

MEETING DATE: \_\_\_\_\_  
DEADLINE DATE: \_\_\_\_\_

Application # \_\_\_\_\_

**ZONING BOARD OF ADJUSTMENT  
BOROUGH OF NEW MILFORD, NJ**

The following instructions are for application for a variance or special exception before the New Milford Zoning Board of Adjustment.

**I. OBTAIN FORMS FROM THE BUILDING DEPARTMENT**

When you are denied a building permit because of non-compliance with the Zoning Ordinance, obtain the following forms from the Building Department:

- a. A Letter of Denial from the Zoning Officer
- b. A Zoning Appeal Application (\$200)
- c. A Block Diagram and List of Property Owners within a two-hundred foot radius of the property (\$10)

**II. HOW THE FORMS ARE PROCESSED**

a. *BUILDING PERMIT LETTER OF DENIAL*

Keep original for your records. Return two copies to the Building Department with your completed application.

b. *NOTICE OF APPEAL* (Page 4)

Complete form in its entirety. Owner and/or agent must sign the form. Return the original and 17 copies to the Building Department.

c. *NOTICE OF HEARING TO PROPERTY OWNERS* (Page 5)

1. Upon request of the applicant and receipt of the \$10.00 fee, the Zoning Officer or his representative shall within 7 days, make and certify a list of property owners within a 200' radius of property under appeal.
2. Complete the Notice of Hearing to Property Owners in its entirety.
3. One copy of the notice must be served upon any owner/agent, of real property, within 200' of the property under appeal. Owners must be served personally or by certified, return receipt mail at the address shown on the certified list of property owners. This service must be completed 10 days prior to the hearing date.

4. If the subject property is within a 200' foot radius of another municipality, the property owners that fall within the 200' radius must be notified. This list of owners must be obtained from the adjoining municipality. The Borough Clerk of the adjoining municipality must be notified as well.
5. If the subject property is within 200' of a county road, the applicant must notify the County Planning Board at One Bergen County Plaza, 4<sup>th</sup> Floor, Hackensack, NJ 07601.
6. Completed original and 2 copies of the Notice of Hearing to Property Owners must be returned, with the completed application, to the Building Department.

d. *AFFIDAVIT OF PROOF OF SERVICE* (Page 6)

1. This form must be signed and notarized by a Notary Public after you have served the property owners within 200' of the property under appeal. Applicant must show proof of service to the notary, in the form of signatures of the property owners and/or stamped certified return receipts from the Post Office.
2. Notarized form and one copy must be returned with the list of property owners with signatures and/or the postal receipts.

e. *LEGAL NOTICE* - Newspaper Advertisement (Page 7)

1. Complete form in its entirety.
2. Notice must be published in The Record newspaper at least 10 days prior to the hearing date. Allow 3 days lead time for the newspaper to publish this notice.
3. Subsequent to publication the newspaper will provide you with an affidavit of publication. Return the affidavit and 1 copy to the Building Department with the completed application.

**NOTE:** *Do not wait to receive the affidavit of publication to submit your application. The affidavit can be submitted at a later date, provided the ad ran ten (10) days prior to the hearing date.*

f. *AFFIDAVIT OF OWNERSHIP* (Page 8)

1. This form must be notarized by a Notary Public upon proof of ownership of the subject property.

2. Return original affidavit with the completed application.

### III: THE FOLLOWING CONSTITUTES A COMPLETED APPLICATION

**The following to be dropped off 10 business days prior to the meeting:**

- |  |           |
|--|-----------|
| 1. Letter of Denial from Zoning Officer  | 17 copies |
| 2. Zoning Schedule work sheet with Zoning Officer's Denial   | 17 copies |
| 3. Completed Notice of Appeal  | 17 copies |
| 4. Block Diagram (supplied with 200' list)   | 17 copies |
| 5. Property Survey existing and proposed construction depicted to scale.   | 17 copies |
| 6. Plans of the proposed construction, in the form of detailed, scaled drawing of existing and proposed project with exact dimensions, or architectural plans. | 17 copies |

All of the above must be **collated in individual packets** (1 letter of denial, 1 zoning schedule, 1 block diagram, 1 survey, 1 set of plans **FOLDED** (not rolled) to make 17 sets & dropped off no later than ten (10) days prior to the meeting.

**The following to be dropped off before the meeting:**

1. Completed "Notice of Hearing to Property Owners"
2. Affidavit of Proof of Service with list of property owner's signatures and/or postal receipts for return receipt registered mail (green receipts)
3. Affidavit of Publication from the newspaper and a copy of the publication
4. Affidavit of Ownership
5. Completed W-9 Form (signed in Blue Ink)
6. Check for Escrow Fund (fund for attorney and engineer costs related to your application, remainder of balance to be returned 6 months after the resolution is memorialized.)

### IV: MEETINGS

The Zoning Board of Adjust holds its regular meeting the second (2<sup>nd</sup>) Tuesday of every month at 7:30 P.M. with the Public Session immediately following in the Council Chambers in the Municipal Building, 930 River Road, New Milford, NJ.

