

**TOWN OF SHARON, NEW HAMPSHIRE****SITE PLAN REVIEW REGULATIONS GOVERNING EARTH EXCAVATIONS****SECTION I: AUTHORITY**

Chapter 155-E of the New Hampshire Revised Statutes Annotated (RSA) stipulates that, with some exceptions, all earth excavations in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority vested in planning boards by RSA 155-E, the Sharon Planning Board adopts the following regulations to govern the excavation and processing of earth materials in the Town of Sharon. The provisions of RSA 155-E are hereby incorporated by reference into these regulations.

**SECTION II: PURPOSE AND SCOPE**

It is necessary to obtain a special exception from the Zoning Board of Adjustment prior to the excavation, quarrying and removal of loam, sand, gravel, clay, stone or similar earth materials and the filing of land with any material. If a special exception is granted, applicant will then follow the procedures given in this regulation.

The basic goal of this regulation is to insure that excavations carried out under the special exception conform to the conditions in the zoning ordinance under which the special exception was granted. For the purpose of achieving this goal, no earth material may be removed in the Town except in accordance with these regulations.

**SECTION III: DEFINITIONS**

- A. **Abutter** shall mean any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For the purposes of receiving testimony only, and not for the purposes of notification, the term **abutter** shall include any person who is able to demonstrate that his/her land will be directly affected by the proposal under consideration. In the case of an abutting property being under a condominium or collective ownership, the term **abutter** means the officers of the collective or association as defined in RSA 356-B:3, XXIII.
- B. **Applicant** shall mean the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.
- C. **Application** shall mean a completed application for an excavation permit or amendment thereto. It shall not be considered complete until all of the items listed in Section XII have been addressed by the applicant in a form acceptable to the Planning Board.
- D. **Earth** shall mean sand, gravel, rock, soil, or construction aggregate produced by quarrying, crushing, or any other mining activity or other such naturally occurring unconsolidated materials that normally mask the bedrock.
- E. **Dimension Stone** shall mean rock that is cut, shaped, or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. **Dimension stone** includes quarry blocks from which sections of dimension stone are to be produced. **Dimension stone** does not include earth as defined in paragraph (D) above.
- F. **Excavation** shall mean a land area, including all slopes, which is used or has been used for the commercial taking of earth.
- G. **Commercial** shall mean any use of any earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different from the ownership of the land

from which the earth is excavated. Excavations which use earth materials in the processing of other material such as, but not limited to, concrete, asphalt, or other building materials shall be considered commercial.

- H. **Excavation Site** shall mean any contiguous area of land in common ownership upon which excavation takes place.
- I. **Excavation Area** shall mean the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E.
- J. **Expansion** shall mean the removal of earth material from an area beyond the limits of an excavation area that existed as of a specific date.
- K. **Reclamation** shall mean the restoring of an excavation site to at least the minimum standard as outlined in Section VIII of these regulations.
- L. **Stationary Manufacturing and/or Processing Plants** shall mean facilities which are permanently placed on the site for the purposes of sorting, washing, screening, crushing, classifying, drying, or other processing of excavated earth materials.
- M. **Pit agreement** shall be the signed written agreement between the owner of a site and the excavator or operator which defines all activity relating to the excavation of that site.
- N. **Board** shall mean the Sharon Planning Board unless specified otherwise.

#### **SECTION IV: EXCAVATIONS REQUIRING A PERMIT**

No owner shall permit any excavation of earth on his/her premises without first obtaining a permit therefore, except:

- A. **Existing Excavations**. No excavations are known to exist in the Town of Sharon that qualify for this “grandfathered” status. In the event that such an excavation becomes known, it will be handled in accordance with the procedures given in RSA 155-E:2,I.
- B. **Stationary Manufacturing Plants**.
  1. No permit is required for excavation from an excavation site which, on August 4, 1989, was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants which were in operation on August 24, 1979, and which used earth obtained from said excavation site. Such excavation shall be performed in compliance with the operational and reclamation standards set forth in RSA 155-E:4-a, 155-E:5 and 155-E5-a which shall be the sole standards with which the excavation must comply in order to retain its non-permit status.
  2. No further permit shall be required for excavation from a site which on August 4, 1989 was contiguous to or was contiguous land in common ownership with stationary manufacturing and processing plants for which local or state permits were granted between August 24, 1979 and August 4, 1989 and which use earth obtained from said site. Operation and reclamation of such a site shall continue to be regulated by such local or state permits and any renewals or extensions thereof.
- C. **Highway Excavations**. No permit shall be required for excavation which is performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway by a unit of government having jurisdiction for the highway or an agent of that unit of government which has a contract for that highway work, subject, however, to the following:
  1. A copy of the pit agreement executed by the owner, the agent, and the unit of government shall be filed with the Planning Board prior to the start of excavation. The failure to file such agreement, or the failure of the excavator to comply with the terms of such agreement shall be deemed a violation of these regulations and may be enforced pursuant to Section XIV.

