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**Article 16:** To see if the Town will vote to adopt amendment No. 13 to Chapter 190 (Zoning) of the Municipal Code of Conway to revise §190-28, Wetland and Watershed Protection Overlay District, for the inclusion of Low-Impact Development stormwater controls and expansion of the buffer to 250-feet from the edge of wetlands.

**Proposed by the Planning Board.**

**Recommended by the Planning Board (7-0-0)**

## **§ 190-28. Wetland and Watershed Protection Overlay (WWPO) District.**

The WWPO District is primarily designed to protect the public health, safety and general welfare by protecting valuable wetland and water resources; preventing the harmful filling, draining, sedimentation, or alteration of wetlands and watercourses; protecting unique and unusual natural areas; preventing the development of structures and land uses on naturally occurring wetlands, which could contribute to pollution of surface water and groundwater by sewage; preventing the destruction or significant degradation of wetlands which provide flood and storm control by the hydrologic absorption and storage capacity of the wetland; protecting fish and wildlife habitats by providing breeding, nesting, and feeding grounds for many forms of plant and animal life, including rare, threatened, or endangered species; protect existing and potential water supplies, aquifers and aquifer recharge areas; providing pollution treatment to maintain water quality; preventing expenditures of municipal funds for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands; providing for compatible land uses in and adjacent to wetlands or surface waters which serve to enhance, preserve, and protect wetland areas and water bodies as natural resources. Excavation shall be prohibited in statutory wetlands unless permitted New Hampshire Department of Environmental Services (NH DES). Land uses permitted in this district are represented in the Permitted Use Table included as an attachment to this chapter.

District boundaries and map.

(1) District boundaries.

(a) The WWPO District shall be comprised of all land within 250 feet from the edge of:

- [1] All water bodies, excluding Great Ponds, which are covered under the Shoreline Protection Overlay District; and certain man-made water bodies, such as fire ponds, agricultural/irrigation ponds, sedimentation/detention basins, and sewerage lagoons;
- [2] All year-round watercourses;
- [3] All wetland areas of three or more contiguous acres, excluding constructed or legally altered wetlands that are not part of a wetland mitigation plan, and vegetated swales and roadside ditches;
- [4] All wetland areas as shown on the Town of Conway 1997 Wetlands Composite Map abutting a water body or year-round watercourse defined on the Town's GIS mapping resource, regardless of the wetland acreage involved;
- [5] All perennial watercourses and hydric areas depicted as having poorly or very poorly drained soils according to the Soils Survey of Carroll County, New Hampshire (approved in 1973, and issued in 1977); and
- [6] All wetland areas, except wet woodlands (designated as WW-1 and WW-2), identified and delineated in a report entitled "The Wetlands of Conway, New

Hampshire - An Inventory and Evaluation," United States Department of Agricultural Extension Service Wetlands Project, Report No. 1, dated 1979.

- (b) Disputed or incorrectly delineated wetlands. When there is a dispute over the delineation of a mapped wetland, or in cases where an unmapped wetland is delineated, it may be resolved with a plan certified by a wetland or soil scientist licensed by the State of New Hampshire that delineates the wetlands in accordance with the criteria established in and defined by the Corps of Engineers Wetlands Delineation Manual Technical Report Y-87-1, Environmental Laboratory, Department of the Army, 1987 and Regional Field Indicators for Identifying Hydric Soils in New England, New England Interstate Water Pollution Control Commission, 1998.

(2) District map. The WWPO District Map is **included as an attachment to this chapter.**

B. Shoreline and wetland setbacks.

- (1) Each structure shall have a one-hundred-foot minimum setback from the edge of the water or edge of wetland, whichever is farther landward. Boat storage sheds, however, may be set back a minimum of 50 feet from the edge of the water or edge of wetland. In the Residential/Agricultural District, storage sheds shall be set back a minimum of 50 feet from the edge of water or edge of the wetland. Only one storage shed is allowed per lot within the buffer.

