

Topic: Wetlands & Watercourse Protection; Natural Resource Protection & Conservation; Development Standards; Site Design Standards; Site Plan Approval
Resource Type: Regulations
State: New York
Jurisdiction Type: Municipal
Municipality: Town of Brookhaven
Year (adopted, written, etc.): 1993-2002
Community Type - applicable to: Suburban; Rural
Title: Town of Brookhaven Wetlands & Waterways Ordinance
Document Last Updated in Database: May 1, 2017

Abstract

The purpose of Chapter 81 of the Town Code, for the Town of Brookhaven is to protect surface waters, lands underwater and wetlands since they are important natural resources to the town. This statute applies to all lands defined as wetlands or waterways, to any activity in an adjacent area of a wetland or waterway, or to any activity that has the potential to adversely impact wetlands or waterways. No person shall conduct any regulated activity within such lands without obtaining permission from the town. Regulated activity includes dredging, dumping, pollution discharge, and construction. Exceptions are made for such activities as fishing and hunting, certain activities of the department of health, maintenance of existing facilities of the highway department and the public works department, and general maintenance activities, such as lawn maintenance that meets certain criteria. This statute describes the application process for permits; it sets standards for the construction of residential and commercial docks; and, the statute provides for civil and criminal penalties.

Resource

Town of Brookhaven NY Wetlands and Waterways
Code of the Town of Brookhaven NY
Chapter 81: Wetlands and Waterways
Note: Tidal wetlands and freshwater wetlands definitions
General Code
[http://www.codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D081%2Ehtm&cn=1439&n=\[1\]\[1343\]\[1439\]](http://www.codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D081%2Ehtm&cn=1439&n=[1][1343][1439])

HISTORY: Adopted by the Town Board of the Town of Brookhaven 1-19-1993 by L.L. No. 2-1993, effective 1-25-1993. Amendments noted where applicable.]

§ 81-1. Legislative intent.

Surface waters, lands underwater and tidal and freshwater wetlands are important natural resources in the Town of Brookhaven. It is hereby declared to be the policy of the Town of Brookhaven to: (1) protect and preserve these natural resources with the valuable attributes and functions they possess; (2) to prevent the despoliation and destruction of these natural resources whenever practicable; and (3) to regulate the use and development of these natural resources thereby securing their natural benefits for the existing and future residents of the Town of Brookhaven; these benefits include flood and stormwater control, commercial and recreational fishing and shellfishing opportunities, pollution treatment, wildlife habitat protection, open space and aesthetic appreciation, erosion control, sources of nutrients for marine and freshwater life, means for scientific and educational research, as well as means to protect subsurface water resources. These natural resources and their benefits shall be protected by the Town of Brookhaven pursuant to the authority conferred upon the Town through the Dongan Patent of 1686 and the authority conferred to the Town by various New York State laws and regulations, including but not limited to Articles 24, and 8, of the Environmental Conservation Law (Freshwater Wetlands, and Environmental Review) and regulations thereto, Town Law and the Municipal Home Rule Law. This chapter shall apply to all lands defined as wetlands or waterways, to any activity in an adjacent area (as defined herein) of a wetland or waterway, or to any activity that has the potential to adversely impact wetlands or waterways.

§ 81-2. Title.

This chapter shall be known as and may be cited as the "Wetlands and Waterways Law."

§ 81-3. Definitions. [Amended 4-15-1997 by L.L. No. 5-1997, effective 4-18-1997]

For the purposes of this chapter, the following terms and phrases shall be given the meanings indicated herein:

ADJACENT AREA — The adjacent area shall be subject to regulations for wetlands and waterways and shall extend 150 feet landward of and parallel to the wetland boundary or shoreline of a water body.

APPARENT HIGH WATER — For the purpose of this code, the apparent high water shall be defined as the approximate average high water level for a given body of water at a given location as determined by reference to hydrogeological information concerning water levels, as identified by direct measurement of the water level or rack line provided the date and time of the measurement are provided, or as identified by other appropriate

tests.

APPARENT LOW WATER — For the purpose of this code, the apparent low water shall be defined as the approximate average monthly low water level for a given body of water at a given location as determined by reference to hydrogeological information concerning water levels, as identified by direct measurement provided the date and time of the measurement are provided or as identified by other appropriate tests.

APPLICANT — The owner, contract vendee or authorized agent of the parcel of property which is the subject of an application under this chapter.

BOAT — Any vessel propelled by oars, paddles, sail, or fuel powered engine which must by law be registered with New York State or documented by the United States Coast Guard, including, but not limited to: power boats, sailboats, personal watercraft, including jet skis and wetbikes.

BOUNDARY OF A WATERWAY — For waters under tidal influence, the spring high water mark will be considered the landward limit of a waterway. For waters not under tidal influence, the boundary will be the maximum landward limit of the waterway as determined by either field survey and/or historical information.

BOUNDARY OF A WETLAND — The landward limit of wetlands as specified in the definitions of "freshwater wetlands" and "tidal wetlands" below.

BULKHEAD — A vertical shore-hardening device intended to protect upland property from wave, wind, water and storm damage.

CATEGORY A PROJECT — Any regulated activity not specifically classified as a Category B project or as a work release shall be deemed a Category A project. Category A projects shall include, but are not limited to, subdivisions, land divisions, site plans, new residential and commercial buildings and associated activities which propose to or cause the erection of a building within 50 feet of wetlands and/or cause activities in association with construction of a new building such as removal of natural vegetation, filling, grading, the installation of roads, parking areas, drainage areas and the like which cause a disturbance to the soils or vegetation within 25 feet of wetlands; all commercial docks and residential docks which exceed the standards set forth in § 81-10 of this chapter and structural erosion control measures proposed on Town-owned land.