Application # \_\_\_\_\_

**NOTICE OF APPEAL  
ZONING BOARD OF ADJUSTMENT  
BOROUGH OF NEW MILFORD, BERGEN COUNTY, NJ 07646**

Property Address \_\_\_\_\_ Subject to Sale agreement (YES - NO)

Block \_\_\_\_\_ Lot \_\_\_\_\_ Zone (Residential - Business- Townhome - other \_\_\_\_\_)

Size of Lot \_\_\_\_\_ Present use (Residential - Business- Townhome- other \_\_\_\_\_)

Owned / Leased - If property is within 200' of Borough line name adjacent municipality(ies) \_\_\_\_\_

Name of Owner \_\_\_\_\_ Telephone \_\_\_\_\_

Owner's Address (if different from above) \_\_\_\_\_

Name of Applicant (if not homeowner) \_\_\_\_\_

Applicant address \_\_\_\_\_ Phone Number \_\_\_\_\_

Name of Attorney \_\_\_\_\_ Phone Number \_\_\_\_\_ Attending Meeting \_\_\_\_\_

Name of Architect \_\_\_\_\_ Phone Number \_\_\_\_\_ Attending Meeting \_\_\_\_\_

The applicant/homeowner hereby seeks relief from section (s) \_\_\_\_\_ of the New Milford Borough Ordinance. (statute numbers from denial letter)

The proposed application is contrary to the ordinance in the following way(s). Be specific attach a separate sheet if necessary. (What you are proposing and why it violates the zoning ordinance).

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

	Lot Area	Front	Right Side	Left Side	Corner	Rear	Height	Building Coverage
Required	7,500 sq.ft.	_____	_____	_____	_____	_____	_____	_____
Existing	_____	_____	_____	_____	_____	_____	_____	_____
Proposed	n/a	_____	_____	_____	_____	_____	_____	_____
Difference	n/a	_____	_____	_____	_____	_____	_____	_____

Driveway Width Required \_\_\_\_\_ Existing \_\_\_\_\_ Proposed \_\_\_\_\_ Curb Cut [ Y/N ] Size \_\_\_\_\_

Are trees being removed YES/NO How many \_\_\_\_\_ Shade Tree Commission date approved \_\_\_\_\_

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

Filed on behalf of Applicant by \_\_\_\_\_ Title \_\_\_\_\_

New Milford, New Jersey

Date: \_\_\_\_\_ 20 \_\_\_\_\_

Application # \_\_\_\_\_

**Notice of Hearing to Property Owners**  
(Delete Inapplicable Sections)

**TO WHOM IT MAY CONCERN:**

In compliance with Section 30-3.4 K2 of the Land Use Ordinance of the Borough of New Milford, New Jersey, notice is hereby given to you that (I) (We) \_\_\_\_\_

propose to \_\_\_\_\_  
(describe specifically what is being proposed)

\_\_\_\_\_ and any other relief the need of which becomes apparent at the time of the hearing at (property address)

\_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Anyone affected by this application may have an opportunity to be heard at a meeting to be held on \_\_\_\_\_, 20\_\_\_\_\_, at 8:00 p.m. in the Municipal Building, 930 River Road, New Milford, New Jersey.

All documents relating to this application may be inspected by the public between the hours of 8:00 a.m. and 4:00 p.m. in the Zoning office in the Municipal Building, 930 River Road, New Milford, NJ.

\_\_\_\_\_  
Signature

**NOTE:** This notice must be personally served or sent by certified return receipt mail at least 10 days prior to the day of the hearing, and proof of service given to the Secretary of the Board of Adjustment at least 2 days prior to the day of the hearing.

New Milford, New Jersey

Date: \_\_\_\_\_ 20 \_\_\_\_\_

Application # \_\_\_\_\_

**Affidavit of Proof of Service  
Zoning Board of Adjustment  
of the  
Borough of New Milford**

Proof of Service of Notice, as required by Statute, must be filed and verified with the Board Secretary at least two (2) days prior to the meeting or the application will not be heard.

State of New Jersey

County of Bergen

\_\_\_\_\_ (Applicant), of full age, being duly sworn according to law, on his/her oath deposes and says that he/she resides at \_\_\_\_\_ in the Borough of New Milford, County of Bergen, and State of New Jersey, and that he did on \_\_\_\_\_ 20 \_\_\_\_\_, at lease ten (10) days prior to hearing date, give personal notice to all property owners within 200 feet of the property located at \_\_\_\_\_

Said notice was given either by handing a copy to the property owner or by sending said notice by certified mail. Copies of the registered receipts and/or a list, with signatures, of affected property owners are attached hereto.

\_\_\_\_\_  
Signature of Applicant

Sworn and subscribed to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

**Legal Notice  
Board of Adjustment  
Borough of New Milford**

To All Interested Parties:

A Public Hearing will be held by the Board of Adjustment of the Borough of New Milford, in the County of Bergen, State of New Jersey on \_\_\_\_\_ at 8:00 p.m. in the Borough Hall, 930 River Road on the application numbered \_\_\_\_\_.

