

REGULATIONS GOVERNING  
THE EXCAVATION, REMOVAL OR MOVEMENT OF EARTH  
IN THE TOWN OF FITZWILLIAM, NEW HAMPSHIRE

Adopted: December 19, 1989  
CHAPTER 209

**§ 209-1. Statutory authority.**

Pursuant to the authority vested in the Fitzwilliam Planning Board by the voters of the Town of Fitzwilliam and in accordance with § 127-8C of Chapter 127, Land Usage, as amended, and Chapter 155-E of the New Hampshire Revised Statutes Annotated, the Fitzwilliam Planning Board adopts the following regulations which shall govern the excavation of earth materials from land situated within the Town of Fitzwilliam.

**§ 209-2. Purpose and scope.**

- A. For the purpose of minimizing the recognized safety hazards which open excavations create; to safeguard the public health and welfare; to preserve our natural assets of soil, water, forests and wildlife; to maintain aesthetic features of our environment; to prevent land and water pollution and to promote soil stabilization, no earth materials shall be removed and no excavations shall be made except in conformance with these regulations.
- B. No owner of land shall, within the Town of Fitzwilliam, excavate earth materials or allow the excavation of earth materials unless exempt from the scope of these regulations, according to § 209-4, without first obtaining a permit from the Fitzwilliam Planning Board pursuant to these regulations.

**§ 209-3. Definitions.**

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

**ABUTTER** – Any person whose property adjoins or is directly across the street or waterway from the land under consideration by the Planning Board. For the purposes of receiving testimony only and not for purposes of notification, the term “abutter” shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

**APPLICANT** – The owner of the property to be excavated or the owner’s agent, so designated, in writing, as part of the excavation permit application.

**COMMERCIAL** – Any use of any earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land. Excavations which use earth

materials in the processing of other material, such as but not limited to concrete, asphalt and other building materials, shall be considered “commercial”.

**EARTH MATERIALS** – Sand, gravel, rock, soil, or construction aggregate or dimension stone.

**EXCAVATION** – The excavation of earth on a lot, including but not limited to sand, gravel, rock, soil or construction aggregate produced by quarrying or any other mining activity or such other naturally occurring unconsolidated materials that normally mask the bedrock, the excavation of which is not exclusively regulated by the State of New Hampshire.

**EXCAVATION PERMIT** – The permit issued by the Fitzwilliam Planning Board pursuant to and in conformance with RSA 155-E, and Chapter 127, Land Usage of the Code of the Town of Fitzwilliam and these regulations to conduct excavation activities. Such “permits” shall expire two (2) years from the date of issuance unless otherwise specified and are subject to renewal as prescribed herein. The “permit” shall be conspicuously displayed at the excavation site from the date of issuance until expiration.

**EXCAVATION PERMIT APPLICATION** – A completed application for an excavation permit. An “application” shall not be considered complete until all of the application checklist items have been completed and accepted to the satisfaction of the regulator, in addition to any other requirements of these regulations. In addition, an “application” shall not be considered complete a receipt of completed application has been issued by the regulator.

**EXCAVATION SITE** – Any area of contiguous land in common ownership upon which excavation takes place.

**EXPANSION** – Shall mean either: the removal of topsoil from a new area; or excavation beyond the limits of the town and/or the area which in 1979 had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for tax purposes as part of the same tract.

**FEES** – Shall include both types defined below:

- A. **APPLICATION FEE** - The required fee, (see separate fee schedule) to be paid upon submission of an excavation permit application to the Fitzwilliam Planning Board, to defray the cost to the town of processing and reviewing the application, plus five dollars (\$5.) per notification of each legal abutter.
- B. **EXCAVATION PERMIT FEE** – Fee paid by the applicant upon the issuance of a permit, to defray the costs of permit compliance. (see separate fee schedule)

MANUFACTURING AND/OR PROCESSING PLANTS – Equipment or structures placed upon the site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

NOTICE OF INTENT – A written notice to the regulator and the Conservation Commission to inform them of the intent to apply for a permit for a new excavation or for expansion of or continuation of an excavation in operation at the time of adoption of these regulations.