CATEGORY B PROJECT — Any regulated activity listed herein: subdivisions, land divisions, site plans, new residential and commercial buildings and associated activities which propose to or cause the erection of a building within 120 feet of wetlands but outside of 50 feet of wetlands and/or cause activities in association with construction of the structure such as removal of natural vegetation, filling, grading, the installation of

roads, parking areas, drainage areas and the like which cause no disturbance to the soils or vegetation within 25 feet of wetlands; in-kind and in-place replacement of bulkheads, bulkhead refacing, new bulkheads, not located on Town-owned underwater land, construction of residential docks in conformance to the standards set forth in § 81-10 of this chapter, placement of residential mooring piles not associated with a previously permitted residential dock, all dredging projects, and construction of accessory structures such as pools, decks, garages, tennis courts, sheds and the like, and any work done appurtenant to an existing residence such as additions clearing, filling and regrading when such activities may, as determined by the Commissioner or his designee, adversely impact a wetland or waterway. All non-maintenance projects of the Town of Brookhaven shall be considered Category B projects.

CATWALK — An elevated walkway, usually built to gain access to a commercial or residential dock, built at a fixed height above grade and which is constructed landward of the apparent high water mark.

COMMERCIAL DOCK — Any catwalk, fixed or floating dock or extension of such, designed, used and/or intended for use other than as a residential dock, as defined in this chapter.

COMMISSIONER — The Commissioner of Planning, Environment and Development.

DIRECTOR — The Director of the Division of Environmental Protection of the Town of Brookhaven.

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

DOCK LENGTH — The length of a dock, including all fixed docks, ramps, floating docks and mooring piles, as measured from the apparent low water mark to the seaward-most portion of the dock or the seaward-most mooring pile, whichever distance is greater.

DREDGING — The removal or excavation of any sand, gravel, aggregate, soil, mud, or sediment from the land lying beneath any waterway or contiguous to any waterway.

FIXED DOCK — An elevated walkway which is constructed at a fixed height above grade and which extends seaward from the apparent high water mark.

FLOATING DOCK — Any structure, raft or floating platform which is designed to float upon the surface of a water body and is secured in place by poles, pilings, anchors, or any other type of mooring system that provides access to the water. A floating dock includes the float itself and any pilings or mooring system designed to keep the dock at a fixed point. **[Amended 12-17-2002 by L.L. No. 27-2002, effective 12-20-2002]**

FRESHWATER WETLANDS — The lands and waters in the Town of Brookhaven (including but not limited to those lands and waters as shown on the Freshwater Wetlands Map prepared by or for the State of New York pursuant to § 24-0301 of the New York State Freshwater Wetlands Act and filed with the Suffolk County Clerk as of July 31, 1984, revised on June 14, 1989, and entitled "Tentative Freshwater Wetlands Maps"), which contain any or all of the following:

A. Lands and submerged lands, commonly called marshes, swamps, sloughs, bogs, flats, streambanks, riverine systems, and the like, supporting aquatic or semiaquatic vegetation of the following vegetative types:

- (1) Wetland trees which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees, including, among others: red maple (*Acer rubrum*), willows (*Salix* spp.), swamp white oak (*Quercus bicolor*), black gum (*Nyssa sylvatica*) and sweet gum (*Liquidambar styraciflua*), Atlantic white cedar (*Chamaecyparis thyoides*), black ash (*Fraxinus nigra*), green ash (*Fraxinus pennsylvanica*), river birch (*Betula nigra*), and yellow birch (*Betula alleghanensis*).
- (2) Wetland shrubs which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs, including, among others: alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), sweet pepperbush (*Clethra alnifolia*), swamp honeysuckle (*Rhododendron viscosum*), spicebush (*Lindera benzoin*), sheep laurel (*Kalmia latifolia*), highbush blueberry (*Vaccinium corymbosum*), crimson eyed rose mallow (*Hibiscus palustris*), winterberry (*Ilex verticillata*), arrow-wood (*Viburnum dentatum*), common elderberry (*Sambucus canadensis*), inkberry (*Ilex glabra*), wild-raisin (*Viburnum cassinoides*), serviceberry (*Amelanchier* spp.), red chokeberry (*Aronia arbutifolia*), swamp rose (*Rosa palustris*) and witch-hazel (*Hamamelis virginiana*).
- (3) Emergent vegetation, including, among others: cattails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium* spp.), swamp loosestrife (*Decodon verticillatus*) and water plantain (*Alisma plantago-aquatica*), sweet flag (*Acorus calamus*), skunk cabbage (*Symplocarpus foetidus*), jewelweed (*Impatiens* spp.), blue flag (*Iris versicolor*), marsh marigold (*Caltha palustris*), horsetails (*Equisetum* spp.), swamp milkweed (*Asclepias incarnata*), and yellow flag (*Iris pseudacorus*).
- (4) Rooted, floating leaved vegetation, including, among others: water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock

(*Nuphar advena*).

- (5) Free-floating vegetation, including, among others: duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrhiza*) and watermeal (*Wolffia* spp.).
 - (6) Wet meadow vegetation which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation, including, among others: sedges (*Carex* and *Cyperus* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cutgrass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), spotted joe-pye weed (*Eupatorium maculatum*), beggar ticks (*Bidens* spp.), cinnamon fern (*Osmunda cinnamomea*), marsh fern (*Dryopteris thelypteris*), ostrich fern (*Pteretis pennsylvanica*), royal fern (*Osmunda regalis*), sensitive fern (*Onoclea sensibilis*), spike rushes (*Eleocharis* spp.), and switch grass (*Panicum virgatum*).
 - (7) Bog mat vegetation, including, among others: sphagnum mosses (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), cranberries (*Vaccinium macrocarpon* and *V. oxycoccos*), sundew (*Drosera rotundifolia*), and leatherleaf (*Chamaedaphne calyculata*).
 - (8) Submergent vegetation, including, among others: pondweeds (*Potamogeton* spp.), naiad family (*Najas* spp.), Bladderworts (*Utricularia* spp.), wild celery (*Valisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.), muskgrass (*Chara*), stonewort (*Nitella* spp.), water weeds (*Elodea* spp.) and water smartweed (*Polygonum amphibium*).
- B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period and provided further that such conditions can be expected to persist indefinitely, barring human intervention.
- C. Lands underwater and surface waters substantially enclosed by aquatic or semiaquatic vegetation as set forth herein in Subsection A above and/or dead vegetation as set forth in Subsection B above.
- D. Those geologic formations commonly known as “perched ponds.”
- E. The waters overlying the areas set forth in Subsections A, B and D above.

