

II. Administrative Provisions.

A. Conflicting Provisions.

Whenever the provisions of this Ordinance conflict with those of a valid statute, ordinance, or regulation, the provision that imposes the greater restriction or higher standard shall prevail. (See RSA 676:14)

B. Saving Clause.

If any section, provision, portion, clause, or phrase of this Ordinance shall be held invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair or invalidate any other section, provision, position, clause, or phrase of this Ordinance.

C. Enforcement

1. Code Enforcement Officer
 - a. The Selectmen shall appoint a Code Enforcement Officer who may be the same person as the Building Inspector, for a term of one (1) year.
 - b. It shall be the duty of the Code Enforcement Officer to enforce the provisions of the Ordinance.
 - c. The Code Enforcement Officer will on request make copies of his/her administrative decisions available to the Planning Board, and will attend the PB meetings as requested.
2. Prosecution: Prosecution, if necessary, shall be handled by the Chief of Police of New Durham on evidence supplied by the Code Enforcement Officer.
3. Penalties: Every person, persons, firm or corporation legally determined to have violated any of the provisions of this Ordinance, shall be fined in an amount consistent with the provisions of RSA 676:17 for each day following conviction, that the violation may exist, plus costs in connection with settling the issue. All fines go to the Town of New Durham.
4. Zoning Board of Adjustment
 - a. The Zoning Board of Adjustment (ZBA) consists of five (5) members **that are elected by the Legislative Body** ~~appointed by the Board of Selectmen as required per RSA 673:1, IV.~~
 - b. With respect to this Ordinance, the ZBA shall review and decide on appeals from Administrative Decisions, applications for Special Exceptions, applications for Equitable Waiver of Dimensional Requirements, and on applications for Variances. To authorize a variance the ZBA must find that:
 - i. The variance will not be contrary to the public interest,
 - ii. The spirit of the ordinance is observed,
 - iii. Substantial justice is done,
 - iv. The values of surrounding properties are not diminished,
 - v. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

XIV. Shorefront Conservation Overlay District

A. Purpose/Authority

1. Purpose: Most of the land immediately adjacent to New Hampshire's lakes, ponds and rivers is overlaid by soil types characterized by above average erosion and drainage hazards. These lands require conservation and land management practices that minimize environmental and aesthetic degradation. The following restrictions are applicable to land within the designated shorefront conservation area. They are designed to protect and enhance water quality, prevent overcrowding of the shore land in the interest of public health and safety, and to preserve the natural beauty and wildlife habitat of the water front areas in the Town of New Durham.
2. Authority: This ordinance is authorized by RSA 674:21, Innovative Land Use Controls, and RSA 674:21 (j) Environmental Characteristics Zoning.

B. District Boundaries

The Shorefront Conservation Overlay District is an environmental overlay area superimposed over the conventional zoning map of the town. The Shorefront Conservation Overlay District extends to a line 300 feet inland from the normal high water level, on all lakes and ponds over ten (10) acres, **and the Cocheco, Merrymeeting, and Ela Rivers**. Uses permitted in the underlying zoning district may be prohibited or require a special permit subject to conditions in the Shorefront Conservation Overlay District. In case of conflict, the more restrictive regulation shall apply. (See also provisions of Article XV. Water Quality Protection Overlay District, for Great Ponds less than or equal to ten acres.) **Deviations from these requirements will require a Special Exception from the Zoning Board. Special Exceptions granted under this Article are exempt from Article VII. Special Exceptions.**

C. Dimensional Requirements

Development with Waterfront Access: All development with water frontage or with rights of access to water frontage shall meet the following requirements.

1. Minimum Shore Frontage: Each dwelling with direct water access and with shore frontage as part of the lot dimension shall have a minimum shore frontage of one hundred fifty (150) feet. Shore frontage shall be measured in a straight line in fifty (50) foot increments, between the points of intersection of the side lot lines with the **reference line**. ~~shoreline at mean high water.~~
2. Building Setback: Except for water related structures (see below), all buildings shall be set back a minimum of seventy-five (75) feet from the **reference line**. ~~normal shoreline at mean high water level.~~
3. Leach Field Setback: Any leach field shall be set back a minimum of 125 feet from the **reference line**. ~~normal shoreline at mean high water level.~~ The Planning Board may require greater setback where more than one dwelling unit uses common sewage disposal facilities.

