacent streets and proposed a vehicular access to the lot and proposed work roadway.
- 64.5.8 An estimate of the number, types and hours of operation of trucks and other machinery to be used on the site, and the locations and types of any buildings, including temporary buildings, to be erected.
- 64.5.9 No Special Exception shall be issued without a letter of approval of the proposed plan from the Director of Public Works/First Selectman or his designee.

- 64.5.10 Details of final grading and planting of the site to prevent erosion on the site of during the operation and at its conclusion.
- 64.5.11 Soil and sediment erosion control plans as per Section 68 of these regulations.
- 64.5.12 Safety precautions to be taken.
- 64.5.13 The sequence of operations, including time limits for major development phases, temporary and permanent sediment control measures to be employed, specifications for temporary and permanent vegetative and structural stabilization and general information relating to the implementation and maintenance of the sediment control measures, including the name of the individual responsible for implementing the plan.
- 64.5.14 Details of the proposed blasting and storing of explosives as approved by the Board of Selectmen.
- 64.5.15 A hydraulic study prepared by a certified professional hydrologist for any excavation, filling, grading or removal within one hundred (100) feet of any brook or pond.

64.6 Standards and Conditions:

The filling, excavation, grading or removal authorized by the Special Exception or Certificate of Zoning Compliance under this section shall conform to the following standards and conditions:

- 64.6.1 The filling, excavation, grading and removal shall be carried out in accordance with the maps and plans as approved by the Zoning Enforcement Officer and within the exterior limit shown thereon.
- 64.6.2 No processing machinery shall be erected or maintained on the lot within three hundred (300) feet of any property or street line, and any such machinery shall be removed from a lot upon termination of the permit. No materials shall be stockpiled and no equipment or structures covered by the permit shall be operated or located outside of the permit area. Except in an industrial district, no stone pressure or other machinery not required for actual removal of the material shall be used.
- 64.6.3 At no time shall more than one undivided area exceeding two (2) acres in size be opened within the lot, it being the intent of these Regulations that the remainder

of the lot shall either be undisturbed land or shall have been restored pursuant to Subsection 64.7. “Restoration”, below;

A. Exception:

When the filling, excavation, grading or removal is performed in direct connection with the improvement, for building, of lots of an approved and recorded subdivision or re- subdivision plan, the Commission may exempt the applicant from the Subsection 64.6.3 above.

- 64.6.4 The filling, excavation, grading or removal shall not result in sharp declivities, pits or depressions, soil erosion, improper drainage or other conditions which would impair the reasonable reuse and development of the lot or which would impair or damage the use of adjacent or neighboring lots or would cause health or sanitary hazards.
- 64.6.5 The work shall be limited to reasonable hours and days of the week that may be specified by the Commission.
- 64.6.6 Proper measures shall be taken to minimize nuisance from noise and dust using best management practices as approved by the Board of Selectmen or its designee.
- 64.6.7 At all stages of the work, proper drainage shall be so arranged as to minimize traffic hazards on streets and to avoid nuisance to residents of the neighborhood.
- 64.6.8 Such a barricades or fences shall be erected as are necessary for the protection of pedestrians and vehicles.
- 64.6.9 No filling, excavation, grading or removal which is below the elevation of any abutting street or property line shall occur within fifty (50) feet of such line unless permitted by the Commission after a public hearing pursuant to Section 64.8 “Procedure: Hearings by the Planning and Zoning Commission for Permits” below has been held on the application and the Commission has determined that such activity would not involve or create a substantial risk of damage to the abutting property.
- 64.6.10 It shall be the responsibility of the permit holder to ensure that vehicles removing earthen and material from the lot are so loaded and/or secure that there will be no spillage of such material within the Town of Middlebury.