REGULATOR – The Planning Board of the Town of Fitzwilliam, New Hampshire.

**§ 209-4. Permit requirements; exemptions.**

The following projects do not require a permit, but are nevertheless subject to Section § 209-7 and § 209-8 of these regulations. The Planning Board may require the owner/operator to come before the Board at a fully noticed public hearing to demonstrate compliance with these standards.

- A. Excavations that are incidental to and in connection with the necessary excavation and grading of a site for a building or structure and its appurtenant driveway or parking facilities for which a permit has been granted by the Board of Selectmen; or the construction of a street approved under Chapter 221, Subdivision of Land.
- B. Excavations that are incidental to agricultural or silvacultural activities, normal landscaping or minor topographical adjustments, provided that ownership of the earth material does not change as a result of the excavation.
- C. Excavations performed exclusively for the lawful construction, reconstruction or maintenance of a Class I, II, III, IV or V highway by a unit of government which has a contract for the construction, reconstruction or maintenance of the highway, provided that a copy of the pit agreement executed by the owner, the agent and the governmental unit shall be filed with and accepted by the regulator prior to the start of excavation, but such excavations shall not be exempt from the provisions of § 209-5 and § 209-9 of these regulations.
- D. Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).

**§ 209-5. Prohibited projects.**

The regulator shall not grant an excavation permit:

- A. Where an excavation is proposed within two hundred (200) feet of any highway right-of-way, unless such excavation is for the purpose of said highway.

- B. For excavations proposed to take place within seventy-five (75) feet of the boundary line of any abutting land owner's property.
- C. For excavations within five hundred (500) feet of an occupied dwelling.
- D. When the excavation is not permitted by zoning or other applicable ordinance.
- E. When the issuance of the permit would be unduly hazardous or injurious to the public welfare.
- F. Where existing visual barriers would be removed, except to provide access to the excavation.
- G. Where the excavation would substantially damage or pose a valid threat to a known aquifer or known major water supplies of the Town of Fitzwilliam, so designated by the United States Geological Survey.
- H. When excavation is planned beneath or adjacent to inland surface water and/or wetlands in such a manner that a permit is required from local, state and federal agencies with jurisdiction over the premises, until all such permits are obtained.
- I. When the project cannot comply with the restoration provisions of RSA 155-E and these regulations.
- J. Where an excavation is proposed within two hundred (200) feet of wetlands (poorly and very poorly drained soils), streams or open bodies of water. The natural vegetation shall be retained in this two-hundred-foot buffer. A high intensity soil survey may be required of the applicant if needed to accurately identify wetland areas.
- K. When the proposed excavation will adversely affect any business within one thousand (1,000) feet.
- L. When the proposed excavation will create traffic congestion or hazards or be offensive to surrounding property owners because of noise or dust or reduce the value of surrounding property.
- M. When the excavation will accelerate the deterioration of any highways or create any safety problems on the highways.
- N. When the excavation will create any unreasonable nuisance or create health or safety hazards.

**§ 209-6. Application; Application Procedures.**

The applicant for an excavation permit shall submit to the regulator a completed excavation permit application form, all required submission documents as enumerated and defined below and the required application fees. A copy of the completed application form and all submission documents shall also be submitted to the Fitzwilliam Planning Board for review by the Fitzwilliam Conservation Commission. Submission documents include the following:

