

Topic:	Wetlands & Watercourse Protection; Drinking Water Protection & Conservation; Sewage Management; Nonconforming Uses Regulations
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of Greenburgh
Year (adopted, written, etc.):	2003
Community Type - applicable to:	Suburban; Rural
Title:	Town of Greenburgh Wetlands & Watercourses Ordinance
Document Last Updated in Database:	May 5, 2017

Abstract

Chapter 28 of the Town Code for the Town of Greenburgh addresses legislative findings that indicate the importance of protection, preservation, proper maintenance and proper use of the community's ponds, lakes, reservoirs, water bodies, rivers, streams, watercourses, wetlands, natural drainage systems and adjacent land areas from encroachment, spoiling, pollution or elimination. The law also states the town's policy of preventing the despoliation and destruction of wetlands and watercourse while taking into account varying ecological, water quality, economic, recreational and aesthetic values.

Resource

Town of Greenburgh NY Wetlands and Watercourses

Code of the Town of Greenburgh NY

Chapter 280: Wetlands and Watercourses

General Code

<http://www.e->

[codes.generalcode.com/codebook_frameset.asp?t=tc&p=0237%2D280%2Ehtm%23Section280%2D2%2E&cn=269&n=\[1\]\[101\]\[875\]\[876\]\[216\]\[224\]\[884\]\[262\]\[269\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0237%2D280%2Ehtm%23Section280%2D2%2E&cn=269&n=[1][101][875][876][216][224][884][262][269])

[HISTORY: Adopted by the Town Board of the Town of Greenburgh 6-25-2003 by L.L. No. 9-2003. Amendments noted where applicable.]

§ 280-1. Title.

This chapter is entitled the "Wetlands and Watercourses Law."

§ 280-2. Legislative findings.

- A. The Town Board of the Town of Greenburgh has determined that the public interest, health, safety and the economic and general welfare of the residents of the Town will be best served by providing for the protection, preservation, proper maintenance and use of its ponds, lakes, reservoirs, water bodies, rivers, streams, watercourses, wetlands, natural drainage systems and adjacent land areas from encroachment, spoiling, pollution or elimination.
- B. The Town Board finds that growth, the spread of development and increasing demands upon natural resources have the potential of encroaching upon, despoiling, polluting or eliminating many of the wetlands, ponds and streams, watercourses, rainfall-drainage systems and water-retention areas and other natural resources in the Town and associated processes which, if preserved, constitute important physical, economic, social, aesthetic, ecological and recreational assets to the Town and its present and future residents.
- C. In their natural condition and state, wetlands and watercourses are valuable natural resources and may serve multiple functions, including but not limited to:
- (1) Removing pollutants from surface waters by trapping sediment, removing nutrients and detoxifying chemicals;
 - (2) Recharging groundwater, including aquifers, and surface waters, thereby maintaining stream flows needed by plants and animals to survive;
 - (3) Controlling flooding by storing and then slowly releasing stormwater runoff;
 - (4) Stabilizing shorelines by protecting against erosion caused by stream currents and waves;
 - (5) Providing unique or essential habitat for diverse fish and wildlife species, including many of those on the New York State and federal lists of special concern, threatened, rare and endangered species;
 - (6) Supporting unique vegetative and biotic associations specifically adapted for survival in low-oxygen environments and/or brackish or salt water;
 - (7) Providing areas of comparatively high plant productivity which support wildlife diversity and abundance;
 - (8) Providing open space and visual relief from intense development in urbanized and growing areas;

- (9) Providing recreational opportunities, including fishing, nature study, hiking and wildlife watching;
 - (10) Serving as outdoor laboratories and living classrooms for the study and application of biological, natural and physical sciences.
 - (11) Protecting and maintaining the stability of stream and watercourse channels, shorelines and banks, thereby controlling and reducing erosion, flooding and related property damage, protecting reservoirs and watersheds vital to the community and to the water supply of the county and New York City.
- D. In addition, sufficiently wide naturally vegetated wetland buffers improve water quality by filtering out non-point source pollutants (polluted stormwater), lower stream temperatures, serve as visual and noise barriers for wildlife, control erosion, lessen impacts from flooding, provide transitional habitats and improve floral and faunal habitat diversity.
- E. Considerable acreage of these important natural resources has been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts inconsistent with the natural uses of such areas. Loss or impairment of wetlands and their ecosystems can cause or aggravate floodings, erosion, degradation and diminution of water supply for drinking and waste treatment. Remaining wetlands are in jeopardy of being lost, despoiled, or impaired by such acts, contrary to public safety and welfare.
- F. It is therefore the policy of the Town of Greenburgh to protect its citizens, including future generations, by preventing the despoliation and destruction of wetlands and watercourses while taking into account varying ecological, water quality, economic, recreational, and aesthetic values. Activities that may damage the functions or cause the loss of wetlands and watercourses should be avoided.

§ 280-3. Legislative intent.

It is the intent of the Town of Greenburgh to control, protect, preserve, conserve and regulate wetlands, watercourses and adjacent (buffer) areas within the Town so as to not hinder the benefits set forth in the legislative findings. Activities in and around wetlands, watercourses and their buffer areas must conform with all applicable building codes, sediment control regulations, and other regulations, so that such activities do not threaten public safety, the natural environment, or cause nuisances by:

- A. Impeding flood flows, reducing flood storage areas or destroying storm barriers, thereby resulting in increased flood heights, frequencies, or velocities on other lands;

- B. Increasing water pollution through location of domestic waste disposal systems in wet soils; inappropriate siting of stormwater control facilities; unauthorized application of fertilizers; pesticides; herbicides and algaecides; disposal of solid wastes at inappropriate sites; creation of unstabilized fills; or the destruction of wetland soils and vegetation serving pollution and sediment control functions;
- C. Increasing erosion;
- D. Decreasing breeding, nesting, and feeding areas for many species of waterfowl and shorebirds, including those rare and endangered;
- E. Interfering with the exchange of nutrients needed by fish and other forms of wildlife;
- F. Decreasing habitat for fish and other forms of wildlife;
- G. Adversely altering the recharge or discharge functions of wetlands, thereby impacting ground water or surface water supplies;
- H. Significantly altering the wetland hydroperiod and thereby causing either short- or long-term changes in vegetational composition, soils characteristics, nutrient recycling, or water chemistry;
- I. Destroying sites needed for education and scientific research, such as outdoor biophysical laboratories, living classrooms, and training areas;
- J. Interfering with public rights in navigable waters and the recreation opportunities provided by wetlands for fishing, boating, hiking, bird watching, photography, camping, and other passive uses; or
- K. Destroying or damaging aesthetic and property values, including significant public vistas.

§ 280-4. Applicability; nonconforming activities.

- A. Applicability. This chapter shall apply to all land defined as "wetland," "watercourse" or "wetland/watercourse buffer" in § 280-5. This chapter establishes those activities which must be regulated due to the potential adverse effects of such activities.
- B. Rules for establishing and interpreting wetland boundaries. The boundaries of a wetland or watercourse ordinarily shall be determined by field investigation, and delineation by a qualified environmental professional and subsequent survey by a

licensed land surveyor unless the last is waived by the approval authority. The approval authority may consult, and/or may require the applicant to consult, with the Town's wetland scientist, and/or additional biologists, hydrologists, soil scientists, ecologists/botanists, or other experts as necessary to make this determination of wetland boundaries. The Planning Board is the ultimate authority for determination of wetland or watercourse boundaries.