The application submitted by:

Name \_\_\_\_\_

Address \_\_\_\_\_

Town \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

The property involved is (Address) \_\_\_\_\_

which is located in a \_\_\_\_\_ Zone.

The proposed \_\_\_\_\_ is contrary to the ordinance \_\_\_\_\_

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

At the time of the hearing, the applicant reserves the right to amend the application to apply for any other variances, waivers, interpretations, and/or relief the need of which becomes apparent.

The property is known on the Borough of New Milford's tax map as:

Block \_\_\_\_\_ Lot \_\_\_\_\_

All documents relating to this application are on file in the office of the Zoning Officer and may be inspected between the hours of 8:00 a.m. and 4:00 p.m. at the New Milford Borough Hall, 930 River Road, New Milford, New Jersey.

**Affidavit of Ownership**

**Board of Adjustment  
Borough of New Milford**

Borough of New Milford)

) as:

County of Bergen )

\_\_\_\_\_ being duly sworn, deposes and says, that  
(he/she/they) is (are) the owner (s) of the land known as: Block \_\_\_\_\_ Lot \_\_\_\_\_,  
commonly known as (Address) \_\_\_\_\_  
and/or any building or structure located on same, and does approve and agree to the terms and  
conditions of the plans submitted and approved by the State of New Jersey, County of Bergen  
and Borough of New Milford.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Sworn and subscribed to before me on

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_

BLUE INK

# Request for Taxpayer Identification Number and Certification

Give form to the  
requester. Do NOT  
send to the IRS.

Please print or type

Name (if a joint account or you changed your name, see Specific Instructions on page 2.)

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  Other ▶

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, if you are a resident alien OR a sole proprietor, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How To Get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

Social security number								

OR

Employer identification number								

## Part II For Payees Exempt From Backup Withholding (See the instructions on page 2.)

## Part III Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

**Certification instructions.**—You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here

Signature ▶

Date ▶

**Purpose of Form.**—A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are an exempt payee.

**Note:** If a requester gives you a form other than a W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What Is Backup Withholding?**—Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding

include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
- You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only), or

5. You do not certify your TIN when required. See the Part III instructions on page 2 for details.

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

## Penalties

**Failure To Furnish TIN.**—If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil Penalty for False Information With Respect to Withholding.**—If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal Penalty for Falsifying Information.**—Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.**—If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

## BOROUGH OF NEW MILFORD CODE

shall be made to the Administrative Officer upon filing the application. All Planning Board fees applicable to cases before the Board of Adjustment shall also be paid.

1. All Board of Adjustment applications: Two hundred (\$200.00) dollars.
2. Tax map listing of property owners: Ten (\$10.00) dollars.
3. Use Variance:
  - (a) Escrow deposit: Four hundred twenty-five (\$425.00) dollars.
  - (b) Minimum legal escrow deposit: Two hundred (\$200.00) dollars.
- c. If the applicant is applying to the Planning Board or Board of Adjustment for approval under more than one (1) of the items set forth in paragraph a, 1-11 above, then the applicant shall pay the higher of the two (2) application fees set forth in those sections. Only one (1) application fee shall be charged per applicant.
- d. *Reapplication Fees.* All Planning Board/Board of Adjustment fees shall apply to any reapplication submitted by an applicant in cases of Board disapproval or voluntary withdrawal prior to Board action.
- e. *Charges to Escrow Account.* The following charges shall be applied to the escrow account:
  1. Charges for the professional review of the application.
  2. Charges for letters of recommendation as a result of a review.
  3. Telephone conferences.
  4. Review of additional documents.

**BOROUGH OF NEW MILFORD  
BERGEN COUNTY, N.J.  
ORD. # 2014:07**

INTRODUCED	March 24, 2014
PASSED FIRST READING	March 24, 2014
PUBLIC HEARING	April 28, 2014
ADOPTED	April 28, 2014
APPROVED	April 28, 2014

Mayor Ann Subrizi

This is to certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of the Borough of New Milford, New Jersey on April 28, 2014 and that same was approved by the Mayor on April 28, 2014.

Christine Demiris  
Borough Clerk

.....  
**ORDINANCE NO. 2014:07**

**AN ORDINANCE TO AMEND CHAPTER XXI OF THE  
ORDINANCES OF THE BOROUGH OF NEW MILFORD  
ENTITLED "SOIL REMOVAL"**

**WHEREAS**, the members of the Mayor and Council of the Borough of New Milford, with the recommendation of the New Milford Planning Board, have determined the present ordinance does not adequately address soil removal in the Borough of New Milford; and

**WHEREAS**, The Mayor and Council of the Borough of New Milford wish to amend Chapter XXI, entitled "Soil Movement" to adequately address soil removal in the Borough of New Milford;

**NOW THEREFORE BE IT ORDAINED**, by the Mayor and Council of the Borough of New Milford that Chapter XXI, Soil Removal, is hereby removed and replaced in its entirety as follows:

**21-1 PURPOSE.**

The Borough Mayor and Council do hereby find and declare that:

a. Unregulated and uncontrolled disturbance, relocation, filling, excavation and removal of soil on a large scale by developers and excavators in and upon lands in the Borough has resulted in conditions detrimental to the public health, safety and general welfare, substantially hampering and deterring the efforts of the Borough to effectuate the general purpose of municipal planning.

b. Continuation of the unregulated and uncontrolled disturbance, relocation, filling, excavation and removal of soil will result in serious and irreparable damage to the public welfare by reason of consequent soil erosion by water and wind; inadequate and improper surface water drainage; a decrease in or destruction of the fertility of the soil; removal of lateral support of abutting streets, lands and premises; creation of dust storms and places for mosquito breeding; creation of dangerous depressions or pits; deterioration of property values; rendering of lands unfit or unsuitable for their most appropriate use; and creation of other factors and elements hampering and deterring the coordinated, adjusted and harmonious development of the Borough.

## **21-2 DEFINITIONS.**

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

*Developer* shall mean an excavator.

*Disturbance* shall mean the cutting of trees, movement of soil, including plowing, spading, cultivating, harrowing or disking of soil, landscaping and gardening.

*Excavator* shall mean any person who moves soil.

*Lot* shall mean any parcel of land or portion thereof, the boundary lines of which can be ascertained by reference to the maps or records in the office of the Borough Tax Assessor or in the office of the Bergen County Clerk.

*Major soil-moving permit* shall mean a permit for the moving of more than two hundred (200) cubic yards of soil on any lot within any twelve (12) consecutive months, as required by this chapter.

*Minor soil-moving permit* shall mean a permit for the moving of less than two hundred (200) cubic yards of soil or the disturbance of greater than two thousand (2,000) square feet of a lot within any twelve (12) consecutive months, as required by this chapter.

*Move* shall mean to dig, excavate, remove, deposit, place, fill, grade, re-grade, level or otherwise alter or change the location or contour or to transport or to supply. This term shall not be construed to include plowing, spading, cultivating, harrowing or disking of soil or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes, landscaping and gardening by homeowners or agents of homeowners, provided that it does not substantially alter existing drainage patterns. For the purpose of calculating the quantity of soil being moved, the total soil movement shall be the sum of the total excavated soil and the soil imported to the lot.

*Owner* shall mean any person seized in fee simple of any lot or having such other interest or estate therein as will permit exercise of effective possession thereof or dominion thereover.

*Soil* shall mean any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter, including any synthetic substance used as a substitute or in conjunction with soil.

*Topsoil* shall mean soil that, in its natural state, constitutes the top layer of earth and is composed of two (2%) percent or more, by weight, of organic matter and has the ability to support vegetation.

## **21-3 SOIL-MOVING PERMIT REQUIRED.**

No person or excavator shall move any soil, or change or alter the grade of any property, within the Borough without first obtaining a soil moving permit as hereinafter provided. No construction permit nor Certificate of Occupancy shall be issued, as the case may be, until a soil moving permit has been issued.

## **21-4 EXCEPTIONS.**

The provisions of this chapter shall not apply to the following operations:

- a. The moving of twenty-five (25) cubic yards or less of soil on any lot within a twelve (12) month period.
- b. The moving of soil in connection with the construction or alteration of the basement or foundation of a building for which a proper building permit has been issued by the Construction Official of the Borough.
- c. The moving of soil for the installation of underground utility lines, provided that all necessary permits have been issued.
- d. The moving of soil for farming and gardening by home owners, provided it does not substantially alter the drainage patterns of the lot.

#### **21-5 PERMIT TO BE ISSUED TO OWNER; TERM OF PERMIT.**

No soil-movement permit shall be issued to any person other than the owner of the lot, and only if the moving of soil from, in or upon the lot is necessary for the immediate development of the property and the normal grading of the lot concerning which the application is made. No permit shall be issued for longer than one (1) year.

#### **21-6 MINOR SOIL-MOVING PERMIT.**

Anyone engaged in the movement of soil of two hundred (200) cubic yards or less of soil or the disturbance of greater than two thousand (2,000) square feet of a lot within any twelve (12) consecutive months, shall make application to the Zoning Officer for a permit prior to commencing operations. The Zoning Officer, upon receipt of a complete application, shall refer the application to the Borough Engineer who shall make a field investigation and shall recommend the issuance of the permit or recommend denial of the permit, giving his reasons for the denial.

#### **21-7 MAJOR SOIL-MOVING PERMIT.**

Any soil-moving permit classified by the Zoning Officer as a major soil moving application and referred to the Planning Board. A major soil-moving permit shall be required to be approved by the Planning Board after a public hearing, with notice being required to be given to all persons as set forth in N.J.S.A. 40:55D-12. The Planning Board shall fix a date for the public hearing within forty-five (45) days after the receipt of the complete application as determined by the Borough Engineer. The issuance of the major soil-moving permit shall be made by the Planning Board.