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4. Maximum Building Height: The maximum height of any building shall be thirty five (35) feet from the ~~average parent lot grade~~ lowest level of the finished floor to the highest point of the roof ~~(For non-conforming shorefront lots see XX. F. 3).~~
5. Lot Coverage: Buildings shall not cover more than 15% of the area of a lot. No more than a total of 20% of the lot area, including buildings, shall be covered by impervious surfaces.
6. A Natural Waterfront Buffer: shall be maintained within 50 feet of the reference line and shall meet the requirements of RSA 483-B:9.V.a (2020) as amended in the future. Land owners are encouraged to plant vegetation that is beneficial to wildlife.
 - a. ~~Within the natural waterfront buffer, the following shall apply:~~
 - i. ~~A healthy, well distributed stand of trees, saplings, shrubs and ground covers and their living undamaged root systems shall be left in place maintained. If the lot lacks a 50 foot waterfront buffer, replacement plantings with native or naturalized species is required.~~
 - ii. ~~Dead, diseased, unsafe, noxious or fallen trees, saplings, shrubs or ground covers may be removed. Land owners are encouraged to preserve dead and living trees that provide dens and nesting places for wildlife.~~
 - iii. ~~Stumps and their root systems which are located within the 50 feet of the public boundary reference line shall be left intact in the ground.~~
7. Structures on conforming and non-conforming lots:
 - a. For nonconforming structures within this Overlay District, expansion of the existing footprint or construction of accessory structures shall be allowed so long as the structure does not extend closer to the reference line, and there is no increase in any existing encroachment into the setbacks. ~~(Specifically, for an existing setback nonconformity, any reconstruction must be completed within the existing building footprint and no expansion of any kind shall occur within that part of the structure that is in the setback—NEEDED?not vertical expansion either??). While the footprint may not be expanded, it may be moved further back from the reference line as described in Article XIV.7.c below. Increases in height at any point on the structure of up to one foot are allowed. Added dormers and/or shed roofs are allowed so long as the height of the original ridgeline is not increased by more than one foot. Any increase in height must not exceed the building height restriction as noted in Article XIV. C. d. above.(NEEDED?)~~
 - b. New structures on conforming or nonconforming lots within this Overlay District require approval of a Conditional Use Permit from the Planning Board. ~~(Applications require Plot Plans noting all structures, setbacks and other features as required for Conditional Use Permit Applications as described in detail in (XXXX)—NOT NEEDED).~~
 - c. All structures within the 75 foot waterfront setback to be torn down and rebuilt must be moved as far back from the water reference line as possible ~~(up to either the 75 foot setback, or where a physical barrier is encountered such as the setback from the road, steep slopes, wetlands, or other barriers to construction NOT NEEDED).~~

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- d. Expansion upward of any existing dwelling within this Overlay District may not obstruct the existing water views of abutters. It is up to the abutter(s) to prove such obstruction.
 - e. Ancillary structures such as sheds or other structures within the 75 foot waterfront buffer shall not exceed one story and have a maximum height of 16 feet.
 - f. All New Development, as defined in Article III, within this Overlay District, must provide parking for a minimum of four vehicles. If the property owner owns additional lots of land abutting the waterfront property, for example, back lots located directly across a roadway from the waterfront lot, parking may be provided for on those adjacent lots. The ZBA shall not grant a Variance for this requirement.
8. Shorefront Common Areas: Shorefront common areas for access by non-shorefront commercial or residential development shall meet the following minimum criteria:
- i. The shorefront common area shall contain a minimum of two acres.
 - ii. The shorefront common area shall have a minimum of 150 feet of shore frontage for the first residential dwelling unit and an additional 50 feet of shore frontage for each additional dwelling unit. For commercial uses, such common area will have 150 feet of shore frontage for the first five users, and 50 feet of shore frontage for each additional five users occupying the non-shorefront development.
 - iii. No building other than toilet and changing facilities, picnic shelters, and suitable recreation facilities shall be constructed on a shorefront common area.
 - iv. One half of the shore frontage shall be reserved for swimming. A swimming beach area shall be provided with a minimum of 800 square feet per dwelling unit or for commercial uses, per five users. Swimming areas shall be separated from boating areas by appropriate markers.
 - v. No more than 25% of the total shore frontage may be dedicated to docks or other structures designed to accommodate boating. All docks require a permit from the NH-DES. Applications for dock permits shall be reviewed by the Conservation Commission. In making its recommendations to the NH-DES and the Planning Board, the Conservation Commission shall consider the size and depth of the water area, the total frontage proposed for the common area, boat traffic already existing in the area, impact on neighboring property owners, protection of water quality, wildlife habitat, and public safety.
 - vi. One off-street parking space (300 square feet) shall be provided for each dwelling unit situated more than 1/4 mile from the shorefront common area. Parking areas shall be set back a minimum of 75 feet from the normal high water level. A buffer of natural vegetation shall be maintained between the beach and/or docking area and the parking area. The buffer may include facilities permitted within the shorefront area.
 - vii. Toilet facilities, approved by the New Hampshire Water Supply and Pollution Control Commission shall be provided at the rate of one toilet facility each for males and females for each 25 dwelling units or (up to 125 persons) or portion

