

ARTICLE I  
Policy

**§ 129-1. Purpose; findings.**

- A. Rapid population growth, the spread of development and increasing demands upon natural resources are encroaching upon or disturbing many of the wetlands within the Town of Shelter Island, which, if preserved and maintained in an undisturbed and natural condition, are a highly important natural resource, as well as a physical, social, aesthetic, recreational and economic asset to the Town.
- B. Wetlands constitute one of the most vital and productive areas in the natural world and collectively have many values including but not limited to marine food chain productions, wildlife habitat, conveyance of flood- and stormwater, outdoor recreation, waterfowl production, protection of water quality and reduction in sediment, protection of groundwater recharge and discharge, sedimentation control, education and research, open space and aesthetic appreciation, and fisheries production. Therefore, the protection and preservation of both tidal and freshwater wetlands are essential.
- C. The Shelter Island Comprehensive Plan calls for regulatory action which establishes a goal to protect the functions and values of the Town's sensitive wetlands. It is the purpose of this chapter to provide for the protection, preservation, proper maintenance and use of the Town's wetlands by preventing or minimizing erosion due to flooding and stormwater runoff, by maintaining the natural groundwater supplies, preserving and protecting the purity, utility, water retention capability, protecting and encouraging natural plant and wildlife diversity, ecological functions, recreational usefulness and natural beauty of all wetlands, and other related features of the terrain, and by providing and protecting appropriate habitats for natural wildlife. It is the policy of this chapter that there shall be no net loss of wetlands due to development or other activities.
- D. The Town Board of the Town of Shelter Island hereby finds and declares it to be the public policy of the Town to preserve, protect, and maintain the functions and values of its wetlands and the benefits derived therefrom, to regulate their use and development in order to prevent their despoliation and destruction. Such policy is consistent with the Town's Comprehensive Plan and the general health and welfare of its inhabitants and the beneficial, economic and social development of the Town.

ARTICLE II  
Permits

**§ 129-2. Definitions**

As used in this chapter the following words shall have the meanings indicated and any word or term not defined below shall have a meaning as defined in Webster's Third New International Dictionary of the English Language Unabridged (or Latest Edition):

ADDITION- an extension or increase in floor area, number of stories or height of a building or structure

ALTERATION – Removal and replacement or the covering of existing materials, elements, equipment or fixtures using new material, elements, equipment or fixtures that serve the same purpose, without

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reconfiguring the space; reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.

AQUACULTURE — The cultivation and harvesting of native products, including fish, shellfish and vegetation, that are produced naturally in wetlands, and the installation of cribs, racks and other in-water structures for the cultivation of these products.

BLUFF – Any bank or cliff with a precipitous or steeply sloped face adjoining a beach or body of water.

BOARDWALK — A walk, or a stairway down a bluff, constructed of planking, which can be at ground level or elevated over vegetation and which cannot be more than five feet wide and must be constructed with ¼” gapped decking or open grating, and is to be limited to the specific area needed to safely travel over a wetland and/or bluff to the inland edge of the beach or a stairway down a bluff.

DEPOSIT — To fill, place, effect, indirectly discharge or dump any material.

DEMOLITION- the dismantling, razing, destroying or wrecking of any building or structure or any part thereof.

DREDGING — Any disruption or displacement of wetlands, substrate or bottom sediments or contours. It also means the excavation or creation of a water body which is to be connected to the wetland. The excavation or removal of sediment, soil, mud, sand, gravel or other aggregate from any wetland or adjacent regulated area for the direct or indirect purpose of establishing or increasing water depth, increasing the surface or crosssectional area of a waterway or obtaining such sediment, soil, mud, sand, gravel, shells or other aggregate.

EXPANSION — Any expansion of footprint or bulk. Expansion of footprint is expanding the area in plain view, expansion of bulk is three-dimensional expansion upwards or outward; adding a second floor, a dormer, or raised roof line

FILLING — The placement of material on, over or within the regulated area.

FOOTPRINT — The outside perimeter of an existing foundation for a structure, including any covered porches attached to said structure but excluding patios, decks, stairways, steps, or balconies.

MATERIAL — Soil, stones, sand, gravel, clay, bog, peat, mud, debris and refuse or any other organic or inorganic substance, whether liquid, solid or gaseous, or any combination thereof.