#### **21-8 APPLICATION PROCEDURE.\***

The procedure for applying for and issuance of a soil-moving permit shall be as follows:

- a. Applications for minor soil-moving permits shall be filed with the Zoning Officer and shall be accompanied by the fee prescribed in this chapter. Applications shall be made in triplicate on forms prescribed by the Borough.\*
- b. Applications for major soil-moving permits shall be filed with the Zoning Officer and shall be accompanied by the fee prescribed in this chapter. Applications shall be made in triplicate on forms prescribed by the Borough for determination of completeness.\* Upon determination by the Borough Engineer that a

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\*Editor's Note: A copy of the soil-moving permit application referred to herein may be found at the end of this chapter.

complete application has been submitted, the applicant shall submit fifteen (15) copies to the Planning Board for scheduling of a public hearing date.

c. *Form of Application.*

1. The names and address of the applicant.
2. The names and address of the owner of the property.
3. The relationship between the applicant and owners.
4. Name and address of the person having express charge, supervision and control of the proposed soil moving operation.
5. The lot, block number and street address of the lot or lots involved.
6. The purpose or reason for the moving of soil.
7. The estimated quantity, in cubic yards, and type of soil to be moved with supporting calculations.
8. A statement as to how the moving of the soil will affect all trees with a diameter of four (4") inches or more.
9. The proposed date of commencement and completion of the work.
10. A description of equipment to be used in the soil movement operations.
11. A list of the number and size of trucks and other vehicles.
12. A listing of the route to be used by the vehicles in the moving and installing of the soil.
13. The source, address and town, of the soil moved to the lot. A certification from a certified laboratory as to the soil suitability or the certification from an environmental consultant based upon the historical survey of the source site of the soil suitability.
14. Proof of liability insurance in such an amount and form as the Planning Board may require.
15. Method of abating noise and dust in the soil moving operation.
16. A statement granting permission to the Borough officials or their employees to enter the premises and make surveys and inspections as the work progresses.
17. Such other pertinent data as the Planning Board may hereinafter reasonably require.

d. *Topographical Map.* Accompanying the application shall be a topographical map prepared by a licensed professional engineer and a licensed professional land surveyor. The map shall be prepared at a scale not to exceed thirty (30) feet to the inch. The topographical map shall include the following:

1. Boundary limits of the entire lot, including metes and bounds information.
2. Limits of the area to be disturbed or graded for which the permit is sought.

3. The present grades at two-foot intervals of the area to be disturbed or graded and the area twenty-five (25) feet outside the limits of the area to be disturbed or graded.
4. The proposed grades at two (2)-foot intervals of the area to be disturbed or graded and the area twenty-five (25) feet outside the limits of the area to be disturbed or graded, using a designation different than those used for the present grades.
5. The present grades at two (2)-foot intervals of all adjacent properties to a distance of at least fifteen (15) feet from the lot in question, including the location of any structures within such fifteen (15) feet if the area to be disturbed or graded is within twenty-five (25) feet of the property line.
6. The location and size of proposed structures, with first floor and basement elevations of all proposed buildings.
7. All elevations shall be computed based on United States Coast and Geodetic Survey datum.
8. Location of all trees greater than four (4) inches in diameter.
9. The quantity of soil for which the soil-moving permit is sought, together with the calculations used to arrive at such determination of quantity. The quantity shall be calculated by accepted earthmoving computations, such as the average end area method. The quantity of soil to be moved shall be certified as accurate by a licensed professional engineer.
10. Details of retaining walls and other structures proposed for support of soil, together with elevations of proposed grade above and below any retaining wall and at the top of the wall. All retaining walls must be designed, construction supervised and certified by a licensed professional engineer.
11. The plan must clearly delineate soil erosion and sediment control measures and construction techniques that are to be implemented to minimize the loss of soil due to erosion.
12. The plan must provide construction details for the soil erosion and sediment control measures and construction techniques that are to be implemented to minimize the loss of soil due to erosion.
13. A notation as to the method of restoration of disturbed areas. The method of permanently stabilizing all disturbed areas.
14. All easements and restrictions of record which may affect the subject lot or lots.
15. Existing surface and subsurface drainage conditions and patterns of the lot and surrounding area.
16. The presence, absence or location of freshwater wetlands on the lot or within fifty (50) feet of the area to be disturbed.
17. Location of any water body, on the lot or within fifty (50) feet of the area to be disturbed.

#### **21-9 REVIEW OF APPLICATION; HEARING.**

An application for a soil-moving permit shall be reviewed and considered in the following manner:

a. *Minor Soil-Moving Permit; Issuance.* Within thirty (30) days of the receipt of a completed application, the Borough Construction Official shall render a determination based upon the recommendation of the Borough Engineer.

b. *Major Soil-Moving Permit; Issuance.* The Planning Board shall review and render a determination within ninety-five (95) days after the submission of a completed application.

## **21-10 APPEAL.**

In the event any person is aggrieved by the action of the Planning Board, such person, the applicant may, not later than thirty (30) days after such action, appeal to the Borough Council. The Borough Council may, by majority vote, sustain, or by two-thirds (2/3) vote of its entire membership, overrule the Planning Board's recommendation.

Any proper party may appeal to a court of appropriate jurisdiction pursuant to applicable law.

