

XIII. Wetland Conservation Overlay District.

A. Purpose.

Restricts construction in environmentally sensitive wetland areas and disallows very poorly drained soils from being considered toward meeting the requirements of minimum lot sizes in new subdivisions. These regulations are intended to be in the interest of public health, safety, and welfare:

1. To provide guidance for the use of areas of land with standing water or extended periods of high water tables.
2. To control the development of structures and land uses on naturally occurring wetlands which would contribute to the pollution of surface and ground water.
3. To prevent the destruction of natural wetlands that provide flood protection, recharge the groundwater supply and augment stream flow during dry periods.
4. To prevent unnecessary or excessive expenses to the town by providing and maintaining essential service and utilities which arise because of unwise use of wetlands.
5. To encourage those uses that can be appropriately and safely located in wetland areas.
6. To preserve wetland for other ecological reasons such as those cited in R.S.A. 483-A:1- b.
7. To preserve and enhance those aesthetic values associated with wetlands of New Durham.

B. Boundary.

1. The Wetlands Conservation Overlay District is defined as those areas delineated as very poorly and poorly drained soils by the U.S. Department of Agriculture, Soil Conservation Service, in the "Soil Survey of Strafford County, New Hampshire", dated March 1973 (as amended). The Wetlands Conservation Overlay District also includes those areas such as swamps, marshes, bogs, ponds and lakes that are in-undated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation adapted for life in saturated soil conditions.

2. The limits of the Wetlands Conservation Overlay District are hereby determined to be areas of one acre or more in size, or of any size if contiguous to surface waters such as lakes, ponds, and streams, subjected to high water tables for extended periods of time and include, but are not necessarily limited to, all such areas delineated as wetlands on the current "Soil Conditions" map (New Durham Natural Resource Inventory Map. Titled "Soil Conditions").

3. Where it is alleged that an area has been incorrectly delineated as a wetland; or that an area not so designated meets the criteria for wetlands designation; or upon written petition of the land owner or abutter, the Planning Board shall determine whether the regulations contained herein have application. The Planning Board shall make their determination under this section only upon the documentation by a qualified soil scientist(s) and/or plant scientist(s) on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands

PAGE of 64 119 TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist(s) to the Planning Board. Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

C. Relation to Other Districts.

Where the Wetlands Conservation Overlay District is superimposed over another zoning area, the more restrictive regulations shall apply.

D. Permitted Uses.

Permitted uses are those not requiring the erection or construction of any structures or buildings, not altering the natural surface configuration by the addition of fill or by dredging, and uses otherwise permitted by the zoning ordinance. Such uses may include the following:

1. Forestry-tree farming, using best management practices in order to protect streams from damage and to prevent sedimentation;
2. Cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
3. Wildlife refuges;
4. Parks and recreation uses consistent with the purpose and intent of this ordinance;
5. Conservation areas and nature trails;
6. Open spaces as permitted or required by the subdivision regulations or zoning ordinance.

E. Special Exceptions.

Special Exceptions may be granted by the ZBA, after proper public notice and public hearing for undertaking the following uses in the Wetlands Conservation Overlay District when the application has been referred to the New Durham Conservation Commission, NH-DES and to the New Durham Planning Board for review and comment at least twenty (20) days prior to the hearing: 1. Streets, roads and other access ways and utility right-of-way easements, including power lines and pipe lines, if essential to the productive use of land not defined as wetlands, and if located and constructed so as to minimize any detrimental impact upon the wetland; 2. Water impoundments; 3. Any use not otherwise permitted in the Wetlands Conservation Overlay District, if it can be shown the proposed use is not in conflict with any or all of the purposes and intentions listed in Section A of this article.

F. Special Provisions.

1. No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any wetland.
2. No part of very poorly drained soil type will be considered as part of minimum size requirement of any lot. PAGE of 65 119 TOWN OF NEW DURHAM ZONING AND LAND USE ORDINANCE
3. Poorly drained soil types may be used to fulfill 25 percent of the minimum size requirement of any lot.

4. All land included in the Wetlands Conservation Overlay District shall be appraised for tax purposes at its full value in money, based on its market value as undevelopable land required to remain in open space.

G. Soil Series and Land Types.

Soils commonly associated with wetlands as described by the Soil Survey of Strafford County, New Hampshire, dated March 1973, include the following “very poorly drained” and “poorly drained” soils:

1. Very Poorly Drained Soils include:
 - a. Fresh water marsh (FA)²
 - b. Muck and Peat (Mp)
 - c. Whitman very stony loam (Wa)
2. Poorly Drained soils include:
 - a. Leicester (LcB) (LeA) (LeB)
 - b. Leicester-Ridgebury (LrA) (LrB)
 - c. Ridgebury (RgA) (RgB) (RtA) (RiB)
 - d. Saugatuck (Sb) Soils with drainage class of 5 or 6 on the high intensity soil map are wetland soil.

H. Separability.

If any section, provision, portion, clause, or phrase of this article 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.

I. Conflict with Other Regulations.

Where any provision of this article is in conflict with State law or other local ordinance, the more stringent provision shall apply.