MAN-MADE POND –A constructed inland body of water, not regulated by the Town, and not recognized by the New York State Department of Environmental Conservation as a natural wetlands, including lined and unlined irrigation ponds and ornamental ponds. Where the DEC regs require a determination that determination must be submitted to the building department.

NEW CONSTRUCTION — The erection of a structure in a location where no structure previously stood, whether freestanding or attached to an existing structure.

POLLUTION — The presence in the environment of conditions or contamination in quantities or characteristics which are or may be injurious to human, plant, marine life, wildlife or other animal life or to property or which unreasonably interfere with the comfortable enjoyment of the benefits of such wetlands as may be affected thereby.

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RECONSTRUCTION — An alteration to any part of an existing structure which replaces 50% or more of the existing structure, including walls, roofs, floors, wiring, plumbing and insulation, as calculated by the Building Inspector pursuant to the Building Department policy.

REGULATED ACTIVITY — Activities requiring a permit pursuant to § 129-3.

REGULATED AREA — The area in, on or over a wetland and within 100 feet of the landward boundary of a tidal wetland or within 100 feet of the landward boundary of a freshwater wetland, as measured horizontally where no activity can occur other than what is permitted pursuant to § 129-3.

REPAIR — A customary, usual and normal activity to restore the sound and good state of a structure after decay, dilapidation, injury or partial destruction, and the routine maintenance necessary from time to time to keep a structure in a state of good repair, including renovations which do not increase the floor area of the existing structure.

TOWN WATERS — All waters bordering on or within the boundaries of the Town of Shelter Island subject to fluctuation in depth from peak lunar, storm or normal tidal action, and including but not limited to all brackish and salt waters of streams, ponds, creeks, estuaries, bays and inlets.

VEGETATIVE BUFFER — A strip of land with natural or established vegetation that acts as a barrier between human activity and sensitive ecological areas with the intention of filtering pollutants, sediments, and nutrients from stormwater runoff, and preventing them from entering waterways, act as erosion controls, provide habitat and flood mitigation.

WALKWAY — a nonstructural permeable passage or path for walking along no more than five feet in width and is not a boardwalk.

WETLANDS —

A. TIDAL WETLANDS:

- (1) Any persistent and/or intermittent water body or area characterized by the dominance of submerged and/or transitional wetland plant species as listed in the Environmental Conservation Law, Article 25-0103, or as may be amended.
- (2) All lands generally covered or intermittently covered with, or which border on or lie beneath tidal waters such as banks, beaches, bogs, salt marsh, swamps, meadows, flats, bars, shoals, littoral zones, high marsh and salt meadow or other low lands subject to tidal action, including those areas now or formerly connected to tidal waters and including waters immediately adjacent to bulkheads.
- (3) All banks, bogs, meadows, flats and tidal marsh subject to such tides, and upon which grow or may grow some or any of the following: salt hay (*Spartina patens* and *Distichlis spicata*), black grass (*Juncus gerardi*), saltworts (*Salicornia* spp.), sea lavender (*Limonium carolinianum*), tall cordgrass, (*Spartina pectinata* and *Spartina cynosuroides*), hightide bush (*Iva frutescens*), cattails (*Typha angustifolia* and *Typha latifolia*), groundsel (*Baccharis halmifolia*), marsh mallow (*Hybiscus palustris*) and the intertidal zone, including low marsh cordgrass (*Spartina alterniflora*).

Lands and water substantially enclosed by aquatic or semiaquatic vegetation as set forth in this subsection,

the regulation of which is necessary to protect and preserve the vegetation.