## **21-11 FACTORS IN CONSIDERING APPLICATIONS.**

In considering and reviewing applications for minor and major soil-moving permits, the Borough Planning Board and Borough Engineer shall be guided by the general purposes of municipal planning and the following standards:

- a. Soil erosion by water and wind.
- b. No soil moving shall be permitted to result in any increase of velocity or change in direction of surface water runoff without such water being appropriately managed on site so as to not adversely affect other properties.
- c. Soil fertility and soil-bearing capacity.
- d. Lateral support of abutting streets and lands.
- e. Public health and safety.
- f. Land values and uses.
- g. The general welfare of the municipality and of the citizens of the Borough of New Milford.
- h. The unsightliness of the premises after soil movement.
- i. The effect of flooding upon the premises in question or surrounding properties.
- j. No soil moving permit shall be issued unless the applicant demonstrates, upon a preponderance of the evidence, that the granting of the soil-moving permit would not have any substantial detrimental impact upon any person, surrounding property or the Borough.
- k. In development of land, natural grades should be preserved wherever possible, and soil moving shall only be permitted when good and sufficient reason appears for such soil moving.

l. No soil moving shall be permitted which shall result in the removal or destruction of trees in violation of the standards established under the Tree Removal Ordinance of the Borough. In all respects, the applicant shall provide a method for protection of trees acceptable to the Borough, provide welling or mounding where appropriate.

m. All proposed structures shall be situated on the lot so as to require the least amount of soil moving as is practical.

n. Whether the proposed removal of soil constitutes a commercial activity.

o. No slope created by soil moving shall be permitted to exceed a grade which rises or falls one (1) foot vertically for every four (4) feet horizontally.

p. Such other factors as may bear upon or relate to the coordinated, adjusted harmonious physical development of the Borough.

q. Proposed soil and sedimentation control plan.

## **21-12 SOIL-MOVING APPLICATION FEES.**

a. *Soil-Moving Application Fee.*

1. Minor Soil-Moving Application Fee: \$100.00 plus a fee of \$250.00 for the Borough Engineer's review. An additional \$125.00 fee must be posted for each plan revision.

2. Major Soil-Moving Application Fee: \$1,500.00 plus a minimum escrow deposit of \$1,500.00 for the review by the Borough Engineer and a minimum escrow deposit of \$1,500.00 for the Planning Board Attorney.

3. Soil application fee will not be refundable.

b. *Exemption from Fees.* All utility companies, Federal, State and local authorities, including the Board of Education and charitable organizations, may be exempt from the requirements of soil application fees and soil-movement fees at the discretion of the Planning Board.

## **21-13 PERFORMANCE BONDS, INSPECTION FEES AND PERMIT CLOSEOUTS.**

a. A road restoration bond of a minimum of three thousand (\$3,000.00) dollars must be posted for soil-moving permits. The purpose of this bond is to cover the cost of municipal road repairs damaged during the soil-moving operations.

b. A performance bond shall be posted for all major soil-moving permits. The amount of the performance bond shall be determined by the Borough Engineer and shall be an amount sufficient to cover the cost of the property restoration, to cover the cost of permanent soil erosion control measures if the work is not satisfactorily completed by the applicant and to cover the costs of Borough review and inspection. The bond amount shall be estimated by the Borough Engineer.

c. The Planning Board may request additional bonds for improvements shown on the soil-moving application or plan, such as, but not limited to, the following: retaining walls, planting, drainage, erosion,

control damages to hauling route, etc. In ascertaining the rate upon which to compute the amount of the bond, the Planning Board shall take into consideration such factors as may bear upon the facility with which the proposed work may be performed, including, but not limited to, the type and character of soil; the extent of the area over which the soil-moving operations are to be conducted; the extent and depth of the various cuts and fills; the extent to which the area of operations is wooded; the proximity of the proposed operations to streets, buildings, structures, natural or artificial streams or watercourses and general drainage conditions.

d. An engineering inspection escrow fee of a minimum of one thousand (\$1,000.00) dollars must be posted for major soil-moving permits. Additional engineering escrow monies must be posted upon notice of the depletion of the escrow monies.

e. Requests for the release of any bonds posted or any unused escrow fees in accordance with the terms of this section or the resolutions of the Planning Board shall be accompanied by an affidavit, stating that the soil-moving operation has been completed in accordance with the application and all plans, maps and other data filed therewith and in accordance with all resolutions and conditions therein adopted by the Planning Board.

#### **21-14 FORM, DATE AND EXPIRATION OF PERMIT; HOURS OF OPERATION.**

a. The soil-moving permit shall be in such form as may be prescribed by the Planning Board. A minor soil-moving permit shall be signed by the Zoning Officer. A major soil-moving permit shall be signed by the Secretary of the Planning Board or the Chairman of the Planning Board, and it shall contain any special conditions set forth in the recommendation.

b. The soil-moving permit shall be dated as of the date it is actually issued, and the term of said permit shall not exceed one (1) year.

c. All permits shall automatically expire on the termination date, unless application for renewal has been made and approved in writing, extending such permit.

d. *Hours of Operation.* There shall be no soil-moving operations which include loading and unloading at any time before 7:00 a.m. or after 6:00 p.m., prevailing time, nor at any time on Saturday, Sunday or legal holidays as defined by the Borough's current restrictions for contractors.

e. No soil-moving permit shall be issued until it is determined that there are no outstanding taxes or assessments for local improvements due or delinquent on the property for which the application is made.

