

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 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 of Adjustment.** ~~Special Exceptions granted under this Article are exempt from Article VII. Special Exceptions.~~ LEGAL: Can we put Special Exception here vs Article VII?

C. Dimensional Requirements

~~Development with Waterfront Access:~~ All development with water frontage or with rights of access to water frontage, whether conforming or non-conforming, 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

TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE

require greater setback where more than one dwelling unit uses common sewage disposal facilities.

4. Maximum Building Height: The maximum height of any building **except ancillary structures**, shall be thirty five (35) feet **measured from the lowest grade adjacent to the foundation or piers** ~~average parent lot grade~~ to the highest point of the roof (~~For non-conforming shorefront lots see XX.F.3~~). Ancillary structures such as sheds or other structures within the 75 foot waterfront setback shall not exceed one story and shall have a maximum height of 12 feet from the lowest adjacent ground level.
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. **Waterfront Buffer: 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.**
7. **Nonconforming Structures:**
 - a. **Expansion upward or downward of nonconforming structures in this Overlay District is permitted provided the expanded structure does not extend closer to the reference line.**
 - b. **Existing structures may be demolished and rebuilt utilizing the same square footage as the original footprint, and may include a foundation and two stories of living space.**
 - c. **All nonconforming structures within the 75 foot waterfront setback that are proposed to be torn down and rebuilt must be moved as far back from the reference line as possible.**
8. **All New Development, as defined in Article III, within this Overlay District, must provide parking for a minimum of four vehicles. Parking may be provided on the same lot, or on lots abutting the waterfront property which the property owner also owns or over which the property owner is granted a permanent easement,.**
9. Shorefront Common Areas: Shorefront common areas for access by non-shorefront commercial or residential development shall meet the following minimum criteria:
 - a. The shorefront common area shall contain a minimum of two acres.
 - b. 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.
 - c. No building other than toilet and changing facilities, picnic shelters, and suitable recreation facilities shall be constructed on a shorefront common area.
 - d. 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.
 - e. 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

TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE

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.

- f. 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.
- g. 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 thereof granted rights of access. The Planning Board may adjust this requirement at their discretion.
- h. ~~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 **the setback and other** requirements of this Article and are constructed in accordance with erosion control requirements of **Article XVII. Stormwater Management and Erosion Control Ordinance**.

TOWN OF NEW DURHAM ZONING AND LAND USE 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

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.

F. CONDITIONAL USE PERMITS

Construction within the 75 foot waterfront setback is permitted only upon the issuance of a Conditional Use Permit by the Planning Board. In order to obtain a Conditional Use Permit, the applicant must:

1. Provide a stormwater management plan to demonstrate that the proposed construction will not reduce water quality in the adjacent water body due to increased stormwater

TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE

runoff or increased phosphorus runoff as described in Article XVII, Stormwater Management and Erosion Control.

2. If applicable, provide all required information for a Conditional Use Permit as required in Article XI, Steep Slopes Conservation Overlay District.
3. If applicable, provide all required information for a Conditional Use Permit as required in Article XV, Water Quality Protection Overlay District.
4. The Building Inspector shall not approve any building permit subject to the terms of this article unless the Planning Board has issued a Conditional Use Permit, and the conditions have been met.
5. All costs pertaining to the consideration of an application under this ordinance, including consultants fees, on-site inspections, environmental impact studies, notification of interested persons, and other costs shall be borne by the applicant and paid prior to the Planning Board's signature of the approved plans.

G. SPECIAL EXCEPTIONS

Deviations from the requirements of this Article may be permitted by Special Exception. Such a Special Exception is required in addition to any other relief which may be required herein, such as a Conditional Use Permit. The Zoning Board of Adjustment shall grant a Special Exception if all of the following requirements are met:

1. The proposed use must otherwise be allowed in this Shorefront Conservation Overlay District.
2. The proposed use will not reduce water quality in the adjacent water body measured by methods such as increased stormwater runoff and increased phosphorus and nitrogen runoff.
3. The structure is proposed to be moved as far back from the reference line as possible.
4. The specific site is an appropriate location and of adequate size for the use.
5. Property values in the district will not be reduced.
6. The use will not place excessive or undue burden on Town services and facilities.
7. The proposed use or structure is consistent with the spirit of this ordinance. To be consistent with the spirit of this ordinance, a proposed use or structure shall not alter the essential character of the locality, or threaten the public health, safety or welfare.

H. 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

TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE

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:

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.

I. 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.