- C. Grandfathered projects. The provisions of this chapter shall not apply to any land use, improvement or development which has received final approval and has been physically completed, i.e., actually completed, including, but not limited to, filling, erecting structures or other improvement activities, as defined in this chapter prior to the effective date of this chapter.

- D. Current projects. A regulated activity that was approved prior to the effective date of this chapter and to which significant economic resources have been committed but which is not in conformity with the provisions of this chapter may be continued, subject to the following:
 - (1) All such activities shall continue to be governed by the laws of the Town in effect at the time of approval.

 - (2) No such activity shall be expanded, changed, enlarged, or altered in such a way that increases its nonconformity without a permit.

 - (3) If a nonconforming activity is discontinued for six consecutive months, any resumption of the activity shall conform to this chapter.

 - (4) If any nonconforming use or activity is destroyed by human activities or a natural catastrophe, it shall not be resumed except in conformity with the provisions of this chapter.

 - (5) Activities or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming activities.

§ 280-5. Definitions.

Words or phrases used in this chapter shall be interpreted as defined below, and as defined in § 285-5 and § 250-3 and, where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out the regulatory goals as set forth in the legislative findings:

ADJACENT AREA — See "wetland/watercourse buffer."

APPLICANT — A person who files an application for a permit under this chapter and who is either the owner of the land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such person.

APPROVAL AUTHORITY — The municipal or administrative board, public official or public employee empowered to grant or deny permits under this chapter, to require the posting of bonds as necessary, and to revoke or suspend a permit where lack of compliance to the permit is established. The approval authority for the Town of Greenburgh shall be the Planning Board or the Wetland Inspector.

AQUICULTURE — The cultivating and harvesting of products, including fish and vegetation, that are produced naturally in freshwater wetlands, and including the installation of cribs, racks, and other in-water structures for cultivating these products; but does not include filling, dredging, peat mining, clear cutting, or the construction of any buildings or any water-regulating structures such as dams.

BOUNDARY OF A WETLAND — The outer limit of the soils and/or vegetation as defined under "wetland."

CLEARANCE FORM — Written form issued by the Wetlands Inspector indicating whether or not a permit is required.

CLEAR CUTTING — The removal of 20% or more of live woody vegetation during any consecutive ten-year period within any wetland/watercourse and/or regulated adjacent area (the regulated one-hundred-foot upland perimeter of a wetland boundary) located on the subject property.

CREATION — To construct a new wetland, often by excavating and/or flooding land not previously occupied by a wetland.

DAMS AND WATER CONTROL MEASURES — Barriers used, or intended to, or which, even though not intended in fact do, obstruct the flow of water or raise, lower, or maintain the level of water.

DEPOSIT — To fill, grade, discharge, emit, dump, or place any material or the act thereof.

DEVELOPMENT ACTIVITIES — Any building activity or mining operation, the making of any material change in the use or intensity of use of any structure or land and the creation or termination of rights of access or riparian rights, including, without limitation, the following activities or uses:

- A. A change in type of use of structure or land or, if the ordinance or rule divides uses into classes, a change from one class of use designated in an ordinance or rule to a use in another class so designated;

- B. A material increase in the intensity of use of land or environment impacts as a result thereof;
- C. Commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land, excluding environmental restoration activities;
- D. Material alteration of a shore, bank or floodplain of a river, stream, lake, pond, or artificial body of water;
- E. Reestablishment of a use which has been abandoned for one year;
- F. Departure from the normal use for which development permission has been granted, or material failure to comply with the conditions of an ordinance, rule or order granting the development permission under which the development was commenced or is continued.

DISCHARGE — The emission of any water, substance, or material into a wetland or wetland buffer, whether or not such substance causes pollution.

DOMINANT(S) or DOMINANCE — A dominant species is either the predominant plant species (i.e., the most conspicuous species occupying a vegetative unit) or a co-dominant species (i.e., a species which is as prevalent as one or more other species, considered collectively, that occupy most of the area within when two or more species dominate a vegetative unit). Dominant species are considered to be those with 20% or more areal coverage or spatial extent within the vegetative unit or plant community.

DRAIN — To deplete or empty water by drawing off by degrees or in increments.

DREDGE — To excavate or remove sediment, soil, mud, sand, shells, gravel, or other aggregate.

EXCAVATE — To dig out and remove any material from a wetland, watercourse or wetland/watercourse buffer.

FACULTATIVE SPECIES — Plant species that can occur with equal frequency in uplands and wetlands.

FACULTATIVE UPLAND SPECIES (FACU) — Plant species that usually occur in uplands at an estimated probability of 67% to 99%, but may occasionally occur in wetlands at an estimated probability of 1% to 3%.

FACULTATIVE WETLAND (FACW) — Plant species that usually occur in wetlands at an estimated probability of 67% to 99%, but occasionally are found in uplands.

FILL — See "deposit."

FRESHWATER WETLANDS MAP — The final freshwater wetlands maps for Westchester County promulgated by the Commissioner of the New York State Department of Environmental Conservation pursuant to Subdivision 24-0301.5 of the New York State Freshwater Wetland Act, **Editor's Note: See Environmental Conservation Law § 24-0301, Subdivision 5.** or such map as has been amended or adjusted, and on which are indicated the approximate locations of the actual boundaries of wetlands regulated pursuant to Article 24 of the Environmental Conservation Law.

GRADING — To adjust the degree of inclination of the natural contours of the land, including leveling, smoothing, and other modification of the natural land surface.

GROWING SEASON — The portion of the year when soil temperatures are above biologic zero (5° C.); the growing season for Westchester County is March through October.

HYDRIC SOIL — A soil that is described in the Soil Survey of Putnam and Westchester Counties, New York (1994) as "somewhat poorly drained," "poorly drained" or "very poorly drained." Under normal circumstances hydric soils are inundated or saturated to within 16 inches of the surface during the growing season. Hydric soils exhibit diagnostic colors or mottled features as described in the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory Technical Report Y-87-1).

HYDROPHYTIC VEGETATION — Vascular plant species that are adapted to growing in inundated soils or soils saturated within 18 inches of the surface for extended periods of time during the growing season. Hydrophytic vegetation includes obligate wetland, facultative wetland and in some cases facultative species as defined in this section.

MAJOR PROJECT (OR PROJECTS) — Any activity or activities which require a permit under this chapter, where the approval authority is the Planning Board. In situations where multiple applications are involved for a specific project, if at least one activity constitutes a "major project," as defined herein, then each proposed activity for each multiple application concerning such specific project shall be treated as a major project, notwithstanding anything contained herein to the contrary.

MATERIAL — Liquid, solid, or gaseous substances, including but not limited to soil, silt, gravel, rock, clay, peat, mud, debris, and refuse; any organic or inorganic compound, chemical agent or matter; sewage sludge or effluent; or industrial or municipal solid waste.