#### **21-15 PROHIBITED ACTS.**

No person to whom a soil-moving permit has been issued shall:

a. Conduct or maintain on the premises any sand, gravel or similar kind of pit; any sand- or gravel-washing or -screening machinery or equipment; any business or industry not permitted in the district in which said premises are located and classified by the New Milford Zoning Ordinance,\* as amended and supplemented; or any endeavor or enterprise other than the grading or re-grading of said premises in accordance with the provisions of said permit, and, where applicable, the necessary disposal of soil incidental to said grading or re-grading.

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\*Editor's Note: The New Milford Zoning Ordinance may be found codified in Chapter XXX.

b. Conduct or maintain any soil-moving operations without having first made adequate provisions by means of water, calcium chloride, or otherwise, for the prevention of dust incidental to the use of vehicles, machinery and equipment on the lands described in the soil-moving permit.

c. Neglect to dispose of, on or before the completion date stated in the application, any partially or wholly excavated boulders or other noncombustible debris resulting from the soil-moving operations by burial or removal and any partially or wholly excavated stumps felled or uprooted trees or other combustible debris resulting from the soil-moving operations.

d. Conduct any soil-moving operations beyond the expiration date as set forth in the soil-removal permit or extended expiration date as may duly be granted by the Planning Board.

## **21-16 GENERAL REGULATIONS.**

Soil-moving conducted in the Borough shall be preformed in accordance with the following regulations:

a. In all operations for which a permit is required:

1. Prior to the start of soil-movement operations, the disturbance of a lot, or construction, the following must be performed.

(a) The limits of disturbance must be delineated with construction fencing.

(b) Sediment barriers must be installed and maintained throughout the entire length of the project.

(c) Tree protection measures must be installed.

2. Lands shall be graded to conform to the approved contour lines and grades.

3. Streets, roads and paved surfaces shall be cleaned, at the applicant's expense, on a daily basis of sediments and debris.

4. The top layer of soil to a depth of six (6) inches shall not be removed from the premises, but shall be set aside and re-spread over the premises when the remainder of the soil has been moved.

b. In all operations, whether or not a permit is required:

1. Prior to the start of soil-movement operations, the disturbance of a lot, or construction, the following must be performed:

(a) Sediment barriers must be installed and maintained throughout the entire length of the project.

(b) Tree protection measures must be installed and approved by the Director of Public Works.

2. All boulders, tree stumps and other debris shall be removed from the property.

3. In dry weather the person conducting such operation shall dampen the ground where operations are conducted to prevent dust.

4. No trucks used shall be loaded above the level of the sides of the truck, to prevent spillage, and all streets shall be cleaned, at the applicant's expense, each day, of any spillage or soil on such streets resulting from truck operations.

5. All truckloads shall be covered with tarpaulin and, if necessary, treated by water or chemical to prevent flying dust.

6. All vehicles engaged in such operations shall use as routes only those Borough streets which have been approved by the Planning Board.

7. The entire area covered by the work shall be maintained and left in such manner as not to create or maintain a nuisance or condition hazardous to life and limb or to the health or general welfare of the inhabitants or the Borough of New Milford.

8. All excavation, removal and other mandatory groundcover work, including restoration of property to final grades and subsequent seeding, must be completed within one (1) year from the date of the permit.

9. No more soil shall be removed than is reasonably necessary for the development and use of the land.

10. No soil removal shall be allowed which shall cause drainage to adjacent property or prejudicially affect the values of adjacent properties.

11. The owner or person in charge of soil removal/deposit shall conduct the operations to minimize, to the extent practicable, soil transport from water runoff, creation of dust or other airborne contamination.

#### **21-17 TOPSOIL.**

a. Whenever any developer or excavator shall move topsoil in or upon any lot, provision shall be made for the storage of said topsoil within the boundary lines of said lot.

b. Except as hereinafter provided, all of the topsoil so stored shall be uniformly replaced over the entire area or surface of the lot on or before the completion date set forth in the soil-moving permit, so that the final grade or grades of said replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map.

c. No developer or excavator shall remove to any point beyond the boundary lines of the lot any topsoil whatsoever unless and until topsoil not inferior in quality to that to be removed shall first have been replaced uniformly to a depth of not less than six (6) inches, measured from the proposed final grades as shown on the topographical map, over the entire surface or area of the lot, excepting only such portions thereof as shall be or shall have become, since the date of filing of said topographical map, permanently covered by a building or structure, street pavement, curb, sidewalk, driveway or other paved area or by any body of water or waterway. In no event shall the developer or excavator remove from the lot more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil as aforesaid.