- A. Application form, to be supplied by the regulator or its designated agent.
  - (1) Regulator action on application:
    - (a) Upon receipt of a completed application the Board will consider the application at the next regularly scheduled meeting.
    - (b) Providing that the application is complete, the Board shall vote to accept the application, after which time the Board has 30 days to hold a public hearing.
    - (c) Within 20 days of the close of the hearing on the application, or any continuation thereof, the Board shall make a decision. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town Offices within 144 hours.
    - (d) The applicant shall receive a copy of the minutes along with the decision. If the application was approved with special conditions, these conditions shall also be stated. In the event the application is disapproved, the reasons for disapproval shall be given.
  - (2) Notices required:
    - (a) The regulator will notify the applicant and abutters of the time and place of the hearing by certified mail, not less than 10 days prior to the hearing. Names and addresses of the abutters will be supplied by the applicant.
    - (b) Public notice of the hearing will appear in a local newspaper and in at least three (3) public places in Town not less than 10 days prior to the hearing.
    - (c) The notice must include the location and general description of the proposal, as well as the date, time and place of the hearing.
    - (d) All costs for notification shall be borne by the applicant. Failure to do this is a valid reason for the regulator to disapprove the application.
- B. Excavation plan, which contains the following information:
  - (1) A locus or perimeter map or plan of the entire parcel with the proposed excavation/removal areas delineated.
  - (2) The name and address of the owner of the land proposed for excavation, the person(s) who will actually perform the excavation work and the name and addresses of all abutters of the premises.

- (3) Lot lines, public streets and zoning district boundaries located within two hundred (200) feet of the proposed work area.
- (4) Lakes, ponds, rivers, streams, wetland areas and any other significant natural features, including the location of groundwater aquifers, as identified and delineated by the United States Geological Survey within two hundred (200) feet of the proposed work area.
- (5) The locations of man-made features such as buildings, structures, power lines and other utilities and private roads or drives within five hundred (500) feet of all boundaries.
- (6) The locations and nature of proposed visual barriers of the site.
- (7) The elevation of the highest annual average groundwater table within or next to the site and the location of test pit(s).
- (8) Existing topography of the site drawn on a map or maps, with a horizontal scale of no less than one (1) inch equals one hundred (100) feet, with contour intervals or a vertical scale of one (1) inch equals ten (10) feet [one (1) inch equals fifty (50) feet is the suggested horizontal scale].
- (9) The locations of proposed topsoil storage areas or sites during the excavation phase.
- (10) Estimates of the site acreage to be excavated and of the volume of earth material to be removed from the site.
- (11) The locations of proposed buildings, structures and operating machinery to be used on the site.
- (12) The proposed locations of and provisions for vehicular traffic, service roads, controls for entrance and exit, parking and fencing of work area.
- (13) A surface water runoff or drainage plan and the location(s) of any proposed water retention ponds necessary to minimize erosion and sedimentation.
- (14) A narrative description of:
  - (a) The project duration and phasing.
  - (b) The hours of operation.
  - (c) The proposed methods of disposal of boulders, stumps, vegetation and other debris.

- (d) The proposed use of explosives and their means of storage.
  - (e) Routing and means (including limits) for transportation of materials from the site, establishing load limits and vehicle trips per day.
- (15) The regulator shall require the preparer of a plan to be a New Hampshire licensed land surveyor or a licensed professional engineer, whose license is recognized by the State of New Hampshire. The regulator may additionally require the review of proposed excavations by a professional hydrologist or engineer to resolve questions regarding the excavation's impact upon groundwater aquifers and water supply.
- (16) Any other information deemed necessary by the regulator.
- C. Restoration plan. All applications for an excavation permit shall include a restoration plan for the site of excavation work which shall contain the information required below. Additionally, pursuant to RSA 155-E, as amended, existing operations in use as of the effective date, August 24, 1979, may continue operation without a permit, but shall perform restoration in compliance with RSA 155-E:5 within a twelve-month period following the intended cessation of the excavation or any completed section thereof. The regulator shall notify the owner(s) of all existing excavation operations of their restoration responsibilities.
- (1) Restoration plans shall contain the following information:
- (a) A map or maps showing, at a horizontal scale not exceeding one (1) inch equals one hundred (100) feet and a vertical scale not exceeding one (1) inch equals ten (10) feet, proposed topography after restoration of the site. [one (1) inch equals fifty (50) feet is the suggested horizontal scale; two-inch contour intervals suggested].
  - (b) A map or maps at a horizontal scale not exceeding one (1) inch equals one hundred (100) feet which indicates the location(s) of all excavated areas where the seasonal high water table is less than twelve (12) inches from the new, restored surface, which shall then be designated as "wetland" and subject to the restrictions imposed upon wetland use by Chapter 127, Land Usage.
  - (c) A narrative description of the restoration process, including specifications of proposed soil conditioning methods, seeding and mulching methods and the quantities, types and sizes of plant materials to be used in restoring the site.
  - (d) A written estimate detailing the total costs of restoration, prepared by a professional landscaping firm.