(2) Special provisions.

- (a) No septic tank or leach field may be constructed or enlarged closer than 100 feet to any wetland.

C. Impervious surface coverage within the WWPO shall not exceed 25%; including but not limited to buildings, driveways, and sidewalks. Qualifying areas within the WWPO may be used to meet greenspace requirements as defined by Site Plan Regulations §110-29.B.

D. Any development within the WWPO which requires Site Plan review shall meet the following performance standards and apply methodologies from the New Hampshire Stormwater Manual Volume 1, 2, and 3 as amended or other equivalent means, all such methods shall be indicated on any proposed site plan.

- (1) Low-impact development (LID) site planning and design strategies shall be used to the maximum extent practicable to achieve the following:
  - [1] Recharge groundwater and reduce total runoff volumes
  - [2] Control peak rates for flood control
  - [3] Reduce pollutant loading
- (2) Stormwater directed to a qualifying wetland shall be treated onsite and achieve at least 80% removal of total suspended solids and at least 50% removal of both total nitrogen and total phosphorus using appropriate treatment measures, as

specified in the New Hampshire Stormwater Manual, Volumes 1 and 2, as amended or other equivalent means.

- (3) All bioretention areas shall be planted with native plantings appropriate for site conditions in sufficient numbers and density to prevent soil erosion and to achieve LID water quality treatment requirements. Standard wet ponds and other stormwater treatment areas shall meet NH DES stormwater standards.
  - (4) The design of stormwater management systems shall be based on the 100-year storm as indicated in the most recent edition of the NH Stormwater Manual as published by the NH DES.
  - (5) A proposed site plan must include erosion and sediment control measures, limits of disturbance, and temporary and permanent soil stabilization measures in accordance with the NH DES Stormwater Manual Volume 3 as amended or other equivalent means.
  - (6) The placement and installation of any required culverts within the WWPO shall use methods that minimize impacts to the natural stream substrate and limit disturbance to streambeds. All such methods shall be indicated on proposed site plans.
- E. Shoreline and wetland buffer. There shall be a fifty-foot-wide vegetated buffer along the edge of the water or edge of wetland, whichever is farther landward. This buffer serves as a natural filter to protect the waters and wetlands from contaminated surface runoff, provides habitat for terrestrial wildlife, protects aesthetic qualities of the water and wetland environment and helps prevent erosion of the shoreline. The following restrictions shall apply to the buffer:
- (1) One access path across the buffer, up to 10 feet in width (measured parallel to the shoreline), is allowed for each 150 feet of water frontage. Such paths shall be designed to prevent erosion and runoff into the water or wetland. Path installation may occur only after receipt of a zoning permit from the Zoning Officer.
  - (2) Municipal trails on government lands and municipal trails across other lands (for which the Town of Conway has accepted trail easements) may be located within shoreline and wetland buffers, provided that they are designed and maintained to prevent erosion and runoff into the water or wetland.
  - (3) No vegetation less than four inches in diameter, measured at 4 1/2 feet above ground level, shall be cut, trimmed, pruned or removed, except to provide for permitted access paths.
  - (4) For vegetation four inches or more in diameter, measured 4 1/2 feet above ground level (hereafter referred to as "trees"), no more than 10% of the basal area of trees may be removed from the buffer (not including the area of permitted access paths) in any five-year period. Before any cutting may occur, the Zoning Officer shall be provided with a plat indicating the size and location of all trees in the buffer, which indicates the total basal area before and after the proposed cutting and which indicates all measures to be taken to prevent destruction of the buffer and protect the

water quality. Cutting may occur only after receipt of a zoning permit from the Zoning Officer.