2. Such excavation shall comply with the operational and reclamation standards of RSA 155-E:4-a, 155-E:5 and 155-E:5-a which shall be the sole standards with which such excavations must comply in order to retain their non-permit status.
  3. Such excavations shall not be exempt from local zoning or other applicable ordinances unless an exemption is granted pursuant to subparagraph 4.
  4. In accord with RSA 155-E:2.IV(c), the Department of Transportation or its agent may apply directly to the appeals board created under RSA 21-L to be exempted from the requirements in local zoning or other ordinances or regulations to obtain a permit for excavation or transportation of materials being used exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, or III highway.
  5. Before beginning such an excavation, the governmental unit or its agent shall certify to the Planning Board that the excavation will be in compliance with RSA 155-E:2, IV(b), items (1) to (6).
- D. Other Exemptions.** The following projects do not require a permit and are not subject to regulation by the Town.
1. Excavations that are entirely incidental to the lawful construction or alteration of a building or structure, a parking lot or way, including a driveway, on a portion of the premises where excavation occurs. Such an excavation cannot be started, however, until all required state and local permits for such construction or alteration have been obtained.
    - a. All excavations must be shown to be connected to the proposed construction through engineering designs prior to the issuance of a building permit, and
    - b. Removal of more than 1,000 (one thousand) cubic yards of material from the site requires the granting of a special exception as detailed in Section VII.C of the Sharon Zoning and Building Ordinance.
  2. Excavations that are incidental to agricultural or silvicultural activities, normal landscaping, or minor topographical adjustment. The Planning Board shall determine what is incidental, normal and/or minor.
  3. Excavation from a granite quarry for the purpose of producing dimension stone if such excavation requires a permit under RSA 12-E for Mining and Reclamation.
  4. A person owning land abutting a site, which was taken by eminent domain or by any other governmental taking, upon which construction is taking place may stockpile earth taken from the construction site and may remove that earth at a later date after written notification to the Planning Board.

#### **SECTION V: ABANDONED EXCAVATIONS**

- A. An excavation shall be deemed abandoned if:**
- a. No earth material of sufficient weight or volume to be commercially useful has been removed from the excavation site during any two (2) year period either before, on or after August 4, 1989.
  - b. The excavation is in use but does not conform to the incremental reclamation requirements of RSA 155-E:5-a, or the owner or operator has not posted a bond or other surety or has not submitted a reclamation timetable approved by the Planning Board.
  - c. The owner or operator has neither secured a permit under these regulations nor filed a report as an existing excavation.

- B. In addition to the enforcement remedies of Section XIV, the Planning Board may order the owner of any land on which an abandoned excavation is located either to file a reclamation timetable, to be approved by the Planning Board, and bond or other security in accord with Section IX or to complete reclamation in accordance with Section VIII within a stated reasonable period of time. Such an order shall, however, only be made if the Planning Board finds that the public health, safety, or welfare requires such reclamation. A public hearing is required, for which notice has been given as described in Section XIII.**

If the owner fails to complete reclamation within the time period prescribed in the order, the Planning Board may request the Selectmen to cause the reclamation to be completed at Town expense. Such expense shall constitute an assessment against the owner and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

#### **SECTION VI: PROHIBITED PROJECTS**

No permits shall be granted for the following projects:

- A. Where the issuance of a permit would result in:**
- 1. Creation of health or safety hazards,**
  - 2. Unreasonable diminution in area property value,**
  - 3. An unreasonable change in the character of the neighborhood,**
  - 4. Unreasonable deterioration of highways or the creation of safety hazards in the use thereof or,**
  - 5. The creation of any unreasonable nuisance.**
- B. Where existing visual barriers would be removed, except to provide access to the site.**
- C. Where the excavation would substantially damage a known aquifer, so designated by the United States Geological Survey.**
- D. When the excavation requires land use permits from state or federal agencies. The Planning Board may, however, approve the application when all necessary permits have been obtained.**
- E. Where the project cannot comply with the operational and reclamation requirements of Sections VII, VIII, and IX of these regulations.**
- F. Where the project involves onsite crushing, sorting, washing or other processing of earth materials.**