B. FRESHWATER WETLANDS:

- (1) Lands and submerged lands, commonly called "marshes," "ponds," "swamps," "sloughs," "bogs," "flats" and the like, regardless of the type or amount of vegetation growing thereon or the absence of same.
- (2) All such lands upon which grow any of the following plant species or vegetation:
  - (a) Wet meadow consisting of such plants as sedges (*Carex* spp.), rushes (*Juncus* spp.), coarse grasses and sometimes cattails (*Typha* spp.).
  - (b) Emergent marsh, including, among others, cattails (*Typha* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), arrowheads (*Sagittaria* spp.), reeds (*Phragmites communis*), bur-reeds (*Sparganium* spp.), pickerelweed (*Pontederia cordata*), wild rice (*Zizania aquatica*), water plantain (*Alisma plantago-aquatica*), bulrushes (*Scirpus* spp.) and arrow arum.
  - (c) Deciduous swamp consisting of live deciduous trees over 15 feet in height such as American elm (*Ulmus americana*), red maple (*Acer rubrum*), silver maple (*Acer saccharinum*), red ash (*Fraxinus pennsylvanica*), black ash (*Fraxinus nigra*), swamp white oak (*Quercus bicolor*) and willows (*Salix* spp.).
  - (d) Coniferous swamp consisting of live coniferous trees over 15 feet in height, such as black spruce (*Picea mariana*), white cedar (*Chamaecyparis thyoides*), red spruce (*Picea rubens*), balsam fir (*Abies balsamea*), Northern white pine (*Pinus strobus*) and American larch (*Larix laricina*).
  - (e) Shrub swamp consisting of vegetation less than 15 feet in height, such as alders (*Alnus* spp.), willows, leatherleaf, bog rosemary (*Andromeda glaucophylla*), sweet gale, buttonbush (*Cephalanthus occidentalis*), highbush cranberry, red osier dogwood (*Coitus* spp.) and sphagnum moss (*Sphagnum* spp.) in bog mats.
  - (f) Floating vegetation such as duckweed (*Lemna* spp.), watermeal (*Wolffia* spp.), waterlily (*Nymphaea odorata*), water shield (*Brasenia schreberi*) and spatterdock (*Nuphar* spp.).
  - (g) Submergent vegetation such as pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), coontail (*Ceratophyllum demersum*), water milfoils (*Nitella* spp.), wild celery (*Vallisneria americana*), muskgrass, stonewort, water smartweed (*Polygonum amphibium*) and bladderworts (*Utricularia* spp.).
  - (h) Lands and water substantially enclosed by aquatic, semiaquatic or dead vegetation as set forth in this subsection, the regulation of which is necessary to protect and preserve the vegetation; or

C. The waters overlying and the lands underlying the areas set forth in Subsections A and B.

D. A manmade pond is not considered wetlands.

**129-3. Permit required.**

Any regulated activity in, on or over or within the area in, on or over a wetland and within 100 feet of the landward boundary of a tidal wetland or within 100 feet of the landward boundary of a freshwater wetland, as measured horizontally (regulated area), entirely or in part, shall require a wetlands permit unless it is specifically exempted or allowed without a permit, as indicated in the following list. Any regulated activity for which a permit is required which is carried out without a permit or in violation of the conditions of a permit is a violation of this Code and subject to criminal and civil penalties.

Key:

AP = Activity Prohibited

NPR = Activity does not require wetlands permit

PR = Activity requires Wetlands Permit

APR = Activity requires a Wetlands Permit, and may be eligible for an Administrative Wetlands Permit

<b>Type of Activities:</b>	
<b>New structure</b>	
New Construction	AP
<b>Existing Structure</b>	
Repair	NPR
Reconstruction (no expansion)	PR
Reconstruction with expansion upward or downward within the footprint of existing square foot living area	PR
Reconstruction with expansion beyond footprint of <u>existing square foot living area</u> if expansion is outside of the regulated area	NPR
New construction with expansion upward or downward within the footprint of existing square foot living area	PR
New construction (outside footprint) in the regulated area	AP
New construction (all other) in the regulated area	AP
Clearing (except for clearing authorized under § 129-4B)	AP
Necessary public facilities	NPR
Landscaping (in conformance with §129-4(a))	NPR
Construction, creation, elimination, alteration, relocation or enlargement or diminishment of waterway	PR
Temporary Irrigation	APR
Long Term Irrigation	AP
Demolition (in connection with a duly issued demolition permit or building permit issued by the Building Department)	APR
Dock (See Chapter 53)	NPR
Bulkhead (See Chapter 53)	NPR
Boardwalk (not part of a dock)	APR
Walkway (permeable)	NPR
Fill/Regrading (not in connection with a Chapter 53 Permit)	PR
Fence	APR
Driveway	AP
Utilities (including well)	NPR

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Retaining Wall	PR
Septic Upgrade Only	APR
Septic (abandonment by backfilling and/or removal of existing)	NPR
Event Tents	APR