- (5) No cutting or trimming of living tree limbs shall be permitted.
- (6) Dead trees and dead limbs may be cut down only after receipt of a zoning permit from the Zoning Officer.
- (7) For beaches permitted herein, where some clearing of land within the buffer is required, in no case shall such clearing for a beach extend inland more than 10 feet from the normal high-water elevation, and such clearing shall be no longer than the permitted beach.
- (8) Agricultural and timber harvesting activities and operations shall be permitted uses within the buffer area, provided they conform to best management practices established by the United States Department of Agriculture Natural Resources Conservation Service, Cooperative Extension and/or the New Hampshire Department of Agriculture and RSA Ch.227-J.

F. Docks. Docks which are completely removed from the water for the winter season shall be permitted as follows:

- (1) Maximum number of docks shall be one per 150 feet of water frontage, but lots with less than 150 feet of water frontage are permitted one dock.
- (2) A dock shall not extend more than 30 feet into the water.
- (3) A dock shall not be wider than 10 feet in width.
- (4) A zoning permit must be obtained prior to the installation of a dock.

G. Private beaches. Beaches which are not owned by a unit of government shall be regulated as follows:

- (1) Existing beaches may be maintained without the use of any machines or motorized equipment below the high-water elevation. Washed sand shall be the only material which may be added to the beach. The amount of washed sand added shall not exceed one cubic yard per three feet of beach length in any five-year period. A zoning permit and all applicable state permits shall be required before any sand is deposited, and it shall be the responsibility of the Zoning Officer to maintain records to monitor beach maintenance.
- (2) New beaches may be created only when the following conditions are met:
  - (a) The lot shall be considered to have an area suitable for a beach if it meets each of the following criteria:
    - [1] The slope of land from the high-water elevation to a line 10 feet inland shall not have slopes steeper than 10%.
    - [2] The slope of the land from the high-water elevation to a line 20 feet out into the water shall have slopes greater than 10%.

- [3] The proposed beach site shall be determined by an independent wildlife biologist to be of minimal importance as fish habitat and/or spawning area (written report from the wildlife biologist shall be provided to the Town).
  - [4] The area proposed for a beach above the high-water elevation is not on or within 10 feet of poorly or very poorly drained soils or wetlands.
  - [5] All proposed beaches must comply with the requirements set forth in RSA Ch. 482-A and the New Hampshire Code of Administrative Rules, as amended.  
[Amended 4-11-2017 ATM by Art. 2]
- (b) A beach shall be no longer than 10% of the length of water frontage, except that no beach shall be required to be less than 15 feet in length.
  - (c) No more than one cubic yard of sand per three feet of beach length shall be used to create the beach. Compliance with this requirement shall be documented to the Zoning Officer by means of providing all receipts for beach construction. Only washed sand shall be used for beach construction.
  - (d) Once established, the maintenance requirements listed in Subsection E(1) shall apply.
  - (e) Erosion control measures shall be provided such that runoff shall not run across the beach, with a design certified by a New Hampshire licensed professional engineer and reviewed by the Carroll County Conservation District.
  - (f) A New Hampshire licensed professional engineer shall inspect the site three times: before construction; after grubbing but before sand is added; and when construction is completed. The professional engineer shall certify that all work is completed in accordance with the plans provided to the Town and in accordance with these requirements.
  - (g) All other required permits and approvals are obtained.
- H. Shorefront common areas. Shorefront common areas are those areas used for water recreation and/or access by users living off-site. Such areas shall comply with the following:
- (1) Shorefront common areas shall not be located on lots smaller than two acres.
  - (2) The lot shall have, at a minimum, 50 feet of water frontage per family or household having rights of use; provided, however, that no more than 500 feet of water frontage shall be required for any one shorefront common area.
  - (3) Parking lots for shorefront common areas shall be set back a minimum of 200 feet from the normal high-water elevation. The parking area shall be screened from view of the water by a strip, at least 25 feet wide, of trees and shrubs.
  - (4) Creation or alteration of shorefront common areas shall be subject to site plan review. [1] Editor's Note: See Ch. 110, Site Plan Review.
- I. Earth disturbance. Prior to any work activity in which digging will occur or the ground's vegetative cover will be removed or substantially disturbed, sufficient erosion and sedimentation control measures shall be installed in accordance with RSA 485-A:17 and the