- (2) Restoration plans must, at a minimum, meet the requirements set forth in RSA 155-E:5.
- D. Required state and/or federal permits. Any excavation which requires permits from any state or federal agency with regulatory jurisdiction over an area proposed for excavation shall submit, as part of the application for excavation permit, the necessary state or federal permits.
- E. Authority to waive certain submission documents. Due to the diverse nature of excavation operations in the Town of Fitzwilliam, which vary in scale and scope, and due to the varying conditions of the land to be excavated, the regulator may, in its sole discretion, waive certain requirements of applications for proposed excavations where, in the opinion of the regulator, strict application of these requirements would create an undue and excessive hardship for the applicant and the proposed excavation will be of small scale and have very limited impact on the site, its abutters and the Town of Fitzwilliam. In no case may the minimum requirements of RSA 155-E:4, RSA 155-E:4-a, RSA 155-E:5, and Section 209-5 of these regulations be waived by the regulator. Applicants must request, in writing, the waiver of specific requirements as part of their application.

**§ 209-7. Minimum and Express Operational Standards.**

- A. Size and restoration time limit on new excavations.
  - (1) No permit application for excavation and reclamation of a new area will exceed five (5) acres in size. In addition, the size of the area for any permitted excavation shall not exceed that area which can be excavated and restored according to the approved application.
  - (2) If restoration of the site is not completed within the time period required in § 209-8R, the town may declare part or all of the bond forfeit and use these moneys to restore the site, in addition to the requirements of § 209-9F (issuance of permit). At no time shall more than one (1) permit be allowed on a lot of record.
- B. Size and restoration time limit on expansions of existing excavations.
  - (1) No permit application for continuance or expansion and restoration of an existing excavation shall exceed the area of the existing excavation, plus five (5) acres. However, the entire excavation area shall not exceed that area which can be excavated and restored according to the approved application within a two-year period. If an existing operating excavation at the time of adoption of this regulation cannot be restored within two (2) years, no additional new excavation into an undisturbed area shall be permitted until the existing excavated area is restored, based on an approved permit as

required by this regulation. In the case of an excavation in operation at the time of adoption of this regulation that is not being expanded, the permit period that is allowed for restoration shall be five (5) years. (This is the only exception to the two-year restoration requirement.)

- (2) If restoration of the site is not completed within the five (5) year permit period, the town may declare part or all of the bond forfeit and use these moneys to restore the site, in addition to the requirements of § 209-F (issuance of permit). At no time shall more than one (1) permit be allowed on a lot of record.
- C. Excavation sites considered nonconforming. Expansion of any site used for sand and gravel excavation is limited to such activities which are considered a permitted or allowed use in the corresponding zoning district. For those excavation sites determined to be nonconforming uses or activities, no further expansion of the site will be permitted to occur.
- D. Hours of operation. No excavation or related activities shall occur outside of the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday. In addition, no excavation operation shall be allowed on a legal holiday. The regulator may adjust those hours in accordance with neighborhood conditions, following the issuance of a permit.
- E. Hauling information. Hauling information, including routes to be utilized, the type and weight of motor vehicles involved and the frequency and schedule of operations of such vehicles shall be provided to the Planning Board prior to the issuance of an excavation permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The regulator reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and conditions have been optimized in the hauling plan. The operator will be required to maintain a daily log of excavation activity, including but not limited to the number of cubic yards removed and the number of truck trips. The log shall be available for inspection by the regulator during regular business hours. Failure to comply may result in a rescinding of the permit and/or fines.

**§ 209-8. Conditions of approval.**

For any permit issued pursuant to the provisions of this regulation, the following conditions shall be presumed to apply unless, upon written request of the applicant and agreement by the regulator, specific conditions of approval are waived due to special site conditions, the unnecessary hardship they would impose or because of the nature of the proposed excavation.