FLOATING HOME — Any vessel in fact used, designed or occupied as a dwelling unit, business office or source of any occupation or for any private or social club of whatsoever

nature, including but not limited to a structure constructed upon a barge primarily immobile and out of navigation which functions substantially as a land structure while the same is moored or docked within the municipal limits of the Town of Brookhaven, whether such vessel is self-propelled or not.

LANDS UNDERWATER — Those lands lying beneath or subject to predictable or regular immersion by fresh, brackish or saline waters.

MAINTENANCE DREDGING — Any dredging action which occurs in a location where dredging has been historically performed to maintain navigational access or which occurs within 10 feet of any bulkhead.

PERSON — Any corporation, firm, partnership, association, trust, estate or one or more individuals and any unit of government or agency or subdivision thereof.

POLLUTION — The presence in the environment of man induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant, marine or freshwater life, wildlife or other animal life, or to property; or unreasonably interferes with the comfortable enjoyment of life and property.

PROJECT PROPERTY — The property which is the subject of a wetlands application and any adjacent properties under common ownership.

RESIDENTIAL DOCK — Any catwalk, fixed dock and/or floating dock designed or constructed as a continuous unit to provide access to the surface waters from a lot that is zoned for residential use. The term dock shall include all associated structures such as ramps and mooring piles.

RESIDENTIAL HOUSEBOAT — A vessel not designed primarily for residential dwelling units, designed primarily for pleasure craft, recreation and for independent navigation and not considered a floating home, in accordance with the definition set forth above, and which is being used for residential purposes.

TIDAL WETLANDS — The lands and waters in the Town of Brookhaven (including but not limited to those lands and waters in the Town which are included in the inventory of tidal wetlands prepared by or for the State of New York and filed with the Suffolk County Clerk as of September 28, 1982, last revised November 16, 1982, and entitled "Tidal Wetlands Maps") which include any or all of the following:

- A. Those areas which border on or lie beneath tidal waters, such as but not limited to banks, bogs, salt marshes, swamps, meadows, flats or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters.

- B. All banks, bogs, meadows, flats and tidal marshes subject to such tides and upon which grow or may grow some or any of the following: salt meadow grass (*Spartina patens*), saltgrass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltworts (*Salsola* spp.), sea lavender (*Limonium carolinianum*), glassworts (*Salicornia* spp.), big cordgrass (*Spartina cynosuroides*), prairie cordgrass (*Spartina pectinata*), marsh elder (*Iva frutescens*), sea-blite (*Suaeda maritima*), groundsel-tree (*Baccharis halimifolia*), crimson-eyed rose mallow (*Hibiscus palustris*), seaside goldenrod (*Solidago sempervirens*) and the intertidal zone including salt marsh cordgrass (*Spartina alterniflora*).

WATERWAY — Any natural or artificial fresh or marine body of water commonly known as streams, rivers, creeks, lakes, ponds, estuaries, bays, harbors, oceans, and the like. A waterway includes those areas defined as lands underwater.

WATERWAYS MANAGEMENT SUPERVISOR — The Waterways Management Supervisor of the Division of Environmental Protection of the Town of Brookhaven.

WETLANDS — Those areas defined in this chapter as tidal or freshwater wetlands.

WETLANDS AND WATERWAYS PERMIT — That form of written Town approval required to conduct a regulated activity as specified under this chapter, hereinafter referred to as a “permit.”

WIDTH OF A WATERWAY — The linear distance in feet as measured from the apparent low water mark from one shoreline to the corresponding point on the opposite shoreline.

WORK RELEASE — That form of written Town approval which permits a regulated activity without the issuance of a wetlands and waterways permit.

§ 81-4. Regulated activities; exceptions.

- A. Permit required. No person shall conduct or cause to be conducted any regulated activity within a freshwater or tidal wetland, waterway, or adjacent area as set forth in Subsections B and C of this section, without first obtaining a permit or work release issued by the Town of Brookhaven.
- B. Regulated activities. Activities subject to regulation shall include any activity in an adjacent area and projects defined as Category A or Category B projects, including, but not limited to:

- (1) Any form of drainage, dredging, excavation or removal of soil, mud, sand, shells, gravel, or other aggregate from any tidal or freshwater wetland or land underwater;
 - (2) Any direct or indirect form of dumping or filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;
 - (3) Erecting any buildings or structures, constructing roads and bridges, clearing and regrading, placing of bulkheads, retaining walls, pilings, docks, catwalks or other physical improvements;
 - (4) Any form of pollution or discharge, including, but not limited to, installing a sanitary sewage system, running a sewer outfall, discharging sewage treatment effluent, stormwater runoff or other liquid wastes, into or so as to drain into surface water or a tidal or freshwater wetland;
 - (5) Any grading activities, including, but not limited to, clearing of vegetation, removal or placement of soil or fill, the alteration of existing land elevations and/or the alteration of natural drainage patterns;
 - (6) Construction of any pier or the mooring of a residential houseboat or floating home;
 - (7) Any mariculture or aquaculture activity; and
 - (8) Any other activity which substantially impairs any of the several functions served by surface waters, lands underwater and/or tidal or freshwater wetlands or the benefits derived therefrom, which are set forth in § 81-1 of this chapter if they occur upon the wetland, waterway, adjacent area, or the lands underwater, or if they impinge upon or otherwise substantially affect the wetlands and waterways. All activities occurring on a project site are subject to review by the Division of Environmental Protection if any portion of the activity on a project property is subject to regulation.
- C. Subdivisions, site plans, land divisions. Any parcel of land which contains wetlands and is the subject of a minor or major subdivision, land division or site plan is subject to regulation.
- D. Fishing, hunting and related activities. The deposition or removal of the natural products of lands underwater, surface waters, tidal wetlands or freshwater wetlands, by recreational or commercial fishing, shellfishing, hunting or trapping, shall be excluded from the regulated activities requiring a permit herein, where otherwise legally

permitted and regulated.