#### **SECTION VII: OPERATIONAL STANDARDS**

- A. No excavations shall be permitted closer than two hundred and fifty (250) feet to an existing dwelling or to a location for which a building permit has been issued at the time the excavation permit is granted.**
- B. No excavations shall be allowed within fifty (50) feet of the boundary of a disapproving abutter or within ten (10) feet of the boundary of an approving abutter unless approval is requested by said abutter.**
- C. No excavation shall be permitted below road level within fifty (50) feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.**
- D. Vegetation shall be maintained or provided within the peripheral areas required by paragraphs A, B and C above for the purpose of erosion control, screening, noise reduction, and maintenance of surrounding property values.**

- E. No excavation shall be permitted within seventy-five (75) feet of any great pond, navigable river or other standing body of water ten (10) acres or more in area, or within twenty-five (25) feet of any other stream, river or brook which normally flows throughout the year, or any naturally occurring standing body of water smaller than ten (10) acres, prime wetland as designated in accordance with RSA 482-A:15,I or any other wetland larger than five (5) acres as defined by the Wetlands Board..**
- F. No excavation shall be permitted so close to the seasonal high-water table or to bedrock (as indicated by the required borings or test pits) as would preclude the subsequent re-use of the site in accordance with existing public health standards, local zoning, and local master plan, or would have a substantial influence on the hydrology of the excavation site or abutting properties.**
- G. No open excavation is to exceed five (5) acres in area at one time unless specifically authorized by the Planning Board.**
- H. Where the depth of excavation will exceed fifteen (15) feet or temporary slopes will exceed one to one (1:1) in grade, a fence or other suitable barricade shall be erected to warn of danger and/or limit access to the site.**
- I. Appropriate drainage shall be provided to prevent the accumulation of free standing water for prolonged periods.**
- J. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the provisions in the USDA Soil Conservation Service Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire. Excavation practices which result in siltation of surface waters or degradation of any water supplies are prohibited.**
- K. All vehicles transporting excavated material shall use adequate covering and other measures to prevent dust and spillage when loaded.**
- L. No excavation, material transfer, hauling or other unreasonably noisy activities shall take place outside of the hours of eight (8) AM to five (5) PM Monday through Friday or on a legal holiday. Other hours may be required or permitted which are compatible with neighborhood conditions but shall be specified at the time at which the permit is granted.**
- M. No fuels, lubricants, explosives or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials.**
- N. Only equipment in actual use for excavation of the site may be stored on the site.**

#### **SECTION VIII: SITE RECLAMATION STANDARDS**

- A. All earth and debris resulting from the excavation shall be removed or otherwise lawfully disposed of.**
- B. All disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation and shall be planted with seedlings and/or grass suitable to establish permanent vegetation.**
- C. For erosion control, all slopes, except for exposed ledge, shall be graded to natural repose for the soil type or to a slope proposed by the applicant and approved by the Planning Board. With no exception shall any slope be left steeper than two to one (2:1) (two (2) units horizontal to one (1) unit vertical. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.**
- D. Any standing bodies of water created by the excavation that are judged to constitute a hazard to health or safety shall be eliminated.**
- E. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in natural proportions of flow.**

- F. **Equipment and temporary structures used during excavation operations shall be removed from the site within thirty (30) days after such operations cease.**
- G. **Any excavated area of five (5) contiguous acres or more, which either is depleted of commercial earth materials, excluding bedrock, or from which no commercially useful amount of earth material has been removed for a two (2) year period, shall be reclaimed within one (1) year in accordance with Paragraphs A to F above. Excavations associated with stationary manufacturing plants under Section IV-B are exempt from this requirement.**

#### **SECTION IX: RECLAMATION BOND**

Prior to the removal of any earth material from the excavation area, the applicant shall submit to the Selectmen a bond with sufficient surety, as determined by the Planning Board, to guarantee compliance with the permit. In determining the amount of the bond, the Planning Board shall consider not only the cost of restoring the excavation site itself, but also the estimated costs of any potential damage to Town roads or facilities caused by the transportation of earth materials outside of the methods and limits authorized by the permit. The bond, or an appropriate portion thereof, shall be released when the Planning Board is satisfied that all conditions of the site reclamation plan have been complied with and that any re-vegetation has survived for a period of one (1) year from the date of planting. The amount of the bond will be reviewed annually.

#### **SECTION X: ADDITIONAL PERMIT REQUIREMENTS**

Operations requiring a permit may be subject to additional conditions, as deemed necessary by the Planning Board, that are consistent with the purpose of these regulations.

#### **SECTION XI: WAIVERS**

Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Planning Board may, at its discretion, waive certain standards contained in Sections VII, VIII and IX where, in the opinion of the Board, the proposed excavation will be of small scale and have very limited impact on the site, its abutters, and the Town. The applicant must request any desired waivers in writing as part of the application. The written decision by the Planning Board shall state specifically what requirements are being waived and include reasonable alternative conditions or standards to be met.