- 64.6.11 At all stages of the work where any excavation or fill will have a depth of ten (10) feet or more and create a slope of more than one (1) foot vertical rise to two (2) feet horizontal distance, there shall be a substantial fence enclosing the fill or excavation, at least six (6) feet in height with suitable gates. Such fence shall be located fifty (50) feet or more from the edge of the excavation or fill.
- 64.6.12 At all stages of the operation, proper drainage shall be provided to prevent the collection of water and the excavator must erect proper barriers or fences for the protection of pedestrians, vehicles, children and others.
- 64.6.13 Truck access to the excavation shall be arranged to minimize nuisance to surrounding properties and access on the premises shall be provided with a dustless surface.
- 64.6.14 The premises shall be excavated and graded in conformance with the permit and approved maps and plans. Any deviation from the permit and approved maps and plans shall be cause to revoke said permit and claimed the bond set forth in Section 64.14 "Posting of Bond" below.

64.7 Restoration:

Upon completion of the work authorized, area of excavated or otherwise disturbed ground shall be prepared or restored as follows:

- 64.7.1 Such area shall be evenly graded to slopes not exceeding one (1) foot of a vertical rise to two (2) feet of horizontal distance except for the ledge rock cut which shall be finished at an angle not to exceed two (2) feet of vertical to one (1) foot horizontal so as to preclude the falling of loosened material or to such lesser slope necessary for soil stability, safety and reasonable reuse and development of the lot; in addition, the area shall be evenly graded with sufficient slopes, dikes, berms, and waterways to assure adequate drainage of the area, so that stagnant pools of water will be avoided and so that adjacent area will not be damaged.
- 64.7.2 All debris and all loose boulders not incorporated into the improvement of the lot shall be buried or removed from the lot; on lots to be serviced by separate septic system, no debris or loose boulders shall be. Closer than 25' (twenty-five) from any property boundary line. If a stone wall is to be covered with fill and it is in the area of the proposed septic leaching field, the stone wall is to be removed.
- 64.7.3 A top layer of any arable topsoil, which shall be free of any large stones, shall be spread to a depth of not less than 6 (six) inches over the entire area and the area

shall then be seeded with a perennial grass and maintained until the ground shall be completely stabilized with a dense cover of grass and there exists no danger from erosion, but this provision shall not apply to the area of ponds, nor too exposed areas of ledge rock existing prior to excavation.

64.7.4 Any permittee or agent thereof who shall cause damage to any road(s) in the Town of Middlebury shall immediately be liable to the Town for repairing the damage, which shall be under the supervision of the Board of Selectmen of the Town of Middlebury.

64.8 Procedure: Hearings by the Planning and Zoning Commission for Permits:

The Commission shall, within sixty-five (65) days of receipt of a completed application for a Special Exception as per Section 52 of these regulations, for any operation involving the excavation, filling, grading or removal of one thousand (1,000) cubic yards or more of earthen material, hold a public hearing on such application. Notice of the time and place of such hearing shall be published in a newspaper having a substantial circulation in the Town of Middlebury at least twice, at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days before the date of such hearing. In addition, notice of the time and place of such hearing shall be sent by registered or certified mail not less than ten (10) days before the hearing to the applicant and to all owners of property within one hundred (100) feet of the lot on which said operation is proposed, at their last known address as shown on the records of the Town Tax Collector. At such hearing any party may appear in person and may be represented by an agent or by attorney. The hearing shall be completed within thirty-five (35) days. The Commission shall decide upon said application within sixty-five (65) days after the hearing. The applicant may grant extensions of these time periods not to exceed sixty-five (65) days total. Whenever the Commission grants or denies a Special Exception, it shall state upon the records the reason for the decision. Notice of the decision of the Commission shall be published in a newspaper having a substantial circulation in the Town of Middlebury and sent by registered or certified mail, addressed to the person who applied for the Special Exception, by its Secretary or Clerk, under his or her signature, in any written, printed, typewritten or stamped form, within fifteen (15) days after such decision has been rendered. Such Special Exception shall become effective at such time as is fit by the Commission, provided a copy thereof shall be filed in the Office of the Town Clerk.

64.8.1 Except as specified in Subsection 64.6.9 of “Standards and Conditions”, a Special Exception is not required for operations involving the excavation filling, grading or removal of less than one thousand (1,000) cubic yards of material.