#### **21-18 AUTHORIZED AUTHORITY AND INSPECTIONS.**

For the purpose of administering and enforcing this chapter, any member of the Planning Board, duly authorized agent of the office of the Borough Engineer and Zoning Officer's office of the Borough shall have the right to enter into and upon any lands in or upon which soil-moving operations are being conducted to

examine and inspect such lands. The Zoning Officer is hereby authorized to issue stop work orders and summonses for any violation of this chapter as determined by the Zoning Officer or the Borough Engineer.

**21-19 VIOLATIONS AND PENALTIES.**

a. Any person who violates the terms or provisions of this section shall be subject to a minimum fine of one hundred (\$100.00) dollars, up to a maximum penalty as permitted by Chapter I, Section 1-5. Subject to the foregoing minimum and maximum penalties, the presumptive penalty shall be calculated on the basis of five (\$5.00) dollars per cubic yard of soil moved in violation of this section. A continuing violation may be deemed committed and a new summons may be issued, for each consecutive one (1) day period during which a violation continues.

b. The penalties set forth above may, upon a written plea of "guilty," be paid and satisfied through the Violations Bureau of the Municipal Court of the Borough of New Milford without the requirement of a court appearance.

c. All fines and penalties collected pursuant to this section shall be deposited or credited to the "Borough of New Milford Replacement Tree Trust Fund," which shall be administered by the Department of Public Works.

d. In addition to any other remedies, the Borough may enforce any provision of this ordinance or any condition of any soil moving permit by an action in Superior Court where in the Borough may seek legal and equitable remedies that may include cost of restoration damages and legal fees.

**SOIL MOVING PERMIT APPLICATION**

(Section 21-8)

Date Received \_\_\_\_\_

**BOROUGH OF NEW MILFORD**

**APPLICATION AND SUBMITTAL REQUIREMENTS FOR SOIL-MOVING PERMITS  
FOR ALL APPLICATIONS (MINOR & MAJOR) SUBMIT THE FOLLOWING:**

( < 25 CUBIC YARDS – NO PERMIT REQUIRED)

1. Appropriate Fee:

Minor (25 Cubic Yards – <200 Cubic Yards)	Major (>200 Cubic Yards)
\$100.00	\$1,500.00
\$250.00 Engineering fee + \$125.00 fee for each plan revision Bond = \$0.00	Additional Engineering Escrow as Deemed Necessary \$1,500.00 min. Engineering Escrow + \$1,500.00 min. Attorney Escrow  Road Bond = \$3,000.00  Eng. Inspection Escrow = \$1,000.00  Perf. Bond Amt. – Est. by Boro Eng.

2. This form completed and signed.

3. Submit a Certificate of Insurance naming the Borough of New Milford as additional insured.

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Application for \_\_\_\_\_ (Type) of Soil Permit

Block \_\_\_\_\_ Lot \_\_\_\_\_

Property Location (Street Address) \_\_\_\_\_

Current Owner's Name \_\_\_\_\_ Phone \_\_\_\_\_

Owner's Address \_\_\_\_\_

(If Applicant is other than owner; Please complete the following) Relationship applicant/owner \_\_\_\_\_

Applicant's Name \_\_\_\_\_ Phone \_\_\_\_\_

Applicant's Address \_\_\_\_\_

Purpose or reason for soil moving \_\_\_\_\_

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Estimated quantity to be moved \_\_\_\_\_ C.Y.

Expected Start Date \_\_\_\_\_ Expected Completion Date \_\_\_\_\_

4. How will soil movement affect trees with a diameter of 4" or more and, what protection will be provided for such trees?

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

5. Location/Source of Soil to be brought to Site (Import) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_ (Address and Town)

Attach a certification from a certified laboratory as to the soil suitability or the certification from an environmental consultant based upon the historical survey of the source site of the soil suitability.

6. Location/Destination of Soil (Export) \_\_\_\_\_ (Address and Town)

7. Person in Charge of Soil Operation: Name \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

8. Description of Equipment and Trucks to be Used \_\_\_\_\_

Number of Trucks to be Used \_\_\_\_\_

9. Truck Route

\_\_\_\_\_

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

Trucks and equipment are to use arterial roads and limit truck movements on local streets.

Signature of Applicant \_\_\_\_\_ Date \_\_\_\_\_

Signature of Property Owner \_\_\_\_\_ Date \_\_\_\_\_

By signing this application form, I hereby grant permission to Borough Officials and their employees to enter the property to make inspections/surveys as the work progresses.

**For Official Use Only**

DATE APPROVED: \_\_\_\_\_ BY: \_\_\_\_\_ FEE: \_\_\_\_\_

**BE IT FURTHER ORDAINED** that the remainder of this ordinance remains unchanged and that this amendment shall become effective upon passage and publication in accordance with law.

**BE IT FURTHER ORDAINED** that a copy of this ordinance be forwarded to the New Milford Planning Board.

This is to certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of the Borough of New Milford, New Jersey on April 28, 2014 and that

Christine Demiris  
Borough Clerk

Introduced: March 24, 2014  
Adopted: April 28, 2014