MINOR PROJECT (OR PROJECTS) — An activity or activities requiring a wetlands permit where the approval authority is the Town Wetlands Inspector and where said activity is to be performed without the use of mechanical earthmoving equipment and will not disturb wetlands, water bodies, adjacent areas or natural drainage systems. A minor project includes any activity which is to be performed on an individual residential single-family building lot containing an existing residence (for which, in this instance, the use of mechanical earthmoving equipment shall be permitted); provided, however, that such activities shall not take place within any portion of any wetlands, water bodies or natural drainage systems and provided also that such activities do not require the excavation of more than 100 cubic yards or disturb more than 5,000 square feet of any adjacent areas.

MITIGATION PLAN — The plan prepared by the applicant in accordance with § 280-10 when the applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable and have been minimized to the maximum extent practicable.

PERMIT — That form of written Town approval required by this chapter for the conduct of a regulated activity within a wetland, watercourse or wetland/watercourse buffer.

PERSON — See "applicant."

POLLUTION — Any harmful thermal effect or the contamination or rendering unclean or impure of any wetland or waters by reason of erosion, or by any waste or other materials discharged or deposited therein.

PROJECT — Any proposed or ongoing action which may result in direct or indirect physical or chemical impact on a wetland or watercourse, including but not limited to any regulated activity.

REMOVE — To dig, dredge, suck, bulldoze, dragline, blast, or otherwise excavate or grade, or the act thereof.

RENDERING UNCLEAN OR IMPURE — Any alteration of the physical, chemical, or biological properties of any wetland or waters, including but not limited to change in odor, color, turbidity, or taste.

RESTORATION — To reclaim a disturbed or degraded wetland to bring back one or more functions that have been partially or completely lost by such actions as draining or filling.

SELECTIVE CUTTING — Any cutting of trees within the boundaries of a wetland or wetland/watercourse buffer that is not clear cutting as defined in this section.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA) — Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.

STRUCTURE — Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground, including but not limited to buildings, tennis courts, and swimming pools.

UPLAND SPECIES — Plant species that, under natural conditions, almost always occur in uplands at an estimated probability of 99% or greater. The less-than-one-percent probability of upland species occurring in wetlands is attributed to unnatural circumstances (i.e., occurrences that are the result of human-induced disturbances and transplants). Upland species UPL for New York State are listed in "Wetland Plants of the State of New York 1986," published by the U.S. Fish and Wildlife Service in cooperation with the National and Regional Wetland Plant List Review Panels and as updated from time to time.

VERNAL POOL — An open area of surface water formed in a shallow basin within an upland that retains a minimum depth of six inches for three to four months during the growing season (usually March through June) and contains amphibians (adults, egg masses, or larval stages) during the growing season. Vernal pools are devoid of fish and

are the exclusive breeding habitats of several amphibians that are becoming increasingly rare throughout the northeast.

WATERCOURSE — Any natural or artificial, intermittent, seasonal or permanent, and public or private water body or water segment. A water body is intermittently, seasonally or permanently inundated with water and contains a discernible shoreline and includes ponds, lakes and reservoirs. A watercourse includes rivulets, brooks, creeks, streams, rivers and other waterways flowing in a definite channel with bed and banks and usually in a particular direction.

WATER TABLE — The zone of saturation at the highest average depth during the wettest season.

WETLAND — All areas that comprise hydric soils and/or are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of hydrophytic vegetation as defined by the Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory Technical Report Y-87-1). Wetland areas include vernal pools, wet meadows, marshes, swamps, bogs and similar wet areas.

WETLAND INSPECTOR — The administrative official appointed by the Town Board to fulfill the responsibilities set forth in this chapter and having special knowledge by reason of education and work related to the identification, delineation, functional assessment and management of wetlands, including a detailed knowledge of wetland flora and fauna and wetland hydrology to a degree acceptable to the approval authority.

WETLAND PLANTS OF THE STATE OF NEW YORK — Those plant species listed in the National List of Plant Species That Occur In Wetlands: Northeast (1988), that are classified as facultative, or facultative wetland, obligate wetland species developed by the U.S. Department of the Interior, Fish and Wildlife Service, for the National Wetland Inventory, as amended and updated from time to time.

WETLAND SCIENTIST — A person having specialized or expert knowledge of the physical, chemical and biological sciences related to the identification, delineation and structural and functional ecology of wetlands and associated upland communities, including flora and fauna; and of methods to delineate and describe wetland and watercourse resources, communities and habitats. This person must possess a minimum of two years' field experience in wetland/watercourse delineation and wetland/watercourse report preparation and must hold at least a bachelors degree, with a minimum of 30 semester hours (credits), or equivalent, in biology, physical science and chemistry, with a minimum of eight semester hours (credits), or equivalent, in botany, including field identification of animal and plant species. Individuals who do not meet the above minimum qualifications but who possess at least 10 years' experience identifying and mapping native vegetation are qualified if they have completed at least 12 semester hours (credits), or equivalent, in botany, including field identification of animal and plant species.

WETLAND/WATERCOURSE BUFFER — The area of land extending 100 feet horizontally away from and parallel to the outermost boundary of a wetland and/or point of mean

high water of a watercourse. The wetland/watercourse buffer may be greater than 100 feet where designated by either the Commissioner of the New York State Department of Environmental Conservation or the local approval authority. The wetland/watercourse buffer provides several ecological benefits to the wetlands/watercourse and some degree of protection from human encroachment associated with development. The wetland/watercourse buffer shall be subject to the regulations for wetlands as defined in this chapter.

§ 280-6. Authorized clearance form required.

- A. All applications for any permit issued by the Building Department, Department of Public Works, Antenna Review Board, Town Board, Planning Board, or Zoning Board of Appeals of the Town of Greenburgh must be accompanied by an authorized wetland/watercourse clearance form. An applicant must provide sufficient information to enable the Wetland Inspector or other authorized representative to properly determine if the proposed activity is an allowable activity, as defined herein, or use that does not also require an activity permit; is a prohibited activity; or is a regulated activity or use which requires an activity permit as issued by the Planning Board in accordance with the standards and procedures set forth herewith. No permits, certificates of occupancy, or temporary certificates of occupancy may be issued without prior approval of the Planning Board for any project involving a wetland/watercourse permit.
- B. False or misleading statements or information provided in a clearance form or to the approval authority shall result in the invalidation of any authorization. The applicant shall be subject to the penalties and sanctions set forth in this chapter for any activities conducted which would have otherwise required a wetland/watercourse activity permit.
- C. The Wetland Inspector or other authorized representative may require an applicant to provide additional information, including but not limited to a qualified wetland delineation, report and survey, to assist in making such a determination; and may further defer the making of said determination to the Planning Board.
- D. Upon submission of a completed clearance form by an applicant, the Wetland Inspector or other authorized representative must determine one of the following, provided the proposed activity is not prohibited pursuant to this chapter:
 - (1) That the proposed activity or use is an allowable activity or use pursuant to this chapter, and no wetland/watercourse permit is required. The Wetland Inspector shall sign and issue a wetlands/watercourse clearance form indicating same.
 - (2) That the proposed activity or use does not impact or occur within a wetland/watercourse or adjacent (buffer) area, and no wetland/watercourse

permit is required. The Wetland Inspector shall sign and issue a wetlands/watercourse clearance form indicating same.