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thereof granted rights of access. The Planning Board may adjust this requirement at their discretion.

- viii. A Natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of it shall have the additional requirements of RSA 483-B:9 V a (2013).

D. Permitted Uses

Uses that are not otherwise provided for within this article or another overlay district and which are permitted in the underlying zoning district either by right or conditional use permit are permitted in the Shorefront Conservation Area Overlay District provided that all relevant requirements are met.

E. Use Regulations

The following uses are permitted provided that they shall be conducted according to the applicable provisions:

1. Any Subdivision or Site Plan, which takes place wholly or partially in the Shoreland Conservation Overlay District, shall obtain approval from the NH-DES in accordance with NH RSA 483-B. This approval shall be obtained prior to final approval of the subdivision or site plan by the Planning Board. Prior to making application to the NH-DES for a permit, applicants are required to hold a Design Review Hearing with the Planning Board (See Article VI. I. Design Review Required).
2. Water Related Structures, docks for boating and swimming facilities, subject to required state permits (not covering more than 10% of the lot).
3. Single family dwellings (with or without ancillary dwelling units) provided that all buildings meet setback requirements of this Article and are constructed in accordance with erosion control requirements of **Article XVII. Stormwater Management and Erosion Control Ordinance**.
4. Sub-surface sewage disposal facilities, provided that leach field setback requirements of this Article are met.
5. The traveled portion of a road shall be set back a minimum of seventy-five (75) feet from the normal high water level except for bridges and bridge approaches and access ways for firefighting equipment and boat launching. All roads shall be constructed in accordance with an erosion and sedimentation control plan approved by the Planning Board in accordance with Article XVII.
6. Beach and dock construction may be permitted in accordance with shore frontage requirements set forth below. All alterations of the shoreline, including beach and dock construction, require a permit from the NH-DES as set forth in RSA 483-B. The Conservation Commission shall review all permit applications submitted to NH-DES and shall make recommendations to the NH-DES and the Planning Board.
7. Marinas, Commercial Docks and Condominium Docking Facilities

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A proposal for a marina, condominium docking facility, or commercial docks, provided it is permitted in the underlying use district, shall be subject to site plan review by the Planning Board and the following minimum standards:

- a. All construction in or on ponds over 10 acres and other waters of the state require a permit from the New Hampshire Department of Environmental Services.
 - b. A marina, condominium docking facility, community docking facility, or commercial docking facility accommodating more than eight boats shall contain a minimum lot area of one acre plus 3000 square feet per boat slip or dry storage space to be used during the boating season.
 - c. The plan shall include appropriate recreation or play area.
 - d. If winter boat storage is proposed, the plan shall include a design for winter boat storage facilities.
 - e. Parking shall be provided at the rate of one space for each boat slip and for each dry storage space, except for those spaces used exclusively for winter storage.
 - f. One Toilet facility and one shower and sink each for males and females shall be provided for each 25 boat slips or dry storage space or fraction thereof, except for spaces exclusively for winter storage.
 - g. A pumping facility for the removal of holding tank waste shall be provided. The facility shall meet all standards established by the New Hampshire Department of Environmental Services and any other applicable State regulations.
 - h. The Planning Board may approve less restrictive conditions for common or commercial docks with accommodations for eight or fewer boats.
8. All deviations from the requirements of this Article require approval of a Special Exception from the Zoning Board of Adjustment. The Zoning Board of Adjustment may, in appropriate cases, and subject to safeguards as determined by the Board, grant a permit for a Special Exception taking into consideration the following conditions including but not limited to:
- a) The proposed use will not reduce water quality in the adjacent water body measured by methods such as lowered stormwater runoff and decreased phosphorus runoff.
 - b) The structure is proposed to be moved as far back from the reference line as possible (see XIV. C. h.).
 - c) The property is not made more nonconforming. A decrease in size of the footprint makes the structure less nonconforming and an increase in size makes the structure more nonconforming.
 - d) The specific site is an appropriate location and of adequate size for the use.
 - e) No factual evidence is found that property values in the district will be reduced due to incompatible or nonconforming land uses.
 - f) There is no valid objection from abutters based on demonstrable fact.
 - g) The use will not place excessive or undue burden on Town services and facilities.
 - h) Existing roads are of sufficient capacity to carry additional traffic that would be generated by the proposed use.
 - i) The proposed use or structure is consistent with the spirit of this ordinance and the intent of the Master Plan.