- E. Suffolk County Department of Health Services. Public health activities of the Suffolk County Department of Health Services other than mosquito control activities which require the physical change of the wetlands shall be excluded from the regulated activities requiring a permit herein. The Director or Waterways Management Supervisor shall be notified by the Department of Health Services in writing two weeks prior to the onset of any such activity. Such notification must include a complete project description and copies of any engineering plans.
- F. Highway departments. Repair and maintenance activities which do not involve substantial reconstruction of existing facilities of the Town of Brookhaven Highway Department, Suffolk County Department of Public Works and the New York State Department of Transportation shall be excluded from the regulated activities requiring a permit herein.
- G. Maintenance exemption.
 - (1) Maintenance activities to existing structures or the lands surrounding these structures shall be excluded from the regulated activities requiring a permit herein if any of the following apply:
 - (a) No building permit is required;
 - (b) No freshwater or tidal wetlands species listed herein are cut, altered or removed;
 - (c) That a buffer zone established by the Town of Brookhaven Town Board, Planning Board or Zoning Board of Appeals is not altered except as permitted by any covenant or permit;
 - (d) There is no discharge or contamination of any wetland or waterway; and
 - (e) That the extent of the work does not expand the footprint of the existing building or structure.
 - (2) Activities exempt under this subsection shall include, but are not limited to, painting of primary and accessory structures, lawn maintenance activities, planting of landscape vegetation, top dressing of vegetated areas with top soil provided no more than two inches of soil is involved, pruning or removal of non-wetlands species, and the like.

§ 81-5. Work releases.

- A. Emergency work which is deemed to be immediately necessary in order to protect public health and safety or to prevent significant damage to personal or real property may be undertaken only upon issuance of a work release by the Director or Waterways Management Supervisor. Said work release shall be valid for no more than 30 calendar days and shall be undertaken pursuant to any conditions imposed by the Director or Waterways Management Supervisor.

- B. Maintenance or repair of existing structures or improved areas including but not limited to bridges, roads, highways, railroad beds, bulkheads, docks, piers, pilings or paved areas which does not involve expansion or substantial restoration, reconstruction, rehabilitation or modification, and will not result in any adverse impact upon a wetland or waterway may be excluded from the regulated activities requiring a permit and may be undertaken upon the issuance of a maintenance or repair work release. Any person, except as provided in § 81-4F, wishing to conduct such maintenance or repair shall notify the Director or Waterways Management Supervisor of the planned activity in writing at least two weeks prior to the onset of such activity. Should it be deemed by the Director or Waterways Management Supervisor that the activity is not ordinary maintenance or repair or if the activity is deemed to have any adverse impacts on the wetlands or waterways, a permit may be required.

- C. Regulated activities located in the adjacent area to a tidal or freshwater wetland which do not significantly impinge or impair the wetlands or their function may be deemed exempt from the normal permit process by the Director or Waterways Management Supervisor and may be undertaken upon the issuance of a work release. These activities shall include, but are not limited to: the erection of any commercial or residential building or accessory structure, which is set back from the limit of wetlands a distance greater than 120 feet and which will cause no disturbance to the soils or vegetation within 75 feet of wetlands. Should it be deemed by the Director or Waterways Management Supervisor that the proposed activity will impinge or impair wetlands, a permit may be required.

- D. Repair or replacement of storm or ice damaged accessory structures, excluding bulkheads, may be undertaken upon the issuance of a work release by the Director or Waterways Management Supervisor, provided:
 - (1) An application is received by the Division of Environmental Protection within 30 days of the event;

 - (2) The applicant provides proof that the structure previously existed and that the structure's destruction was a direct result of the storm event; and

- (3) That the structure had previously been permitted under Chapter 81 of the Town Code.

§ 81-6. Application for permits: Category A projects.

A. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland or waterway shall file a permit application, on such forms as shall be prescribed by the Director or Waterways Management Supervisor, for the activity with the Director or Waterways Management Supervisor. Such application shall include:

- (1) Statement of authority from the owner for any agent making application;
- (2) Statement of proposed work and purpose thereof;
- (3) A list of the names of the owners of record of lands and the names of known claimants of water rights as shown on the current Town of Brookhaven assessment role, of whom the applicant has notice, which relate to any land within 200 feet of the boundary of the property on which the proposed regulated activity will be located;
- (4) Complete project plans for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York unless said certification is waived by the Director or Waterways Management Supervisor, drawn to scale no less detailed than one inch equals 40 feet, or in a scale as required to meet the guidelines set forth by the Planning Board as required in the Town of Brookhaven Subdivision Regulations. The following shall be indicated on the project plan:
 - (a) The location of all wetlands and/or waterways on the project property as they existed no earlier than 36 months prior to the date of filing the application;
 - (b) A description of the vegetative cover of the wetland and adjacent area, including dominant species;
 - (c) A description of the soil types on site;
 - (d) Location of the construction area and the associated area that may be disturbed during construction, and their relation to property lines, roads, buildings, and watercourses located within 200 feet of the project;