- A. Removal and processing operations shall not be conducted closer than two hundred (200) feet to a public street.
- B. All equipment for sorting, washing, crushing, classifying, drying, processing and treating, if approved by the Board, shall not be used closer than two hundred (200) feet to any public street or from any adjoining lot line.
- C. Suitable off-street parking shall be provided. In addition, queuing lanes may be required by the regulator.
- D. Any access to excavated areas or areas in the process of excavation will be adequately gated and posted with KEEP OUT – DANGER signs.
- E. Any workface or bank which slopes more than thirty degrees (30°) downward will be adequately fenced at the top with a substantial fence at least four (4) feet in height. A waiver may be granted upon written request if the banking will be broken down at the end of each workday.
- F. Adequate provision is made for drainage during and after completion of the operations. However, the excavation shall proceed in a manner which will not allow it to hold standing surface water in excess of two (2) inches except as approved as part of a surface water absorption system designed to minimize surface water runoff.
- G. The use of explosives shall require a blasting plan to be submitted as part of the application for an excavation permit. Explosives shall be used in accordance with the regulations for storage and handling of explosives as published by the State of New Hampshire and then used only following the granting of a permit by the Fire Chief of the Town of Fitzwilliam.
- H. Night operations are not permitted.
- I. No land shall be excavated below eight (8) feet above the seasonal high water table in aquifers and recharge areas, except as part of an approved plan to develop water conservation or recreational uses in accordance with the reclamation plan approved by the regulator.
- J. If removal/excavation operations cease for more than one (1) year and said stoppage is not in accordance with the approved excavation plan or due to bad weather, the excavation permit may be revoked and the performance bond forfeited, with its proceeds used for reclamation of the land in accordance with the approved restoration plan.
- K. Prior to excavation, top soil shall be stripped and stockpiled on site for reclamation purposes. No topsoil in excess of fifty (50) cubic yards shall be

removed from any site within one (1) year without additional permit approval from the regulator.

- L. All finished grades will in no case be greater than a slope of two to one (2:1) (horizontal distance to vertical height).
- M. Upon completion of the permitted activities, the entire site shall be respread with loam to a depth of four (4) inches unless otherwise specified in the approved plan.
- N. All finished grades as specified in the approved plan shall have a permanent cover crop established, except when ledge rock is exposed.
- O. Petroleum products cannot be stored on the premises in excess of one hundred (100) gallons.
- P. Prior to the issuance of any permit, the applicant shall post a bond or letter of credit with sufficient surety to the town in an amount determined by the regulator. Said bond or letter of credit shall be sufficient to cover all costs required for the restoration of the site to the specifications of the approved plan, and also include fair wear and tear of town roads, when appropriate, to any large commercial operation. Should the amount of the bond or letter of credit be insufficient to cover the cost of restoration, the applicant shall be responsible for any additional costs not covered by the bond or letter of credit.
- Q. When the scope of an approved project is to be altered so as to affect size or location, the owner shall submit an application for amendment. Said application shall be subject to approval in the same manner as provided in § 209-6 and § 209-7 of these regulations.
- R. The permit holder shall, within twelve (12) months after the expiration date of the permit or upon completion of the excavation, whichever occurs first, restore or cause to be restored the area affected by the excavation to meet the standards set forth in this chapter.
- S. The regulator will determine and include, as a condition of permit approval, the amounts of land area which may at any one (1) time be unrestored or under active excavation. Excavation operations are hereby encouraged to restore excavated areas of the site as they are completed.

#### **§ 209-9. Administration.**

- A. Permits. The issuance of a permit pursuant to this regulation shall be only to the owner of record or his agent and shall not be transferable without the prior written consent of the regulator. A permit shall specify the date upon which it expires and renewal of the permit shall be contingent upon satisfactory

compliance with the conditions of approval and adherence to the specifications of the approved plan.