New Hampshire Code of Administrative Rules, as amended. Such measures, which may include hay bales and silt fences, shall be maintained in proper working order until the ground surface is stabilized and no longer subject to erosion. The control measures shall be installed to protect the water, the wetland and the buffer (in order to preserve the buffer's natural filtering capacity). [Amended 4-11-2017 ATM by Art. 2]

- J. Water quality. In order to afford maximum protection to water quality, the application of chemical fertilizer, insecticides or other chemicals shall be prohibited in the district. In addition, drainage shall be controlled and treated as best as is reasonably possible for any construction or activity, or as a result of any land use, such as access paths. Local regulation of pesticide management is preempted by RSA 430:49.
- K. Special exceptions. The following shall be prohibited unless granted a special exception by the Zoning Board of Adjustment. If granted a special exception under this section, a site plan review approval shall be required prior to construction. References to the "shoreline" shall be considered either the shoreline of the water body/watercourse or the edge of wetland, whichever is farther landward. Any special exception shall be granted only after having found that there is no better feasible alternative, in keeping with state and federal standards for the issuance of development permits in 404 jurisdictional wetlands.
  - (1) Protective riprap. Riprap to protect shores from erosion shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
    - (a) All required state and federal permits are obtained; and
    - (b) The shoreline is being eroded by action of the waters and the riprap will protect the shoreline from further erosion without enhancing erosion at another location on the shoreline.
  - (2) Building on undersized lots. Building on pre-existing lots with insufficient acreage shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
    - (a) There is a state-approved septic system or connection to a municipal sewer.
    - (b) Any building to be constructed shall be configured and located on the lot to create the maximum shoreline setback practical. If appropriate, rear and sideline setbacks may be reduced by the Zoning Board of Adjustment by up to 50% to facilitate maximum shoreline protection.
    - (c) Clearing of lots may be limited by the Zoning Board of Adjustment as a condition of approval so as to prevent erosion runoff problems.
  - (3) Municipal and state facilities. Municipal and state facilities, including beaches and boat launches, shall be granted a special exception by the Zoning Board of Adjustment, provided that the following conditions are met:
    - (a) All required state and federal permits are obtained.
    - (b) Sand for a beach shall not be deposited in water which is deeper than 4.5 feet nor farther than 75 feet out from the high-water elevation. For erosion control of the

beach area, a barrier shall be constructed between the water and the sand on the beach. The site shall not be normally subject to erosion by action of the water nor by the grade of the shoreline slope.

- (c) In order to shield the view of parked vehicles from the water and to protect the water from runoff from parking areas, parking shall be located behind a landscaped area of natural or planted vegetation at least 50 feet in depth. Parking areas shall be gravel. Appropriate drainage controls shall be constructed and maintained to protect the Great Pond.
  - (d) Footpaths may be cleared across the vegetated area for access to the beach. They shall be kept at a minimum width which serves pedestrian access to the water.
- (4) Wetland or stream crossing: the construction of a wetland or stream crossing for purposes of streets, roads and other access ways and utility right-of-way easements, including power lines and pipelines. A special exception for these uses may be granted if the following conditions are met:
- (a) The use is essential to the productive use of land not in the district; and
  - (b) The use is so located and constructed as to minimize the detrimental impact upon the wetlands.
- (5) Water storage or impoundment: the construction of a water storage or impoundment.
- (6) Any use not otherwise permitted or otherwise allowed by special exception in a wetland, which may include the erection of a structure, dredging, filling, draining or otherwise altering the surface configuration of a wetland. A special exception may be granted, provided that the following conditions are met:
- (a) The proposed use will not conflict with the purpose and intent of the district. To support this claim, the applicant shall provide proper written evidence, which shall be accompanied by the findings of a review by the United States Natural Resources Conservation Service; and
  - (b) The use is permitted in the underlying zoning district.