- (e) The exact locations and specifications for all proposed draining, fill, grading, dredging, and vegetation removal activities, and the procedures to be used;
 - (f) For projects located adjacent to a waterway, the width of the waterway as measured from the prevailing shoreline to the opposite prevailing shoreline at the point of construction;
 - (g) Existing and adjusted contours at two foot intervals for the proposed project area, and to a distance of 50 feet beyond the limit of wetlands unless otherwise specified by the Director or Waterways Management Supervisor;
 - (h) Details of any drainage system proposed both for the conduct of work, and after completion thereof, including locations of any point discharges, or other human-made conveyances which would discharge into the wetlands or waterways, and measures proposed to control erosion both during and after work;
 - (i) For all waterfront properties adjacent to tidally influenced waters, the mean high water, mean low water and spring high water marks should be located and noted;
 - (j) For properties located in a flood zone as defined by Chapter 33 (Flood Damage Prevention) of the Town Code, the flood zone designation should be noted and, if appropriate, the boundary of the flood zone indicated;
 - (k) Complete construction details prepared and certified by a licensed engineer or architect unless waived by the Director or Waterways Management Supervisor;
- (5) A completed full environmental assessment form as required pursuant to Part 617, Sections 617.5 and 617.21 of the SEQRA (State Environmental Quality Review Act, 6 NYCRR Part 617) regulations;
- (6) Copies of all applicable county, state or federal permits or permit applications that are required for such work. The Director or Waterways Management Supervisor shall determine the adequacy and completeness of the application.
- B. The applicant shall submit such further application requirements as specified by the Director or Waterways Management Supervisor as are deemed necessary to effectuate the provisions and intent of this chapter. Said requirements may include, but are not limited to, permission to physically inspect the subject parcel by personnel of the Town of Brookhaven prior to, during and upon completion of the regulated activity.

Furthermore, the applicant shall have the burden of demonstrating that the proposed activity will be in accordance with the policies and provisions of this chapter.

§ 81-7. Application for permits: Category B projects.

A. Any person proposing to conduct or cause to be conducted a regulated activity upon any wetland or waterway shall file a permit application, on such forms as shall be prescribed by the Director or Waterways Management Supervisor for the activity, with the Director or Waterways Management Supervisor. Such application shall include:

- (1) Statement of authority from the owner for any agent making application;
- (2) Statement of proposed work and purpose thereof;
- (3) Complete project plans for the proposed site improvements, which shall be certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York unless said certification is waived by the Director or Waterways Management Supervisor, drawn to scale no less detailed than one inch equals 40 feet, or in a scale as required to meet the guidelines set forth by the Planning Board as required in the Town of Brookhaven Subdivision Regulations. The following shall be indicated on the project plan:
 - (a) The location of all wetlands and/or waterways on the project property as they existed no earlier than 36 months prior to the date of filing the application;
 - (b) A description of the vegetative cover of the wetland and adjacent area, including dominant species;
 - (c) A description of the soil types on site;
 - (d) Location of the construction area and the associated area that may be disturbed during construction, and their relation to property lines, roads, buildings and watercourses located within 200 feet of the project;
 - (e) The exact locations and specifications for all proposed draining, fill, grading, dredging and vegetation removal activities and the procedures to be used;
 - (f) For projects located adjacent to a waterway, the width of the waterway as

measured from the prevailing shoreline to the opposite prevailing shoreline at the point of construction;

- (g) Existing and adjusted contours at two-foot intervals for the proposed project area, and to a distance of 50 feet beyond the limit of wetlands unless otherwise specified by the Director or Waterways Management Supervisor;
 - (h) Details of any drainage system proposed both for the conduct of work and after completion thereof, including locations of any point discharges, or other human-made conveyances which would discharge into the wetlands or waterways and measures proposed to control erosion both during and after work;
 - (i) For all waterfront properties adjacent to tidally influenced waters, the mean high water, mean low water and spring high water marks should be located and noted;
 - (j) For properties located in a flood zone as defined by Chapter 33 (Flood Damage Prevention) of the Town Code, the flood zone designation should be noted and if appropriate, the boundary of the flood zone indicated;
 - (k) Complete construction details prepared and certified by a licensed engineer or architect unless waived by the Director or Waterways Management Supervisor;
- (4) A completed full environmental assessment form as required pursuant to Part 617, Sections 617.5 and 617.21 of the SEQRA (State Environmental Quality Review Act, 6 NYCRR Part 617) regulations except for those actions listed by SEQRA as Type II actions;
- (5) Copies of all applicable county, state or federal permits or permit applications that are required for such work. The Director or Waterways Management Supervisor shall determine the adequacy and completeness of the application.
- B. The applicant shall submit such further application requirements as specified by the Director or Waterways Management Supervisor as are deemed necessary to effectuate the provisions and intent of this chapter. Said requirements may include, but are not limited to, permission to physically inspect the subject parcel by personnel of the Town of Brookhaven prior to, during and upon completion of the regulated activity. Furthermore, the applicant shall have the burden of demonstrating that the proposed activity will be in accordance with the policies and provisions of this chapter.

§ 81-8. Withdrawal of application.

A. An application shall be deemed withdrawn in the following circumstances:

- (1) By the applicant upon the filing of a written request to withdraw at any time prior to the time the Town Board takes action on such application.
- (2) Upon the applicant failing to comply with a written request for additional information by the Division of Environmental Protection within six months of the date of such request.
- (3) Upon the applicant failing to supply the Town Clerk and the Town Board with a survey, written covenants or deeds and a title report within six months of the date approval if covenants or deeds are imposed or required by the Town Board as a condition of receiving approval of a wetlands permit.

B. For a major action, the Town Board may extend such period of time for good cause upon written application. For a minor action, the Commissioner, the Director or the Waterways Management Supervisor may extend such period of time upon written application.