- (3) That a wetland/watercourse permit is required in accordance with the standards and procedures set forth in this chapter.

§ 280-7. Prohibited, allowable and regulated activities.

A. Allowable activities not requiring permit. The following activities shall be permitted as-of-right within a wetland, watercourse, or wetland buffer, and do not require a wetland/watercourse permit to the extent that they are not prohibited by this or any other ordinance, law, local law, rule or regulation; and to the extent that they do not constitute a pollution or erosion hazard or interfere with proper drainage; and provided they do not require structures, grading, fill, draining, or dredging. A clearance form must be obtained before any activity is commenced.

- (1) Normal ground maintenance of existing landscaped areas, including mowing, trimming of existing vegetation and removal of dead or diseased vegetation around a residence, excluding the use of fertilizers, pesticides, and herbicides. Expansion or enlargement of said areas is a regulated activity.
- (2) Selective cutting as defined in § 280-5, provided stumps are left in place and work is accomplished without the assistance of any motorized vehicles.
- (3) Repair of "in kind" walkways, terraces, patios, fences, walls, driveways and roadways, in-ground pools and tennis courts, provided that the height, size and/or spatial extent (i.e., no increase in the area beyond the existing footprint) of the affected area does not change and appropriate erosion controls are maintained as may be required by the Wetlands Inspector.
- (4) Public health activities, orders, and regulations of the Westchester County Department of Health and/or the New York State Department of Health for emergencies; only with notification to the Planning Board.
- (5) Agricultural activities as set forth in ECL § 24-0701(4).
- (6) "In kind" restoration of preexisting structures partially or entirely destroyed by casualty loss after the effective date of this chapter, provided that such "in kind" restoration occurs within six months of the date of loss.

(7) Construction and repair of sluices and culverts by the Public Works Department in accordance with § 140 of the New York State Highway Law.

(8) Maintenance, repair, replacement or rehabilitation of existing public structures or facilities.

B. Prohibited activities. All activities that are not specifically permitted or regulated by permit shall be prohibited. Prohibited activities include but are not limited to the following:

(1) Placement of a sewage disposal tank or plant or septic field within a wetland or watercourse;

(2) Direct discharge of untreated stormwater into a wetland or watercourse;

(3) The placement of aboveground or underground chemical storage facilities or bulk petroleum storage tanks within a wetland, watercourse or adjacent buffer area; and/or

(4) Deposit or fill consisting of construction and demolition materials, asphalt or other materials within a wetland, watercourse or adjacent buffer area.

C. Regulated activities: any activity or use within a wetland, watercourse or wetland/watercourse buffer, other than those specified herein, and may be permitted only upon issuance of a permit from the approval authority.

§ 280-8. Procedures for permits.

A. Permit procedures. Where any alteration or activity is proposed on any lot which is within or contains within it a wetland, watercourse or wetland/watercourse buffer, the Town's Wetland Inspector must determine whether such an area is subject to the regulations set forth herein and a clearance form and/or permit obtained. The initial burden of proof and expense shall be upon the applicant to verify the presence and/or extent of a wetland, watercourse or buffer on the subject property. The finite areas of wetlands, watercourses and/or wetland/watercourse buffers shall ultimately be determined by the Planning Board pursuant to the criteria set forth herein after consultation with the Town's Wetland Inspector. All costs incurred by the Town for purposes of review and verification in accordance with this chapter are to be borne by the applicant in accordance with this chapter, SEQRA and/or Chapter 230.

B. Permit application contents for minor projects.

(1) Where an applicant proposes a minor project that is not referred to the Planning Board by the Town's Wetland Inspector, application submission requirements as set forth in Subsection C may be waived in part, at the discretion of the Town Wetlands Inspector and with the approval of the Planning Board, if all of the following conditions are met:

(a) Request for utilization of this process shall be in writing and clearly state the reasons in support of such request, in order to allow the Wetlands Inspector to determine that the granting of any such request is no less protective of wetlands, watercourses and adjacent (buffer) areas.

(b) The proposed activity, taken as a whole, must constitute a Type II action pursuant to SEQRA.

(c) The Town Wetlands Inspector must report to the Planning Board on each minor application received and the basis for the proposed determination.

(2) All required fees and escrow account procedures shall apply in accordance with this chapter and Chapter 230.

(3) The Planning Board may terminate this expedited permit process at any time and require the full processing of the application at its discretion.

C. Wetland/Watercourse permit application contents. No regulated activity shall be conducted without the issuance of a written permit from the approval authority. Sixteen copies of the application for a permit together with a filing fee and escrow deposit shall be made to the Secretary to the Planning Board on forms furnished by the Town before any activity is conducted and must include the following items:

(1) Name, address and telephone number of the applicant and/or owner. (If the applicant is not the owner, the affidavit of the owner must be attached.)

(2) Street address and tax map designation of the property, along with an accurate certified property and land survey.

(3) Statement of proposed work and purpose thereof, and an explanation why the proposed activity cannot be located at another site, including an explanation of how the proposed activity is dependent on wetlands, watercourses or other water resource(s).

(4) A list of the names and addresses of property owners, along with tax map identification addresses, of properties within 500 feet of the boundaries of the

property that is the subject of this application. The list must include the names and addresses of the owners of record of lands adjacent to the wetland or watercourse and wetland/watercourse buffer in which the project is to be undertaken which relate to any land within 500 feet of the boundary of the property on which the proposed regulated activity would be located.

- (5) Project location map, showing the subject property as a parcel centered within adjacent parcels within 500 feet, surrounding zoning, named streets and water-related resources; and having a scale of no less than one inch equals 400 feet.
- (6) Complete plans and estimates for the proposed site improvements, certified by an engineer, land surveyor, architect, or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 50 feet, and including:
 - (a) Existing conditions map, including identification of existing buildings, structures, walls, fences, areas of one-hundred-year floodplain, vegetative cover, including dominant species, and all trees with a dbh of four inches or greater;
 - (b) Delineation of the soil types on site;
 - (c) Location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, structures, walls, fences, areas within 100 yards of floodplain, and trees with a dbh of four inches or greater and watercourses within 250 feet of the proposed activity;
 - (d) The exact locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amount computed from cross-sections, estimated quantities and the nature of material to be deposited or removed, and the procedures to be used;
 - (e) Location of any septic systems or well(s), and depth(s) thereof, and any disposal system within 100 feet of area(s) to be disturbed;
 - (f) Existing and proposed contours at two-foot intervals in all proposed disturbed areas and to a distance of 100 feet beyond; at the discretion of the approval authority, the existing elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet;
 - (g) Details of any drainage, diversion, detention or retention system proposed both for the conduct of work, and after completion thereof, including

locations at any point discharges, artificial inlets, or other human-made conveyances which would discharge into the wetland or wetland buffer, and measures proposed to control erosion both during and after the work;