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- j) ~~Enlargement or expansion of a nonconforming structure within this Overlay District may not be substantial and may not render the property more nonconforming.~~
- 9. ~~The Zoning Board of Adjustment may impose additional conditions in granting a Special Exception. These conditions may include:~~
 - a) ~~Limiting the lot coverage or height of buildings because of obstruction of views of adjacent properties.~~
 - b) ~~Maintain existing waterfront buffer, and if no vegetative buffer exists, applicant shall revegetate the buffer as described in NH RSA XXXX.~~
 - c) ~~The footprint may be required to be moved further back from the reference line if possible.~~
 - d) ~~A septic system approved and permitted by NH Department of Environmental Services.~~
 - e) ~~Adequate parking space for a minimum of four vehicles based on two vehicles per bedroom.~~
 - f) ~~Applicants must maintain Best Management Practices as outlined in the Operation and Maintenance Manual approved by the Planning Board and provide the updated Maintenance Log annually. All fees to maintain BMPs must be paid annually.~~

F. Design Standards/Erosion Control

1. Construction:
 - a. Erosion and sedimentation control plans shall be required for all filling, grading, dredging, and other activities requiring land disturbance. Erosion and Sedimentation control plans shall conform to the provisions outlined in Article XVII. Stormwater Management and Erosion Control Ordinance.
 - b. The Building Inspector/Code Enforcement Officer shall review all plans before construction begins, and may require the applicant to post a bond or other security to assure conformance with approved plans. Said bond or security may be in an amount of 100 percent of the estimated cost of erosion and sediment control measures and shall be filed in the name of the town. The bond shall be approved by the Building Inspector/Code Enforcement Officer and legal counsel of the town and conditioned upon satisfactory completion of all required improvements within 12 months of the date of bonding. The bond shall not be released until the Building Inspector/Code Enforcement Officer has certified completion of the required improvements in accordance with the plan.
 - c. Erosion and Sedimentation Control Plans shall not conflict with minimum N.H. Department of Environmental Services requirements for Alteration of Terrain or other environmental permits required.

2. Buffer Requirement for Agricultural Uses:

To prevent runoff of fertilizers, pesticides and erosion of soils and sedimentation of surface water, a buffer strip of at least 75 feet consisting of permanent native vegetation shall be maintained between any agricultural uses such as farming, pasturing, and horticulture and the normal high water level.

3. Alteration of Existing Uses:

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For conforming lots or current conforming uses, an alteration or vertical or footprint expansion of a dwelling unit, or increase in impermeable surface shall require a permit from the Building inspector/CEO. (For non-conforming lots, see also the provisions in Article XX.) Conversion to year round use shall be considered a change of use. Before a permit may be issued, the following conditions must be met:

- a. The applicant shall supply a certificate of inspection from a qualified sanitary professional (e.g., engineer, system designer, etc.) certifying that the existing septic system is adequate for the proposed use and that the system meets current standards of the New Hampshire Department of Environmental Services, including lot size and number of bedrooms. If the existing system is found to be inadequate, a system approved by the New Hampshire Department of Environmental Services shall be installed before a building permit is issued.
- b. The applicant must demonstrate that site conditions and land area are adequate for installation of a replacement sewage disposal system should the existing system malfunction or fail.
- c. Dwellings converted to year-round use shall have a New Hampshire Department of Environmental Services Approved Septic system designed and installed that meets the current standards, including lot size and per bedroom capacity, of the New Hampshire Department of Environmental Services.

G. Prohibited Uses

The following uses are prohibited in the Shorefront Conservation District:

1. Commercial or Industrial Storage or processing of materials which are pollutants, flammable, toxic, or which could be injurious to human, animal, or aquatic life. Storage and dispensing of essential materials associated with boating may be permitted provided that all state and local approvals are obtained.
2. Garbage and solid waste disposal facilities, including any expansions of existing facilities within the Shorefront Conservation Overlay District.
3. Duplexes and Multi-family dwellings.