#### **SECTION XII: APPLICATION FOR EXCAVATION PERMIT**

Article VII.C of the Sharon Zoning Ordinance prohibits excavation of earth in the Town of Sharon without special exception from the Zoning Board of Adjustment. If the Zoning Board of Adjustment grants the special exception, the applicant then goes to the Planning Board for a permit under this regulation. The Planning Board and Zoning Board of Adjustment are encouraged to meet jointly where appropriate so as to expedite the application process.

Once the special exception has been granted, the applicant for an excavation permit shall submit to the Planning Board a completed application form, an excavation plan, a reclamation plan, hauling information, any other submission documents as requested, and all applicable fees.

Submission documents shall include the following items:

- A. **Application Form:** Application Form as per Appendix A of these regulations, completed, signed, and dated by the applicant and accompanied by copies of any necessary state and federal permits.
- B. **Excavation Plan:** Two (2) copies of an Excavation Plan at a scale of no less than one (1) inch equals one hundred (100) feet showing the area to be excavated and the land falling within

**two hundred and fifty (250) feet of the perimeter of the area to be excavated. The Excavation Plan shall include, either on the plat or in separate materials referenced on the plat:**

- 1. A locus map showing the proposed operation in relation to existing roads;**
  - 2. Sketch and description of the location and boundaries of the proposed excavation, any existing excavations and the areas of same in square feet or acres;**
  - 3. The depth and slope of the proposed excavation, proposed rate of material removal, and estimated duration of the project;**
  - 4. The name and location of all abutters;**
  - 5. The location of existing dwellings, buildings, structures, septic systems, and wells within two hundred and fifty (250) feet of the excavation boundary;**
  - 6. Lot lines, public streets, driveways, intersections, rights-of-way, and all easements within two hundred and fifty (250) feet of the excavation boundary;**
  - 7. Sketch and description of existing and proposed access roads, including their width and surface materials;**
  - 8. Topography at contour intervals of five (5) feet or less;**
  - 9. All wetlands, perennial streams and standing water;**
  - 10. A sketch showing existing surface drainage patterns;**
  - 11. The elevation of the highest annual average ground water table within or next to the proposed excavation;**
  - 12. Existing and proposed fencing, buffers, or other visual barriers, including height and materials;**
  - 13. Location of storage areas for topsoil to be used in reclamation. Storage areas should be selected with regard to erosion, siltation, dust and visibility from abutting properties and public roads;**
  - 14. Identification of all measures proposed for the storage and handling of fuel, lubricants and chemicals and measures proposed to control erosion, storm water, sedimentation, water and air pollution, dust, noise, and hazards to human safety;**
  - 15. The seal and signature of a civil engineer licensed in New Hampshire;**
  - 16. A copy of the pit agreement for the excavation.**
- C. Reclamation Plan: Two (2) copies of a Reclamation Plan which shall show the following:**
- 1. All boundaries of the area proposed for reclamation and the land within two hundred (200) feet of the site boundary;**
  - 2. Final topography of the area proposed for reclamation at contour intervals of five (5) feet or less;**
  - 3. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities;**
  - 4. Timetable for full depletion of areas within the excavation site;**
  - 5. Schedule of all final reclamation activities including seedlings, seeding mixtures, cover vegetation, fertilizer types, and application rates;**
  - 6. Photographs of the site before excavation from at least two (2) different vantage points.**
- D. Hauling Plan: Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles shall**

be provided to the Planning Board prior to the issuance of an Excavation Permit. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending upon surrounding land uses and road conditions. The Planning Board reserves the right to conduct a traffic study at the applicant's expense to ensure that public safety, neighborhood compatibility and road capacity and condition have been properly considered and optimized in the hauling plan.

- E. **Other information:** The Planning Board reserves the right to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. Any expense incurred for such information or reviews shall be borne by the applicant.

### **SECTION XIII: APPLICATION REVIEW PROCEDURES**

Following receipt of an application, the Board will review the materials submitted and will determine whether the application is complete, i.e. that all required materials have been submitted in the form specified in Section XII. If the application is incomplete, the applicant will be directed to supply the missing items and resubmit the application at the next regular Board meeting.

If the application is found to be complete, a public hearing shall be held for discussion of the application. A notice to all abutters at least fourteen (14) days in advance of said hearing shall be sent by registered mail, return receipt requested, and shall specify the grounds for the hearing as well as the date, time, and place. At least a fourteen (14) day advance notice of the time and place of such hearing shall be published in a paper of general circulation in the Town and a legal notice shall also be posted in two (2) public places in the Town.