- (h) Groundwater table elevations, indicating depth to groundwater, direction of flow and hydrologic connections with surface water features, and analysis of the wetland/watercourse hydrologic system, including seasonal water fluctuation, inflow/outflow calculations and soil subsurface, geology and groundwater conditions;
 - (i) Erosion and sedimentation control plan, including installation details of proposed control measures, directive construction notations and a schedule for the installation and maintenance of proposed control measures;
 - (j) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices; and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions; and
 - (k) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets, or other bank or bottom stabilizing or water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface drainage, soil and bedrock geology, and groundwater conditions.
- (7) Proposed mitigation plans.
- (8) When the application affects the water-retention capacity, water flow or other drainage characteristics of any pond, lake, reservoir, natural drainage system or wetland, a statement of the impact of the project on upstream and downstream areas, giving appropriate consideration to other-than-normal levels of watercourses and amounts of rainfall.
- (9) Details of erosion and sediment control practices, including a diagram showing what and where erosion and sediment controls practices will be implemented and a schedule for their installation and maintenance.
- (10) Wetland/Watercourse delineation map showing the certified boundaries of all wetlands, watercourses and wetland and watercourse buffers as defined herein and as certified by a qualified wetland scientist within 12 months prior to the

date of filing the application. The delineation limits of all wetlands and watercourses shall be subject to field verification and acceptance by the Planning Board and its authorized agents.

- (11) Wetland/Watercourse delineation report and assessment prepared by a qualified wetland scientist as defined by this chapter, which shall include identification, description and assessment of the following:
 - (a) The vegetative cover of the regulated area, including dominant species, and hydrophytic vegetation;
 - (b) On-site soil types, including groundwater table elevations showing depth to water table and direction of flow and hydrologic connections with surface water features;
 - (c) Wetland/Watercourse hydrology;
 - (d) Wetland/Watercourse and adjacent (buffer) area functions and benefits; and
 - (e) Site flora and fauna, including upland and hydrophytic vegetation with their wetland classified status (FAC, FACW, FACU, UPL) and dominant woody and herbaceous species.
- (12) A narrative description of the proposed regulated activity or use, including location of subject property and area to be affected; environmental impact assessment and description of the wetland, watercourse and/or adjacent (buffer) area proposed to be disturbed or altered; intended purpose of the proposed activity or use and the applicant's interest in the subject property and area to be affected; intended purpose and extent of impact or alteration on the affected wetland, watercourse and/or adjacent (buffer) area; explanation of why the proposed regulated activity cannot be located at another site or location with no or less impact upon wetland, watercourse and/or adjacent (buffer) area; explanation as to whether or not the proposed activity is dependent on the affected wetland, watercourse and/or adjacent (buffer) area; the alternatives to the proposed activity considered, and why the proposal to disturb or alter the affected wetland, watercourse and/or adjacent (buffer) area was chosen instead; and the mitigation measures proposed to avoid or reduce impact on the affected wetland, watercourse and/or adjacent (buffer) area.
- (13) A complete and accurate long-form environmental assessment form (EAF) in accordance with the procedures of the State Environmental Quality Review Act.

Editor's Note: See Environmental Conservation Law Art. 8.

- (14) The approval authority may require additional information as needed such as the study of flood, erosion, or other hazards at the site and the effect of any protective measures that might be taken to reduce such hazards, and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this chapter.
 - (15) An application fee and engineering and inspection/monitoring fees shall be charged according to the schedule established by the Town of Greenburgh Town Board. Necessary escrow funds shall be deposited with the Town from time to time as necessary to cover costs for technical assistance and monitoring when the Planning Board deems necessary. The applicant shall be notified of the expenses and shall deposit said necessary funds prior to the cost being incurred.
 - (16) A statement that the property owner and applicant will indemnify and hold the Town or its representatives harmless against any damage or injury and that the owner and applicant consent to the approval authority's (including its agents or employees) entry upon lands or waters for the purpose of undertaking any investigations, inspections, examination, survey, or other activity for the purposes of this chapter.
- D. All applications for a wetland/watercourse permit shall be referred to the Town of Greenburgh Conservation Advisory Council (CAC) for review and recommendations, and the CAC shall have 60 days from the date of receipt to make its recommendation to the approval authority. Failure to render a recommendation within the specified time period will be interpreted as no objection to the application.
- E. The approval authority may establish a mailing list of all interested persons and agencies who wish to be routinely notified of such applications. Upon receipt of the completed application, the applicant shall notify the individuals and agencies, including federal, state, and local agencies having jurisdiction over or an interest in the subject matter, to provide such individuals and agencies with an opportunity to comment.
- F. Public hearings. The Planning Board shall hold a public hearing on the application at such time as it deems appropriate, in order to give the public at least 15 days' notice thereof. The applicant shall also give at least 15 days' notice by certified mail to each of the owners of property within a five-hundred-foot radius from the boundary of the property, and such notice shall include the notice required for any other required public hearing in connection with the application, if practicable. Insofar as practicable, any public hearing on the application may be integrated with any public hearing required or otherwise held pursuant to any other law, including the State Environmental Quality Review Act. Any hearing will be held by the Planning Board. At the hearing, the

applicant shall bear the burden of proof and have the burden of demonstrating that the proposed activity will be in accord with the goals and policies of this chapter and the standards set forth below.

- G. All information relating to a permit application, including but not limited to the application itself, additional required materials or information, notices, record of hearings, written comments, and findings, shall be maintained on file in the office of the Clerk of the Town of Greenburgh and available through the Town's Planning Department.

§ 280-9. Standards for permit decisions.

The Planning Board shall either grant, conditionally grant or deny a permit application within 60 days of the close of the public hearing; provided, however, that the Planning Board has whatever additional information or documentation it required, the Planning Board shall then render its decision within 60 days of its receipt of such matter.

- A. In granting, denying, or conditioning any permit, the Planning Board shall evaluate wetland and watercourse and adjacent (buffer) area functions and the role of each, as the case may be, in the hydrologic and ecological system in which it is part, and shall determine the impact of the proposed activity upon public health, safety and welfare, flora and fauna, water quality, and additional wetland and watercourse functions listed in § 280-2 of this chapter. Regardless of the level of the impact of the proposed activity, avoidance of any direct or indirect impacts shall be the primary criteria used to judge the appropriateness of the action. The Planning Board shall consider the following factors, and shall issue written findings with respect to:

- (1) The overall direct and indirect impact(s) of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetland, watercourse and adjacent (buffer) area functions as set forth in § 280-2 of this chapter, including but not limited to the:
 - (a) Infilling of a wetland, watercourse or other modification of natural topographic contours;
 - (b) Disturbance or destruction of natural flora and fauna;
 - (c) Influx of sediments or other materials causing increased water turbidity or substrate aggradation;
 - (d) Removal or disturbance of wetland or watercourse soils;