64.8.2 Failure to submit additional information requested by the Commission shall be grounds for disapproval of the application.

64.8.3 All communications between the Commission and the applicant shall be in writing and a copy of such shall be kept on file in the Town Hall.

64.9 Regulations Regarding Permit:

Any Special Exception issued hereunder shall expire one year from the date of issuance unless extended by the Commission.

64.9.1 Extensions:

The Commission may extend the one (1) year time period for not more than six (6) months provided the applicant can show to the Commission that the work already completed conforms with the plan of operation as approved, and provided that the other applicable requirements of this section have been carried out.

64.9.2 A public hearing is not required for extension of their time period specified in Section 64.9.1 above.

64.9.3 Any deviation from the plan or from these Regulations shall be cause for the Commission to revoke the Special Exception.

64.10 Inspection:

The Commission, or its authorized agents, shall at all times have access to the premises for the purpose of inspection and determination of compliance with this section; the Commission may require the applicant to submit to periodic reports, prepared by and bearing the seal of a land surveyor or civil engineer, showing the status and progress of the work.

64.11 Inspection Fee:

At the time of issuance of a Special Exception or a Certificate of Zoning Compliance granted under this section, the applicant shall pay to the Commission or its appointed agent and inspection fee equal to twenty five (25) cents for each cubic yard of earthen material, or fraction thereof, to be removed from the site or ten (10) cents for each cubic yard or part thereof for material to remain on site.

64.12 Insurance:

No Certificate of Zoning Compliance or Special Exception shall be issued until the applicant shall have filed with the Commission a certificate evidencing that the applicant has obtained a policy of liability insurance, in which the Town of Middlebury shall be named insured, with the following minimum requirements:

Public liability	-	Personal injury - \$500,000.00 each person \$1,000,000.00 each accident
Property damage	-	\$250,000.00 each occurrence
Auto liability	-	Personal injury - \$500,000.00 each person \$1,000,000.00 each accident
Property damage	-	\$250,000.00 each accident

64.13 The Town of Middlebury Must Be Named as Co-insured (as its interests may apply on each policy accepted):

The above to cover all operations to be conducted pursuant to the Special Exception in the event of cancellation of such insurance, the Special Exception shall terminate.

64.14 Posting of Bond:

Before a Certificate of Zoning Compliance or Special Exception is granted under this section, the applicant shall file with the Commission a cash or surety bond, or savings account, in form acceptable to the Board of Selectmen and in such amount to ensure the faithful performance and completion of the work in accordance with the provisions of this section.

64.15 Release of Bond:

Upon completion of the work authorized by a Certificate of Zoning Compliance or Special Exception and the restoration of the premises pursuant to subsection 64.7 “Restoration” above, the applicant may apply to the Commission for release of the cash or surety bond, or savings account filed, and if the Commission is satisfied that the work and restoration has been completed as required by the Certificate of Zoning Compliance or Special Exception and these Regulations, the cash or surety bond, or savings account shall be released to the permit holder, but otherwise the cash or surety bond, or savings account shall remain in full force and effect. No bond shall be released without a letter of approval from the First Selectman or his designee.

64.16 Existing Operations:

Any operation involving the filling, excavation, grading or removal of earthen material which is in existence on the effective date of these regulations. Or any amendment or amendments thereof shall be in compliance therewith within one hundred and twenty (120) days of said date.

64.17 Town Operations:

The Town of Middlebury, in the filling, excavation, grading or removal of any lot or road of any earthen material when the work is conducted solely by or on behalf of the Town of Middlebury for the municipal purposes of the Town, shall not be required to make application for a Certificate of Zoning Compliance or Special Exception nor pay any inspection fee or post a bond, provided the work, however, shall meet all the standards and conditions of these Regulations. The Board of Selectmen shall require that the specifications for Town operations or other projects under contract with the Town include provisions for the proper disposal of any earthen material displaced due to these activities.