**§ 129-34. General guidelines to activities within regulated area.**

- A. Planting, seeding, cultivating or maintaining fertilizer dependent vegetation is prohibited within the regulated area as are the use of fertilizers, pesticides, herbicides, fungicides or other pollutants. New or replacement plantings in the regulated area shall be of native vegetation, as set forth in a list approved by the Town Board.
- B. Undisturbed areas must remain in a natural, undisturbed state, except upon the submission of a certified survey or site plan showing the existing vegetation in the regulated area and/or same being confirmed by the Wetlands Officer the following may be conducted:
- (1) Removal of dead, diseased or damaged trees when such removal is necessary for reasons of safety or to control the spread of disease.
  - (2) Removal of obnoxious plant growth such as catbrier, poison ivy, wild grape, oriental bittersweet, Russian olive or other common invasive species.
  - (3) Removal of vegetation on a five-foot wide path for access to, or for construction of, a dock, bulkhead or boardwalk, or other access to the water.
  - (4) Tree limbs may be trimmed upward from the ground to a maximum of 15 feet to permit water views. It is permitted to remove trees of less than four inches in diameter when measured four feet above ground level as long as root structure is not removed and the ground area remains vegetated.
  - (5) Shrubs may be trimmed to a height of four feet to enhance growth of nearby ground vegetation.
- C. Construction of a dock, bulkhead and boardwalk connected to the dock or bulkhead application, does not require a wetlands permit so long as the applicant has obtained a permit pursuant to Chapter 53 of this Code.
- D. The depositing or removal of the natural products of wetlands during recreational or commercial fishing, shellfishing or aquaculture is allowed so long as there is no undue disturbance of the wetlands.
- E. Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life, property or natural resources may be done on a temporary basis without a permit, although the applicant must subsequently obtain a permit if one is required.
- F. The dumping of sewage, liquid waste, refuse, toxic or other offensive materials shall not be permitted within the regulated area, except as permitted by the DEC and the Town.
- G. Any activity which is not required to obtain a wetlands permit is still subject to all other permit requirements.

**§ 129-5 Administrative wetlands permit review procedures.**

- A. If the proposed action is identified in Section 129-3 of this Chapter as one that may be eligible for an Administrative Wetlands Permit, the applicant may apply to the Building Inspector for an administrative wetlands permit by completing an application. The application for an administrative wetlands permit shall be upon the form provided and must include, at a minimum, the following information:
  - (1) A description of the proposed activity.
  - (2) Location map and survey as prepared by a licensed surveyor.
  - (3) Any additional information the Building Inspector may require to properly evaluate the location of the proposed activity.
  
- B. Upon receipt and review of an application for an administrative wetlands permit, the Building Inspector will determine whether, in their judgment, the proposed activity is compatible with the intent and purposes of this chapter and is unlikely to have significant impact on wetlands or their functions and benefits.
  
- C. If the Building Inspector or their designee determines that the proposed activity is compatible with the intent and purposes of this chapter and is unlikely to have a significant impact on wetlands or their functions and benefits, an administrative wetlands permit may be issued by the Building Inspector in lieu of a full wetlands permit approved by the Town Board. Nothing herein shall be construed to prohibit the Building Inspector from attaching such reasonable conditions to an administrative wetlands permit as they deem necessary or appropriate for protection or preservation the wetlands or their benefits.
  
- D. Administrative wetlands permits shall specify the:
  - (1) Activity for which the permit is issued.
  - (2) Address or location where the activity is to be conducted.
  - (3) Name and address of the applicant.
  - (4) Permit number and date of issuance.
  - (5) Period of permit validity. If not otherwise specified, the permit will expire two (2) years from the date of issuance.
  - (6) The terms and conditions of the approval.
  
- E. If the Building Inspector or their designee determines that the proposed activity, may have an adverse impact on wetlands or their functions and benefits, the Building Inspector shall deny the application for an administrative wetlands permit, in which case the applicant may apply for a full Wetlands Application as provided in this chapter. Any such determination shall be communicated to the applicant in writing, and shall sets forth the basis for denial of the administrative wetlands permit.
  
- F. Upon approval of the application, the Building Inspector shall endorse the approved plan and issue an administrative wetlands permit. Prior to any construction or land disturbance, the applicant shall

prominently display said administrative wetlands permit on the premises facing each public street. The applicant shall also keep a copy of the plans and specifications on site open to inspection by the Building Inspector at all reasonable times.