§ 81-9. Additional application requirements.

A. All permit applicants shall submit to the Director or Waterways Management Supervisor a notarized affidavit signed by the owner of the project property which indemnifies and saves harmless the Town of Brookhaven from any claims arising out of or connected with operations under the permit and from all acts, omissions, commissions or negligence on the part of the applicant, his agents or employees, in such form as shall be approved by the Town Attorney.

§ 81-10. Standards for residential and commercial docks. [Added 4-15-1997 by L.L. No. 5-1997, effective 4-18-1997]

A. It shall be the policy of the Town of Brookhaven that all docks shall be designed, constructed and located so as to reduce a dock's potential adverse impacts to navigation, public safety, waterway congestion, access to public trust lands and water, and natural resources and habitats. Conformance to the following standards will serve as a basis for granting, denying, or limiting permits for the construction of docks.

B. The standards for a residential dock shall be as follows:

- (1) In no case shall the dock length exceed beyond a water depth of three feet below the apparent low water mark (for this provision only, dock length shall include only the fixed dock, ramp and any floating docks), but in any event not to exceed 150 feet in length, or exceed 15% of the width of the waterway, whichever of these provisions is less; **[Amended 6-2-1998 by L.L. No. 16-1998 effective 6-5-1998]**
- (2) Only one residential dock may be constructed on a residential lot that has a riparian right and that dock may only be for a residential lot having a riparian right;
- (3) A residential dock and any part thereof, or any vessel tied to a dock, may not be located within or impinge upon that area located within 10 feet of the seaward extension of any property line;
- (4) A residential dock and associated mooring piles must be configured so that no more than two vessel berths are created;
- (5) The width of a catwalk or dock may not exceed four feet and must be elevated a minimum of four feet above the apparent high water mark and a minimum of four feet above grade when traversing any tidal or freshwater wetlands as identified by the Division of Environmental Protection of the Town of Brookhaven; and
- (6) The width of any single float may not exceed eight feet in width nor 20 feet in length and shall be secured or installed in such a manner that the float shall not rest on the bottom of the water body at any time during the tidal cycle.

C. The standards for commercial docks shall be as follows:

- (1) In no case shall the dock length, excluding that portion landward of the apparent high water mark, be in excess of 150 feet nor exceed 40% of the width of the waterway, whichever is less;
- (2) The width of a catwalk or dock may not exceed eight feet and must be elevated a minimum of four feet above the apparent high water mark, and a minimum of four feet above grade when traversing any tidal or freshwater wetlands as identified by the Division of Environmental Protection of the Town of Brookhaven;
- (3) The width of any single float may not exceed eight feet in width and shall be secured or installed in such a manner that the float shall not rest on the bottom of the water body at any time during the tidal cycle;

- (4) All docks installed to provide fuel to private vessels must also provide pump-out facilities for vessel sanitary waste; and
 - (5) The principals or corporate officers of any commercial dock placed above Town-owned underwater land shall either enter into a lease agreement with the Town of Brookhaven (if applicable) or provide the Town Clerk, on a yearly basis, an affidavit of indemnity and agreement to provide insurance in such form as required by the Town of Brookhaven Town Attorney or her/his designee.
- D. In granting, denying or limiting permits for residential and commercial docks, the Town of Brookhaven shall, in addition to those requirements listed in §§ 81-11 and 81-12 of this Code, shall also consider the following:
- (1) The dock shall be located on the property so as to minimize the obstruction of surface waters, reduce hazards to navigation, minimize the reduction in uses of public trust lands and waters, and minimize negative impacts to natural resources;
 - (2) The dock shall not be permitted in areas of high vessel traffic or vessel congestion where there is a likelihood that the dock will significantly jeopardize public safety or create a public nuisance;
 - (3) The dock shall be designed and sited so as to minimize habitat fragmentation, loss of habitats, and access to recreational and commercial shellfish resources;
 - (4) The dock shall, to the best extent practicable, be designed and sited so as to not hinder public access to public trust lands and surface waters;
 - (5) The cumulative impacts of a residential and commercial dock shall be evaluated and the design, construction, and location of the dock shall minimize cumulative impacts; and
 - (6) In areas of high traffic, congestion, multiple uses of the water surface, or where needed to protect public safety, a dock and its associated floats and piles may be required to have adequate lighting and markings.
- E. The Town shall have the right to seek removal of any dock constructed without a permit described herein or built in violation of these standards and/or restrictions established by a permit issued by the Commissioner or the Town Board of the Town of Brookhaven.

§ 81-11. Granting, denying or limiting Category A projects.

- A. The Director or Waterways Management Supervisor shall notify the applicant in writing when the application is deemed complete.
- B. Not later than 60 days after the application is deemed complete, the Town Board shall schedule a public hearing on such application. The Town Board shall cause notice of such hearing to be published at least once in at least two newspapers having a general circulation in the area where the affected wetland is located. The notice of hearing shall be published not more than 28 days nor less than 14 days prior to the date set for the hearing.
- C. No later than five days after being notified by the Town Clerk of the date of the public hearing, the applicant shall conspicuously place along each road frontage of the property which is the subject of the application, at least one poster, on such form as shall be supplied. The Director or Waterways Management Supervisor may require the use of a poster supplied by the Division of Environmental Protection at a fee set by the Town Board.
 - (1) Such posters shall contain the following information, printed in letters no less than two inches high:
 - (a) A brief description of the proposed project as approved by the Director or Waterways Management Supervisor.
 - (b) That any person interested in this application and who wishes to become a party of interest may contact the Division of Environmental Protection prior to the Town Board meeting.
 - (c) That a public hearing will be held before the Town Board at a specified date and the time and place with regard to the proposed hearing.
 - (2) Said poster must remain, in a readable condition, in place until the public hearing has been completed and must be removed no later than seven days thereafter.
- D. The applicant shall also notify all owners of record as shown on the current Town of Brookhaven Assessor's roll of lands within 500 feet of the project property and known claimants to water rights, by registered or certified mail, not less than 15 days prior to the date set for the hearing. **[Amended 10-18-2005 by L.L. No. 25-2005, approved 10-24-2005]**
- E. In granting, denying or limiting any permit application, the Town Board shall consider the functions of the wetlands and surface water functions and their role in the hydrologic and ecological system and evaluate the effect of the proposed activity with respect to the public health and welfare; navigation, public access and the impact to