- B. Inspections. The Board of Selectmen or its authorized agent is hereby designated as the enforcement agent of the regulator. The Board of Selectmen or its authorized agent may make periodic inspections of all permitted operation sites to determine if said operations are in conformance with these regulations and the approved plan. If nonconformance is certified by the Board of Selectmen or its authorized agent, written notice shall be forwarded to the owner/agent/operator, return receipt requested, which shall identify all violations and nonconformance with the approved plan. Five (5) business days after notification of nonconformance has been received by the owner/agent/operator, the Board of Selectmen or its authorized agent shall reinspect the excavation site. If the violations and nonconformances identified in the notice have not been corrected, the Board of Selectmen or its authorized agent shall notify the regulator. The regulator shall suspend the excavation permit until the conclusion of a hearing called to consider revocation of the excavation permit. If an unsafe or hazardous condition is determined to exist by the Board of Selectmen or its authorized agent, then an immediate suspension of excavation activities shall be ordered and a reasonable time by which the unsafe or hazardous conditions must be corrected may be established. If the time set by the Board of Selectmen or its authorized agent for correction of unsafe or hazardous conditions expires without said conditions being corrected, the regulator shall call a hearing to consider revocation of the permit and forfeiture of the bond. Its proceeds will be used to correct the unsafe or hazardous conditions and restore the site in accordance with the approved plan.
  
- C. Appeals. Any interested person affected by the regulator's decision to approve or disapprove an application for an excavation permit, or an amendment thereto, or any suspension or revocation of an excavation permit may appeal to the regulator for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The regulator shall, within ten (10) days of the receipt of a motion for rehearing, either grant or deny the request. If the request is granted, a rehearing shall be scheduled within 30 days. Any person affected by the Board's decision on a motion for rehearing may appeal such decision pursuant to the procedures in RSA 677:4-15.
  
- D. Fees.
  - (1) The excavation fee schedule shall be assessed against all applications for permit under these regulations so that the town may recover all reasonable costs of administration, as well as inspections, incidental thereto.

- (2) All excavation operations shall report, on an annual basis, to the Board of Selectmen or its authorized agent, the amount of gravel removed. The Board of Selectmen or its authorized agent shall determine if an on-site inspection is necessary.
    - (a) A fee may be charged per inspection.
    - (b) All excavation operations may be inspected periodically.
- E. Bonding. Prior to issuance of a permit by the regulator, the applicant shall submit to the Selectmen a bond or letter of credit with sufficient surety in an amount determined by the regulator to guarantee compliance with the permit. The regulator shall, in determining the amount of bond required, consider factors, including but not limited to:
- (1) The estimated cost of restoration in the approved restoration plan.
  - (2) The type(s) of soils and vegetation to be used in restoration.
  - (3) The nature of the excavation itself, proposed finished slopes and elevations.
  - (4) The estimated cost of repairing any potential damage to town roads or facilities caused by the transportation of earth materials outside of the methods and limits authorized by the permit.
- F. Excavation permit amendments and renewals.
- (1) Permit holders wishing to amend or renew existing, lawfully issued permits shall follow the procedures outlined in § 209-6 of these regulations. Applicants are urged to consult the regulator to determine the information requirements of the regulator in acting upon applications for renewal or amendment of excavation permits. It is incumbent upon applicants to submit required information in a timely manner.
  - (2) The regulator may, in its sole discretion, waive certain requirements of § 209-6 in acting upon requests for renewal or amendment of existing excavation permits. However, in no case may the minimum requirements of RSA 155-E:5 be waived by the regulator.
  - (3) Additional application fees, permit fees and bonding or other surety, sufficient to guarantee restoration, may be required by the regulator in acting upon applications for renewal or amendment.
- G. Enforcement. It shall be the duty of the Board of Selectmen, and the Board is hereby given power and authority to enforce the provisions of this chapter.

Upon well-founded information that this chapter is being violated, the Board of Selectmen shall take immediate steps to enforce this chapter by taking any legal action authorized by RSA 676:15-19, inclusive, as may be amended from time to time.

- H. Severability clause. The invalidity of any provision of this chapter shall not affect the validity of any other provision.
- I. These regulations shall take effect upon adoption by the regulator, and as amended.