- G. The Building Inspector may issue and extend an administrative wetlands permit for one or more periods of up to one year each so long as there are no changes to the originally approved plan.
- H. The Building Inspector may suspend or revoke an administrative wetlands permit theretofore issued and approved in the following instances:
  - (1) Where he finds that there has been any false statement or misrepresentations as to a material fact in the application, plans or specifications on which the administrative wetlands permit was based;
  - (2) Where he finds that the administrative wetlands permit was issued in error and should not have been issued in accordance with the applicable law;
  - (3) Where he finds that the work performed under the permit exceeds the scope of the application for which the permit was issued or there is a violation of one of the conditions of the permit.

#### **§ 129-6 Full wetlands permit procedure**

- A. The owner or authorized agent of the owner proposing to conduct or cause to be conducted a regulated activity as defined herein upon or over any wetland or within a regulated area shall file an application for a permit on a form prescribed by the Town Board. Such application shall include the following:
  - (1) A current, certified survey prepared by a licensed surveyor or certified site plan prepared by a licensed architect, landscape architect, or engineer based on a certified survey which shall also be included, showing the information set forth in the application form approved by the Town Board including a delineated wetlands boundary, flagged by a credentialed environmentalist within two years of submission of the application.
  - (2) The short form Environmental Assessment Form (EAF) mandated by State Environmental Quality review Act (SEQRA) and the Shelter Island Local Environmental Quality Review Law, Chapter 60, setting forth the information and documentation required for a project permit involving wetlands or the regulated area, subject to a request by the Town Board for additional information in a long form EAF.
  - (3) A notice of disapproval issued by the Building Department and the wetlands application form indicating all proposed structures, and the requisite fee, established from time to time by resolution of the Town Board.
  - (4) If applicable, a vegetation plan from a licensed design professional must be submitted, showing the way in which the regulated area will be affected and preserved including the existing and proposed vegetation, screening, landscaping to be utilized and any other information required by the Town Board, Planning Board or Conservation Advisory Council.
  - (5) Additional hydrological computations, topographical or engineering studies, ecological site plan or other factual or scientific data as deemed necessary by the Town Board.

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- (6) Current photographs of the proposed site showing proposed project location, current vegetative buffer, and existing sediment/erosion controls.
  - (7) If applicable, all covenants and easements on the property.
  - (8) Any other information requested by the Town Board.
- B. The applicant shall submit the application in the prescribed form to the Town Clerk. Upon receipt of the complete application, the Town Clerk shall forward the application to the Conservation Advisory Council and to the Planning Board. The Conservation Advisory Council and Planning Board shall review said application and shall have a forty-five-day period following transmittal of the application to forward their written report of findings and recommendations to the Town Board.
- C. The Town Board will only accept and process wetlands permit applications if they are accompanied by any requisite authorization from the New York State Department of Environmental Conservation, and ~~or~~ a copy of the Suffolk County Department of Health Services permit or application for permit.
- D. The Town Board shall schedule a public hearing on the application with no less than 30 days' notice, to be given as follows:
- (1) Upon receipt of a complete application, the Town Board shall fix a time and place for a public hearing and shall provide for giving notice of same by publishing a notice in the official newspaper at least 30 days prior to the hearing.
  - (2) In addition, at least 30 days prior to the hearing, the applicant shall mail notice of the time, date, place and nature of the hearing to the owners of record of every property which is within 200 feet of the property involved in the application and to any applicable homeowners' association. Such notice shall be made by certified mail and addressed to the owners at the addresses listed for them on the local assessment roll. On or before the commencement of the public hearing, the applicant shall file a radius map and an affidavit with postal receipts annexed thereto confirming mailing of said notices.
  - (3) The applicant or his agent shall also erect or cause to be erected a sign or signs which shall be displayed on the parcel upon which the application is made, facing each public street on which the property abuts, giving notice that an application has been made to the Town Board, and stating the time and place where the public hearing will be held. The sign(s) shall not be located more than 10 feet from the street line, and shall not be less than two feet nor more than six feet above the natural grade at the street line. The sign(s) shall be displayed for not less than 30 days immediately preceding the public hearing date. The applicant shall file an affidavit with the Town Clerk that he has complied with the provisions of this section. Failure to submit such affidavit shall result in the adjournment of the public hearing.
- E. Within 60 days after the public hearing or receipt of any requested information, whichever is later, the Town Board shall render a decision to approve, approve with modifications or conditions or disapprove the issuance of a permit.
- F. The work covered by the permit must be substantially started within two years of issuance, or the permit is void. The permit shall be valid for a period of two years from date of issuance.
- G. Any new or additional activity not covered in the original wetlands permit shall require an

amendment to the wetlands permit. The amendment may be approved by resolution of the Town Board. Should the amendment be required in the course of conducting permitted work, due to unforeseen conditions, and the activity is deemed de minimis by the Building Inspector, or reducing the nonconformity, then it may qualify for an administrative wetlands permit review.