adjacent properties; fishing and shellfishing; flood, hurricane and storm dangers; water quality; loss of natural aesthetic values; and protection or enhancement of the several functions of wetland and the benefits derived therefrom which are set forth in § 81-1 of this chapter. The Town Board shall also consider any land use regulations promulgated by the Commissioner of the New York State Department of Environmental Conservation.

- F. In granting, denying or limiting any permit application, preference will be given to water-dependent activities that must have a shoreline, wetland or waterway location in order to function, and that will have as little impact as possible upon surface waters, the wetland and adjacent area. Furthermore, it is the policy of the Town, to the extent practicable, to:
- (1) Preserve areas of high environmental sensitivity, areas with unique vegetation and areas serving as valuable wildlife habitats.
 - (2) Protect areas of archaeological importance.
 - (3) Maintain as much natural vegetation as is feasible to preserve watershed areas and wildlife habitats and promote natural aesthetic compatibility and visual quality.
 - (4) Provide adequate setbacks for development away from wetlands and waterways to protect and enhance natural systems.
 - (5) Maximize setbacks for new construction in proximity to erosion-prone and erosion-sensitive areas.
 - (6) Minimize the visual impact of site development and provide sufficient visual buffering.
 - (7) Maintain natural undisturbed adjacent areas and where necessary provide supplemental landscaping.
 - (8) Conform to the natural topography of the site during development in order to minimize the loss of natural vegetation, disturbance of soil and natural fisheries and associated environmental impacts.
 - (9) Minimize areas of fertilizer-dependent vegetation in order to reduce nitrogen and chemical loading to wetlands and surface waters.

- (10) Prevent impacts associated with stormwater runoff during or after site development, including any direct discharge of stormwater from the site onto wetlands, into surface waters or onto adjacent properties and to employ structural and nonstructural measures to contain stormwater on site.
 - (11) Minimize adverse impacts associated with dredging and dredge spoil disposal and changes in bottom topography.
 - (12) Employ minimum structural measures to control shoreline erosion. Bulkheads or retaining walls should be located at or above apparent high water. Docks and catwalks should be at least 3.5 feet above wetlands.
- G. In granting or limiting a permit, the Town Board may impose conditions or constraints designed to carry out the intent of this chapter, including restrictive covenants and performance bonds. Such conditions or limitations shall be incorporated in the permit. If the proposed activity causes an unavoidable loss of wetlands or unavoidably adversely impacts a waterway, said impacts having been minimized to the extent practicable, the applicant shall develop a mitigation plan which shall specify mitigation measures that provide the replacement of the resources which are lost due to the proposed activity. If mitigation is required, the mitigation plan will be a condition of the permit and shall be completed prior to the expiration of the permit and maintained for the life of the permitted structure. Any wetland created pursuant to this provision shall be regulated under this Chapter 81.
- H. Any decision by the Town Board to grant, deny or place conditions upon a wetlands permit or to revoke or suspend any permit previously issued pursuant to this chapter shall be supported by written findings giving the reason for such decisions.
- I. In the event that a court of competent jurisdiction finds the action reviewed constitutes a taking without just compensation and the land so regulated merits protection under this chapter, the court may, at the election of the Town Board, either:
- (1) Set aside the order; or
 - (2) Require the Town Board to proceed under the condemnation law to acquire the wetlands or such less than fee rights therein as have been taken.

§ 81-12. Granting, denying or limiting Category B projects.

- A. The Director or Waterways Management Supervisor shall notify the applicant in writing when the application is deemed complete.

- B. Within 30 days after the notice of complete application, the applicant shall notify all owners of record as shown on the current assessment role of the Town of Brookhaven Assessor of lands adjacent to the project property and known claimants to water rights, by registered or certified mail, that written comments will be accepted by the Director or Waterways Management Supervisor for a period of not less than five days and not later than 21 days.
- C. No later than five days after being notified by the Director or Waterways Management Supervisor that the application is complete, the applicant shall conspicuously place along each road frontage and water frontage if applicable, of the property which is the subject of the application, at least one poster, as such form as shall be supplied. The Director or Waterways Management Supervisor may require the use of a poster supplied by the Division of Environmental Protection at a fee set by the Town Board.
- (1) Such posters shall contain the following information, printed in letters no less than two inches high:
 - (a) A brief description of the proposed project as approved by the Director or Waterways Management Supervisor.
 - (b) That any person interested in this application and who wishes to become a party of interest may contact the Division of Environmental Protection prior to the Town Board meeting.
 - (2) Said poster must remain, in a readable condition, in place for a minimum of 15 consecutive days after the application is deemed complete and must be removed no later than seven days after the permit is issued.
- D. Within 30 days of the completion of these notifications, the Commissioner or the designee of the Commissioner shall grant the permit, deny the permit or grant the permit with conditions.
- E. In granting, denying or limiting any permit application, the Commissioner or the designee of the Commissioner shall consider the functions of the wetlands and surface water functions and their role in the hydrologic and ecological system and evaluate the effect of the proposed activity with respect to the public health and welfare; navigation, public access and impact to adjacent properties; fishing and shellfishing; flood, hurricane and storm dangers; water quality; loss of natural aesthetic values; and protection or enhancement of the several functions of wetland and the benefits derived therefrom which are set forth in § 81-1 of this chapter. The Commissioner or the designee of the Commissioner shall also consider any land use regulations promulgated by the Commissioner of the New York State Department of Environmental

Conservation.