- (e) Reduction in wetland or watercourse ground or surface water supply;
 - (f) Interference with wetland or watercourse water circulation;
 - (g) Changes in the amount or type of wetland or watercourse nutrients;
 - (h) Physical and chemical changes to the wetland or watercourse water supply;
and
 - (i) Destruction of natural aesthetic values;
 - (j) Reduction in public recreational or educational use and access; and
 - (k) Impact to, and alteration or disturbance of adjacent (buffer) areas associated
with wetlands and watercourses.
- (2) Any existing wetland, watercourse and adjacent (buffer) area impact(s) and the cumulative effect of reasonably anticipated future activities in the wetland, watercourse or adjacent (buffer) area subject to the application;
- (3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, storm barriers, shoreline protection, and water quality;
- (4) The potential effect of flooding, erosion, hurricane winds, soil limitations, and other hazards, and possible losses to the applicant and subsequent purchasers of the land;
- (5) The adequacy of water supply and waste disposal for the proposed use;
- (6) Consistency with federal, state, county and Town comprehensive land use plans, and regulations;
- (7) The availability of preferable or environmentally compatible alternative locations on the subject parcel; and
- (8) The demonstration by the applicant that any direct and indirect impact(s) are necessary and unavoidable and have been minimized to the maximum extent practicable for the purposes of this chapter. Wetland, watercourse and adjacent (buffer) area impacts will be deemed necessary and unavoidable only if the applicant satisfies all of the following criteria as determined by the Planning

Board:

- (a) The proposed activity is compatible with the public health and welfare.
- (b) There is no reasonably feasible on-site alternative to the proposed activity, in the judgment of the Planning Board, including reduction in density, change in use, revision of road and lot layout, revision in the location of buildings, structures, driveways and other site construction and land-altering activities and/or related site planning considerations, that could otherwise reasonably accomplish the applicant's objectives.
- (c) There is no reasonably feasible alternative to the proposed activity on another site or site location that is not a wetland, watercourse or adjacent (buffer) area as defined herein.

B. The approval authority must deny a permit if:

- (1) The applicant has not demonstrated that all reasonable alternatives have been explored; that reasonable alternatives exist which could avoid or reduce potential losses or impacts to the wetland, watercourse or adjacent (buffer) area; or that any unavoidable losses or impacts to wetlands, watercourses, and adjacent (buffer) areas have not been minimized to the maximum extent practicable.
- (2) The proposed activity may threaten public health, safety or welfare; results in fraud, causes nuisances, impairs public rights to the enjoyment and use of public lands and waters; threatens a special concern, rare or endangered plant or animal species; violates pollution control standards; or violates any other Town, state, city or federal regulations or laws; or
- (3) Both the affected landowner and the local government have been notified by a duly filed notice in writing that the state or any agency or political subdivision of the state is in the process of acquiring the wetland, watercourse or adjacent area by negotiation or condemnation with the following provisions:
 - (a) The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.
 - (b) If the landowner receives no offer for the property within one year of the permit denial, this prohibition shall lapse. If its negotiations with the applicant are broken off, the state or any agency or political subdivision must, within six months of the end of negotiation, either issue its findings

and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to § 206 of the Eminent Domain Procedure Law, or this prohibition shall lapse.

- C. The approval authority shall give consideration to activities that must have a shoreline or wetland location to function and that will have as little impact as possible upon the wetland, watercourse and/or the watercourse/wetland adjacent (buffer) area. In general, permission will not be granted for dredging or ditching solely for the purpose of draining wetlands or watercourses, controlling mosquitoes, creating ponds, constructing industrial facilities, providing soil and dump sites, or building roads, driveways or buildings or structures that may be located elsewhere. All reasonable measures must be taken to minimize all direct and indirect impacts upon the wetland, watercourse and adjacent (buffer) area.
- D. The Planning Board shall require preparation of a mitigation plan by the applicant pursuant to § 280-10 when the Planning Board has determined that all alternatives have been explored and that wetland, watercourse and buffer impacts are necessary and unavoidable and have been minimized to the maximum extent practicable. In the evaluation of the least environmentally damaging practicable alternatives, mitigation may be used as a means of reducing environmental impacts; a mitigation wetland is designed to replace lost wetland acreage and functions.

§ 280-10. Mitigation policy; plan requirements.

- A. After it has been determined by the approval authority that impacts to a wetland, watercourse or wetland/watercourse buffer are necessary and unavoidable and have been minimized to the maximum extent practicable, the applicant must develop a proposed mitigation plan which shall specify proposed mitigation measures that provide for replacement wetland that recreates as nearly as possible the original wetland in terms of type, vegetative composition, functions, geographic location and setting, and that is larger, by a ratio of at least 1.5 to 1.0, than the original wetland, and located on site.
- B. All mitigation plans shall be based on the following order of preference:
 - (1) Minimization of impacts and disturbance to wetlands, watercourses and adjacent (buffer) areas, in that order.
 - (2) Preservation of remaining wetlands, watercourses and adjacent (buffer) areas through the dedication and establishment of perpetual conservation easements,

development restriction areas, or equivalent.

- (3) Rectification by repairing or restoring existing damaged wetlands, watercourses or adjacent (buffer) areas, including enhancement thereto.

C. Mitigation may take the following forms, either singularly or in combination, for disturbances in wetland/watercourse and adjacent (buffers) areas:

(1) For disturbance in a wetland/watercourse or buffer:

- (a) Implementation of preventative practices to protect the natural condition and functions of the wetland, watercourse; and/or
- (b) Restoration or enhancement (e.g., improving the density and diversity of native woody plant species) of remaining or other upland buffer to offset the impacts to the original buffer.

(2) For disturbance in a wetland:

- (a) Restoration of areas of significantly disturbed or degraded wetlands at a ratio of at least 1.5 (restored wetland) to 1.0 (impacted wetland) by reclaiming significantly disturbed or degraded wetland to bring back one or more of the functions that have been partially or completely lost by such actions as draining or filling, provided the area of proposed mitigation occurs in a confirmed disturbed or degraded wetland having significantly lesser functional values as a result of disturbance or degradation; and/or
- (b) The in-kind replacement of impacted wetland by the construction of new wetland, usually by flooding or excavating lands that were not previously occupied by a wetland, that recreates as nearly as possible the original wetland in terms of type, functions, geographic location and setting, and that is larger than, by a ratio of at least 1.5 to 1.0, the original wetland.

D. The Planning Board shall inspect and monitor, or shall cause to have inspected and monitored, projects according to the specifications set forth in the permit, to determine whether the elements of the mitigation plan and permit conditions have been satisfied and whether the restored or created wetland function(s) and acreage mitigate the impacted function(s) and acreage. To this end, the approval authority may contract with an academic institution, an independent research group, or other qualified professionals at the expense of the applicant. An annual, or more frequent, monitoring report prepared by the appropriate monitor shall be submitted to the approval authority. Mitigation projects shall be monitored for an appropriate period of time, as determined

by the approval authority Planning Board, on a case-by-case basis. Long-term monitoring is generally needed to assure the continued viability of mitigation wetlands. In general, the monitoring period shall be from three to five years. The requirements for monitoring shall be specified in the mitigation plan and shall include, but not be limited to:

- (1) The time period over which compliance monitoring shall occur;
- (2) Field measurements to verify the size and location of the impacted wetland area and the mitigation (restored or replacement) wetland area;
- (3) The date of completion of the restoration and/or replacement; and
- (4) Field verification of the vegetative, hydrologic, and soils criteria as specified in the mitigation plan and permit.