- H. A permit may be extended by resolution of the Town Board for an additional period of one year without a public hearing, provided that the request for same is submitted prior to the expiration date.

**§ 129-7. Criteria for permit issuance.**

- A. No permit shall be issued unless the applicant demonstrates, and the Town Board finds, that the following standards have been met:
- (1) The proposed action and location will not create a risk of impairing the function and value of the wetland and regulated area.
  - (2) The proposed project will not diminish any wetland in size, unless the approving authority finds that the proposed activity is water-dependent or requires access to the wetland as a central element of its basic function and will result in the minimum possible alteration or impairment of the wetland.
  - (3) The proposed project will not have a negative impact on the quantity and quality of groundwater.
  - (4) The proposed project will not create a net increase in the risk of runoff.
  - (5) The applicant has demonstrated that there are no practicable alternatives which allow the project to be constructed outside the regulated area. Practicable alternatives are presumed to be available unless the applicant clearly demonstrates otherwise. In making this determination, note that the Town Board generally finds that conducting the proposed regulated activity on the side or landward side of the house is highly preferred to conducting it within the regulated area.
  - (6) The applicant has submitted information to describe alternative site locations and configurations sufficient for a determination that the proposed work and location would have a less adverse environmental impact than any other practicable alternative in order for it to be approved. Practicable alternatives that are constructed entirely outside the regulated area are presumed to have less adverse impacts on the wetlands than projects that do not meet such standards, unless the applicant clearly demonstrates otherwise.
  - (7) The Town Board has determined that the applicant will voluntarily implement, within three months of the issuance of the permit, adequate mitigation measures that contribute to the protection and enhancement of wetlands and wetland benefits.
- B. The Town Board reserves the right to impose any conditions and mitigation measures it deems to be compatible with the purpose and public policy of this chapter.
- C. Upon completion of the permitted project the applicant shall contact the Town's Environmental

Consultant, fees to be incurred by the applicant, to confirm that the subject regulated area meets the requirements of this chapter and the conditions of the permit. If confirmed, and all of the other terms are met, the Building Inspector shall issue a certificate of wetlands compliance.

**§ 129-8. Fees and Deposits.**

- A. Application fees for wetlands permits shall be established by resolution of the Town Board.
- B. Expenses. In addition, applicants shall be liable for, and shall pay to the Town all of its expenses reasonably and necessarily incurred in connection with the application including, without limitations, all fees, costs and expenses for engineering, legal, and stenographic services, environmental and other consultant services, and all recording fees that are reasonably and necessarily incurred in connection with the application.
- C. Initial deposit, other than one-family and two-family residential premises. The Town Board may from time to time by resolution establish and require deposits to be paid by applicants in connection with applications related to properties that are other than one-family or two-family residential premises, to secure the payment of the expenses required to be paid pursuant to this Section. The expenses for which the applicant is responsible shall be deducted from the deposit as incurred by the Town.
- D. Additional deposit. In the event, from time to time, the amount on deposit with the Town is reduced to twenty five percent (25%) of its original amount prior to final determination of the application and receipt by the Town of all invoices for the expenses required to be paid pursuant to this Section, the applicant shall deposit such additional funds as may be required to restore the amount on deposit to fifty percent (50%) of its original amount.
- E. Refund of unused deposit. In the event that the amount of the deposit shall exceed the expenses required to be paid pursuant to this Section, upon final determination of the application and receipt by the Town of all invoices for such expenses, the unused portion of the deposit shall be returned to the applicant.

**§ 129-9. Waiver.**

- A. The Town Board, or Building Inspector during an administrative wetlands review, upon the request of an applicant for a permit, may waive any requirement hereunder if it finds that the applicant suffers unnecessary hardship or the submission of any information required by the provisions of § 129-4, is found to be unnecessary.
- B. Factors that the Town Board may consider are:
  - (1) The unique characteristics of the property;
  - (2) The waiver would not alter the essential character of the neighborhood;
  - (3) The hardship was not created by the applicant;
  - (4) The health of the wetlands would not be impaired.