Within one (1) month of the public hearing on the application, or any continuation thereof, the Board shall make a decision. Notice of the decision shall be recorded in the minutes of the meeting and placed on file in the Town office within three (3) days.

The applicant shall receive a copy of the minutes including the decision. If the application was approved with conditions, these conditions shall also be stated. In the event the application was disapproved, the reasons for the disapproval shall be given.

### **SECTION XIV: ADMINISTRATION AND ENFORCEMENT**

The Planning Board hereby designates the Selectmen of the Town of Sharon as its agent for enforcement of these regulations.

- A. **Permits.** Permits shall be issued only to the owner or his/her agent and shall not be transferable without the prior consent of the Planning Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site. A permit shall be valid for three (3) years and the expiration date shall be specified. A permit is automatically withdrawn if no substantial work is done on the site for a period of two (2) years and the site must then be reclaimed in accordance with Section VIII. Failure to file for a permit or renewal thereof shall be considered a violation and owners or operators who fail to file will be issued a cease and desist order.
- B. **Amendments and Renewals.** Permit holders wishing to alter the size or location of the excavation, the rate of removal of material, or the plan for reclamation shall follow the same procedures as those for a new excavation permit.
- C. **Inspections.** The Planning Board or its designated agent shall make periodic inspections of all excavation sites to determine if the operations conform to these regulations and the approved plans.

- D. Suspensions and Revocations.** The Planning Board may suspend or revoke a permit if it determines that any provisions of the permit have been violated, a material misstatement made in the application upon which the permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist. Such suspension or revocation may be subject to a motion for rehearing thereon and appeal in accordance with paragraph (E) following.
- E. Appeals.** Any person affected by the Planning Board's decision to approve or disapprove an application or amendment thereto or any suspension or revocation of a permit may appeal to the Planning Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Planning Board shall either grant or deny the request for rehearing within ten (10) days and, if the request is granted, the rehearing shall be scheduled within thirty (30) days. Any person affected by the Board's decision on a motion for rehearing may appeal that decision in accordance with RSA 677:4-15.
- Appeals in connection with highway excavations are described in Section IV.C.
- F. Fees.** The following fees shall be assessed against all applications, granted permits, and excavation operations so that the Town may recover all reasonable costs of administration of these regulations. Failure to pay these or any other costs associated with the application process shall be grounds for denial or cancellation of the permit.
1. A filing fee of fifty dollars (\$50) shall be charged for each excavation permit application, two dollars and fifty cents (\$2.50) per abutter for notification and sixty dollars (\$60) for newspaper advertising to cover the administrative costs of the Planning Board.
  2. Any other costs incurred to ensure compliance with the conditions of the permit such as site inspection by a qualified engineer or other as deemed necessary by the Board.
- G. Penalties.** Fines, penalties, and remedies for violations of these regulations shall be the same as for violations of RSA 676:15 and RSA 676:17. Whoever violates any provision of these regulations, a permit, or valid order issued hereunder shall be guilty of a misdemeanor.

#### SECTION XV: SEPARABILITY

The invalidity of any provision, sentence, paragraph, or other aspect of these regulations shall not affect the validity of any other provision.

#### SECTION XVI: EFFECTIVE DATE

These regulations shall take effect upon adoption by the Planning Board and as amended.

APPENDIX A:

**EXCAVATION APPLICATION FORM**

1. Name, mailing address and telephone number of applicant/owner

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Location of proposed excavation (street/road) \_\_\_\_\_

3. Tax map and lot number \_\_\_\_\_

4. All items specified in Section XII above must accompany this application unless waived in writing by the Planning Board

5. The following fees must accompany this application:

Filing fee.....	\$ 50.00
Advertising/posting costs.....	\$ 60.00
Abutter notification @ \$2.50 per abutter.....	\$ _____
Total.....	\$ _____

Reasonable fees in addition to those listed above may be imposed by the Planning Board to cover special reviews or investigative studies, the need for which may arise during the Board's study of the application. The applicant will be notified before such costs are incurred.

6. Applicant signatures:

I hereby certify that this application is correctly completed with all required attachments. I agree that additional costs as described in 5. above will be my responsibility.

(Signed) \_\_\_\_\_ (Date) \_\_\_\_\_

For purposes of viewing the site of the proposed excavation, members of the Sharon Planning Board and its agents are authorized access to the property. Similar access is also authorized to ensure conformance with ordinances and regulations of the Town of Sharon after a permit is granted.

(Signed) \_\_\_\_\_ (Date) \_\_\_\_\_