E. If the Planning Board requires a mitigation plan, the following shall apply:

- (1) All mitigation measures shall balance the benefits of regaining new wetland area(s) with the loss to upland (nonwetland) area(s) caused by wetland creation. On-site mitigation is required.
- (2) Mitigation plans developed to compensate for the loss of wetland or wetland/watercourse buffer shall include base line data as needed to adequately review the effectiveness of this plan.
- (3) Any mitigation plan prepared pursuant to this section and accepted by the Planning Board shall become part of the permit for the application to conduct a regulated activity.

F. All mitigation plans shall include:

- (1) A map with sufficient detail and at a scale to be able to determine where the wetland is located and its size, boundaries and topographic features;
- (2) A narrative which describes goals and specific objectives for the mitigation wetland or wetland/watercourse buffer, including the functions and benefits to be provided and clear performance standards and criteria for assessing project success;
- (3) A description of the physical, hydrological and ecological characteristics of the impacted wetland and/or wetland/watercourse buffer and proposed restored

and/or created wetland and/or buffer in sufficient detail to enable the Planning Board to determine whether wetland and/or buffer impacts will be permanently mitigated;

(4) Details on construction, including:

- (a) Diking, excavation, or other means by which the wetland will be restored or created, including existing and proposed topographic contours;
- (b) Construction schedule;
- (c) Measures to control erosion and sedimentation during construction;
- (d) Plantings: source of stock, procedures for transplanting/seeding the stock, area(s) to be planted, and planting schedule. If vegetation from the wild is to be used, identify the source and measures to prevent introduction of undesirable exotics.
- (e) Chemicals: if applicable, explain why chemicals will be used and precautions to be taken to minimize their application and protect the wetland and/or watercourse from excessive chemicals;

(5) Details on management of the mitigation site, including:

- (a) Measures to assure persistence of the wetland (e.g., protection against predation by birds and other animals);
- (b) Vegetative management;
- (c) Sediment and erosion control;
- (d) Plans for monitoring site during and after construction, including methods and schedule for data collection and provisions for mid-course corrections;
- (e) Provisions for long-term protection of the site (e.g., permanent conservation easement);
- (f) Provision for bonding or other financial guarantees;

(6) A description of the periodic reporting, including at the end of construction, during

the monitoring period and at the end of the monitoring period; and

(7) The name, qualifications and experience of the person(s) implementing the mitigation plan (i.e., contractor who will restore or construct the wetland).

G. Mitigation measures and permit conditions shall be set forth in a covenant to be recorded in the County Clerk's office, to run with the land and bind subsequent owners. The approval authority will require the applicant to provide a covenant or easement to enable the Town to inspect any mitigation measures of approval. If mitigation measures are removed or not properly maintained, the Town, upon notice to cure to the property owner, may undertake corrective action, charge the property owner for such expense, and, if unpaid, place the costs on the real property tax bill.

§ 280-11. Permit form and conditions.

A. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached, as the approval authority deems necessary, to assure the preservation and protection of affected wetlands and compliance with the policy and provisions of this chapter.

B. Every permit issued pursuant to this chapter shall be in written form and shall contain the following conditions:

(1) Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the approval authority, or its designated representative(s).

(2) The permit shall expire on a specified date; unless otherwise indicated, the permit shall be valid for one year.

(3) The permit holder shall notify the approval authority, in writing, of the date on which the regulated activity is to begin at least five days in advance of such date.

(4) A copy of the approval authority's written permit with conditions and the approved plans shall be maintained on site during construction while the regulated activities authorized by the permit are being undertaken.

(5) The boundaries of the regulated activity and wetlands and watercourses shall be staked and appropriately marked in the field so as to be clearly visible to those at the project site.

(6) Mitigation measures shall be enumerated as conditions of the written permit.

- C. Any permit, the issuance of which is based on erroneous or incomplete information, including, but not limited to, the failure to completely identify wetland, watercourse and adjacent (buffer) areas, shall be subject to revocation by the Planning Board.
- D. The approval authority shall set forth in writing all conditions attached to any permit. Such conditions may include, but are not limited to, limitations on lot size for any activity; limitations on the total portion of any lot or the portion of the wetland/watercourse or adjacent (buffer) area on the lot that may be cleared, regraded, filled, drained, excavated or otherwise modified; modification of waste disposal and water supply facilities; imposition of operation controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitation of vegetation removal; dedication of easements and development restriction areas to protect wetlands/watercourses and adjacent (buffer) areas; erosion control measures; setbacks for structures, fill, excavation, deposit of soil, and other activities from the wetland; modifications in project design to ensure continued ground and surface water supply to the wetland/watercourse or adjacent (buffer) area and circulation of waters; and/or replanting of wetland/watercourse or adjacent (buffer) areas vegetation or construction of new wetland areas to replace damaged or destroyed areas.
- E. All permits shall expire on completion of the acts specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. An extension of an original permit may be granted upon written request to the approval authority by the original permit holder and/or the legal agent for the permit holder at least 90 days prior to the expiration date of the original permit. The approval authority may require new hearings if, in its judgment, the original intent of the permit is altered or extended by the extension, or if changed circumstances or conditions in the area may exist or if the applicant has failed to abide by the terms of the original permit in any way. The request for extension of a permit shall follow the same form and procedure as the original application, except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in any significant way.

§ 280-12. Variances.

- A. Any person, upon a showing of extraordinary hardship caused by the provisions of this chapter on development in the wetland, watercourse or adjacent (buffer) areas, may apply to the Zoning Board of Appeals for a variance from this chapter. Such variance may be granted only if the applicant establishes that:

(1) Denial of such variance would result in an extraordinary hardship, as distinguished from an inconvenience, if the provisions of this chapter are literally enforced. An applicant shall be deemed to have established the existence of extraordinary hardship only if the applicant demonstrates, based on specific facts, that the subject property does not have any beneficial use if used for its present use or developed as authorized by the provisions of this chapter, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

(a) Do not apply to or affect other property in the immediate vicinity;

(b) Relate to or arise out of the characteristics of the subject property rather than the personal situation of the applicant; and

(c) Are not the result of any action or inaction by the applicant or the owner or predecessors in title, including any transfer of contiguous lands which were previously in common ownership; or

(2) There is a compelling public need for development of the parcel in question based upon one of the following:

(a) The proposed development will serve an essential health or safety need of the municipality such that the public benefits from the proposed use override the importance of the protection of the wetland, watercourse or adjacent (buffer) area as established in this chapter, that the proposed use is required to serve existing needs of the residents; and that no feasible alternatives exist outside the wetland, watercourse or adjacent (buffer) area to meet such established public need; or

(b) The proposed development constitutes an adaptive reuse of an historic resource and said reuse is necessary to ensure the integrity and continued protection of the designated historic resource; and, further,

B. Additional findings required. An application for a hardship variance to permit development on, near, or in a wetland, watercourse or adjacent (buffer) area shall be approved only if the Zoning Board of Appeals specifically finds that:

(1) The proposed development will not be materially detrimental or injurious to other properties or improvements in the area in which the subject property is located, increase the danger of fire or flood, endanger public safety or result in substantial impairment of the resources of the wetland, watercourse or adjacent (buffer) area;

- (2) The waiver will not be inconsistent with the purposes, objectives or the general spirit and intent of this chapter; and
 - (3) The variance is the minimum relief necessary to relieve the extraordinary hardship established by the applicant.
- C. A variance granted under the provisions of this chapter by the Zoning Board of Appeals shall not constitute an approval of the entire development proposal, nor shall it constitute a variance of any other requirements contained within any other applicable local, county or state laws or ordinances or regulations.