- F. In granting or limiting a permit, the Commissioner or the designee of the Commissioner may impose conditions or constraints designed to carry out the intent of this chapter.

§ 81-13. Permit requirements for Category A and Category B projects.

- A. All permits shall be clearly posted on the project site during all work activities and all applicants, their agents or construction crews proceeding with approved operations shall carry on their persons or have readily available the approved permit conditions and shall show same to any authorized inspector of the Town of Brookhaven whenever requested.
- B. Operations conducted under permit shall be open to inspection at any time by any authorized inspector of the Town of Brookhaven.
- C. The Town Board or, in the case of Category B projects, the Commissioner or the designee of the Commissioner, may revoke or suspend any permit where any conditions of the permit have not been complied with.
- D. All activities undertaken pursuant to a wetlands and waterways permit shall be completed within a period of two years, except dredging permits, which shall, at the discretion of the Town Board or for a Category B project the Commissioner or the designee of the Commissioner, be in effect for a period of five years. Notwithstanding the foregoing, in the event that the applicant has obtained a building permit for the work authorized by the wetlands and waterways permit, the time for completing a permitted activity shall expire simultaneous with the expiration of the building permit or any renewal thereof. In the event a wetlands or waterways activity authorized by the Town Board is not completed within two years and the permit is due to expire, the Town Board may renew said permit by resolution. In the event that the permit was for a Category B project and expires by operation of this Section, the Commissioner or the designee of the Commissioner may issue a renewal thereon. In the event that the permit expires and work has not commenced, the Town Board and/or the Director or Waterways Management Supervisor may require a new application to be filed.

§ 81-14. Building permit required.

- A. All buildings and structures as defined in Chapter 85 (Zoning) of the Town of Brookhaven Code and regulated herein shall, upon the issuance of a wetlands permit by the Town Clerk or in the case of Category B projects the Commissioner or the designee of the Commissioner, be required to apply for and receive a building permit from the

Chief Building Inspector.

- B. No structure or building erected or altered and regulated under this Chapter 81 of the Brookhaven Town Code shall be used until a certificate of occupancy has been issued by the Chief Building Inspector.

§ 81-15. Fees.

The Town Board shall reserve the right to require an application fee for all permit applications as well as a permit or license fee for any operations or uses permitted pursuant to this chapter. Such fees shall be set by resolution of the Town Board and shall be collected by the Division of Environmental Protection.

§ 81-16. Jurisdiction of other agencies.

A permit approved by the Town of Brookhaven does not relieve the applicant of the necessity to obtain authorization or other permits from other agencies which have jurisdiction over the proposed project.

§ 81-17. Appeals of decisions regarding freshwater wetlands.

Pursuant to Article 24, § 1103 of the New York State Environmental Conservation Law (Freshwater Wetlands Act), an applicant may appeal any order or decision regarding freshwater wetlands to the Freshwater Wetlands Appeals Board and the Town shall be bound by the decision of the Board except to the extent such decision is reversed or otherwise modified by a court of competent jurisdiction pursuant to this chapter.

§ 81-18. Appeals of decisions regarding tidal wetlands.

An applicant may appeal an order or decision regarding a Category B project to the Town Board of the Town of Brookhaven; in which event, the Town Board shall hold a public hearing in accordance to the requirements of a Category A project as specified herein. An applicant may appeal any order or decision regarding a Town Board determination pursuant to Article 78 of the Civil Practice Law and Rules.

§ 81-19. Compliance. [Added 5-23-2002 by L.L. No. 8-2002, effective 5-28-2002.]

- A. No person shall conduct or cause to be conducted any activity which violates the conditions of a valid Category A or B wetlands and waterways permit or work release.
- B. No person shall conduct or cause to be conducted any activity which violates a covenant filed with Suffolk County Clerk that was imposed as a condition of a Category A or B wetlands and waterways permit or work release.

§ 81-20. Penalties for offenses; corrective action.

A. Administrative sanctions.

- (1) Any person found violating any provision of this chapter or the conditions imposed by the Town Board and/or the Commissioner or the designee of the Commissioner upon an approved permit may be served with a written notice by the Director or Waterways Management Supervisor requiring the activity be stopped and the appearance of such person at a hearing before the Director or Waterways Management Supervisor. Such written notice shall be served at least 10 days prior to the hearing date by personal service or by registered or certified mail. The notice shall contain a specification of charges. No work shall resume until the Director or Waterways Management Supervisor has determined that a violation does not exist.
- (2) Following such hearing, the Town Board, upon the recommendation of the Director or Waterways Management Supervisor, shall have the power to assess a civil penalty not to exceed \$3,000 for every such violation. In addition, the Town Board shall have the power to direct the violator to satisfactorily restore the affected wetland to its condition prior to the violation, insofar as that is possible within a reasonable time and under the supervision of the Director or Waterways Management Supervisor.
- (3) Any civil penalty or order issued by the Town shall be reviewable pursuant to the Civil Practice Law and Rules.

B. Criminal sanctions.

- (1) Any person who violates any provision of this chapter or the conditions imposed by the Town Board, or in the case of Category B projects the Commissioner or the designee of the Commissioner, upon an approved permit shall, in addition for the first offense, be guilty of a violation punishable by a fine of not less than \$500 nor more than \$1,000 and for a second and each subsequent offense be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not less than 15 days nor more than six months or both.
- (2) In addition or in lieu of these punishments, any offender may be ordered by the court to restore the affected wetland to its condition prior to the offense. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Director.
- (3) Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and

distinct offense.

- C. Equitable relief. The Town of Brookhaven shall have the right to seek equitable relief to restrain any violation or threatened violation of any of the provisions of this chapter.