§ 280-13. Performance bonds and letters of credit.

- A. The approval authority may require that, prior to commencement of work under any permit issued pursuant to this chapter, the applicant or permittee shall post a bond and/or provide a letter of credit in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations set forth in the permit. The particular amount and the conditions of the bond and/or letter of credit shall be consistent with the purposes of this chapter. The bond and/or letter of credit shall remain in effect until the approval authority or its designated agent certifies that the work has been completed in compliance with the terms of the permit and the bond and/or letter of credit is released by the approval authority or a substitute bond is provided. In the event of a breach of any condition of any such bond and/or letter of credit, the approval authority may institute an action in the courts and prosecute the same to judgment and execution.
- B. The approval authority shall set forth in writing its findings and reasons for imposing a bond and/or letter of credit pursuant to this section.

§ 280-14. Compliance with other laws.

No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or Town law or regulation, including but not limited to the acquisition of any other required permit or approval.

§ 280-15. Suspension or revocation of permits.

- A. The approval authority may suspend or revoke a permit and direct the Wetlands Inspector to issue a stop-work order if it finds that the applicant or permittee has not complied with any or all of the terms of such permit, has exceeded the authority granted

in the permit, has failed to undertake the project in the manner set forth in the approved application or has provided information, in whole or in part, which subsequently proves to be false, deceptive, incomplete or inaccurate.

- B. The approval authority shall set forth in writing in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.

§ 280-16. Fees; escrow.

All permit application and review fees and escrow deposits shall be in an amount set forth in the fee schedule established by resolution of the Town Board and in accordance with Chapter 230 of the Town Code.

§ 280-17. General powers of approval authority.

In order to carry out the purposes and provisions of this chapter, and in addition to the powers specified elsewhere in this chapter, the approval authority shall have the following powers:

- A. To do any and all things necessary or convenient to carry out the policy and intent of this chapter; and
- B. To consult or contract with expert persons or agencies in reviewing a permit application; and
- C. To hold hearings and subpoena witnesses in the exercise of its powers, functions, and duties provided for by this chapter.

§ 280-18. Enforcement.

- A. The Town of Greenburgh is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions of this chapter and/or compel the restoration of the affected wetland or wetland/watercourse buffer to its condition prior to the violation of the provisions of this chapter.
- B. The Planning Board will require the inspection of each site of a permit to ascertain the degree of compliance with the approved plans and permit conditions. The frequency of such inspections will be in proportion to the site complexity and potential harm of each project. The inspection shall be carried out by the Town Wetland Scientist. The cost of such inspection shall be determined by the approval authority and borne by the permit

holder. The reports of such inspection shall become part of the public record.

§ 280-19. Penalties for offenses.

A. Administrative sanctions.

- (1) Damages. Any person who undertakes any wetland activity without a permit issued hereunder, or who violates, disobeys, or disregards any provision of this chapter or any rule or regulation adopted by the Planning Board pursuant to this chapter, shall be required to suspend all activity by a written stop-work order issued by the Wetlands Inspector, or other Town representative, and shall be liable to the Town of Greenburgh for civil damages caused by such violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the Town of Greenburgh at the request and in the name of the Planning Board in any court of competent jurisdiction.
- (2) Restitution. The Town of Greenburgh shall have the authority, following a hearing before the Planning Board and on notice to the violator, "Notice of Violation," to direct the violator to restore the affected wetland/watercourse to its condition prior to violation, insofar as that is possible, within a reasonable time and under the supervision of the Planning Board or its designate. Further, the Planning Board shall be able to require an adequate bond in a form and amount approved by the Planning Board to ensure the restoration of the affected wetland. Any such order of the Planning Board shall be enforceable in an action brought in any court of competent jurisdiction. Any order issued by the Planning Board pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules. The Planning Board may attach any order issued pursuant to this subsection to the land records of the Town of Greenburgh for the property on which the violation occurred. This order shall remain attached to the land records for the duration of the violation; the Planning Board shall, upon satisfactory removal of the violation, remove the order from the land records.
- (3) Stop-work order; revocation of permit. In the event any person holding a wetlands/watercourse permit pursuant to this chapter violates the terms of the permit, fails to comply with any of the conditions or limitations set forth on the permit, exceeds the scope of the activity as set forth in the application, or operates so as to be materially detrimental to the public welfare or injurious to wetlands or watercourses, the Planning Board may suspend or revoke the wetlands/watercourse permit, as follows:
 - (a) Suspension of a permit shall be by a written stop-work order issued by the Wetlands Inspector or any other official of the Town, through the Town

Attorney, and delivered to the permittee or his agent, or the person performing the work. The stop-work order shall be effective immediately, shall state the specific violations cited, and shall state the conditions under which work may be resumed. A stop-work order shall have the effect of suspending all authorizations and permits granted by the Town or any agency thereof. The stop-work order shall remain in effect until the Planning Board is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the Town Board as provided in Subsection A(3)(b) contained hereinbelow.

(b) No site development permit shall be permanently suspended or revoked until a public hearing is held by the Planning Board.

[1] Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state:

[a] Grounds for complaint or reasons for suspension or revocation in clear and concise language.

[b] The time and place of the hearing to be held.

[2] Such notice shall be served on the permittee at least one week prior to the date set for the public hearing unless the stop-work order is issued for a violation occurring less than one week before the next regularly scheduled public meeting of the Planning Board. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence. At the conclusion of the hearing, the Planning Board shall determine whether the permit shall be reinstated, suspended or revoked. The term "person," as used herein, shall mean a natural person or a corporate person.

(4) Any offender also may be ordered by the Planning Board to restore the affected freshwater wetland to its condition prior to the offense, insofar as possible. The approval authority shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Town of Greenburgh.

B. Criminal sanctions. Any person convicted of having violated or disobeyed any provision of this chapter, any order of the Planning Board or any condition duly imposed by the Planning Board in a permit granted pursuant to this chapter, shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$2,000, nor more than \$15,000,

and/or a term of imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense.

§ 280-20. Review of decision.

Any determination, decision or order of the approval authority may be judicially reviewed by the applicant or any other aggrieved party by the commencement of an action pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York within 30 days after the date of the filing of the determination, decision or order of such approval authority with the Clerk of the Town of Greenburgh and/or County.