



TOWN OF MILFORD, NH
OFFICE OF COMMUNITY DEVELOPMENT

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STAFF MEMO

Date: November 23, 2021

To: Planning Board

From: Jason Cleghorn, Town Planner

Subject: Amendments to Zoning Ordinance Article 6 – Section 6.02.0 Wetland Conservation District

The purpose of this agenda item is to discuss possible amendments to the Milford Zoning Ordinance’s Section 6.02.0 Wetland Conservation District to modify the minimum required buffer area relative to wetlands, streams, surface water, and vernal pools, to allow for additional permitted uses within the delineated buffer. The suggested attached amendments were developed by the Conservation Commission for Board consideration and comment.

In summary, the amendments seek to improve water quality, wildlife habitat, and flood control by increasing the buffer to wetlands, streams, surface water, and vernal pools from 25 feet to 50 feet and from 50 feet to 100 feet for identified water bodies and streams (e.g. Birch Brook, Great Brook, Osgood Pond, Souhegan River) with any adjacent very poorly drained wetlands. In addition, the number/type of allowable uses with the wetland buffer zone would be expanded to include the construction of a driveway access, specific water impoundments, pre-existing uses as defined in Section 2.0 of the Zoning Ordinance, and the replacement/repair of septic systems. Lastly, the amendments propose general housekeeping and administrative updates to reference the correct applicable State wetland and environmental regulations/statutes.

The proposed amendments were introduced and discussed at the November 2nd Planning Board Work Session. At that meeting, the Board requested more scientific research and information from the Conservation Commission Coordinator to support and justify the expansion of the wetland buffer area and buffer protection requirements in other NH communities. Please see Attachments 1 and 2. The Conservation Commission Coordinator will be present to discuss the proposed amendments.

RECOMMENDATION:

Staff recommends that the Board support the general housekeeping and administrative updates to reference the correct applicable State wetland and environmental regulations/statutes. These are minor changes that are completed regularly as part of the annual updates to the Zoning Ordinance. The discussion involving the required buffer to the wetland resources will require further discussion and vetting.

PLANNING BOARD AMENDMENT 3: WETLAND CONSERVATION DISTRICT

Are you in favor of adopting the following amendment to the Town of Milford Zoning Ordinance as proposed by the Planning Board?

To see if the Town will amend the Milford Zoning Ordinance, Article VI Section 6.02.0 by deleting and adding the underlined text (in red) to read as follows:

6.02.0 WETLAND CONSERVATION DISTRICT (2017)

6.02.1 GENERAL

- A. The Wetland Conservation District shall be considered as overlaying any other district established by this Ordinance. Any use permitted in the portions of the district so overlaid shall only be permitted subject to all provisions of this section.
- B. Except for the permitted uses as listed in 6.02.5 of this section, there shall be no impact of wetlands or surface waters, unless all federal, state and local permits are in place.
- C. All impacts to wetlands shall be regulated in accordance with NH Code of Administrative Rules, Wt. Env-Wt 100-900 as may be amended from time to time and require the receipt of the appropriate permit from the State of New Hampshire Department of Environmental Services Wetlands Bureau. The state process requires a review by the Milford Conservation Commission. (2017)
- D. The Milford Conservation Commission, established under NH RSA 36-A, has statutory standing before the Department of Environmental Services under NH RSA 482-A:11, III and provides a local source of assistance to both the department and the applicants for Dredge & Fill Permits.
- E. A special exception approved by the Milford Zoning Board of Adjustment shall be required for any use within the wetland except for those listed in 6.02.5. Note that state and/or federal permits may be required for uses not requiring a special exception under this Ordinance.
- F. The Wetland Conservation District is an overlay district which imposes additional requirements and restrictions to those of the underlying base district established under the powers granted under NH RSA 674:21. In case of conflict between the requirements of Section 6.02.0 and the requirements presented elsewhere in the Milford Zoning Ordinance, the provisions of 6.02.0 shall apply. (2010)

6.02.2 PURPOSE

By the authority granted in NH RSA 674:16-17 and 674:20-21, the purpose of the Wetlands Conservation District is to protect the values and functions of wetlands, surface waters and their associated buffer zones. It is further intended, but shall not be limited to, the following:

- A. Protect the public health, safety, general welfare and property;
- B. Reduce sedimentation of wetlands and surface waters;
- C. Aid in the control of non-point source pollution; (2017)
- D. Provide a vegetative cover in the case of the buffer zones for filtration of runoff and the prevention of erosion;
- E. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats;
- F. Conserve natural beauty and open spaces;
- G. Preserve ponds, rivers and streams in their natural state,

- H. Protect persons and property from flood damage by preserving the natural flood storage areas,
- I. Control the development of structures and land uses which contribute to the pollution of surface and groundwater by sewerage, hazardous substances or siltation;
- J. Protect aquifers, which serve as existing or potential water supplies as well as the aquifer recharge system;
- K. Prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities which arise because of the inharmonious use of wetlands;

6.02.3 LOCATION OF THE WETLAND CONSERVATION DISTRICT

The areas within the town of Milford to which this section applies are as follows:

- A. **Streams:** This includes both perennial and intermittent streams wherever fresh water flows for sufficient time to develop and maintain a defined channel. The area of the stream shall lie within the banks as defined by the ordinary high water mark established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the immediate bank, or shelving, or changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- B. **Ponds:** The pond area shall be the extent of water at the full pond as determined by the top of the impoundment structure in artificial ponds or by the natural high water mark in natural ponds.
- C. **Wetlands:** A wetland area shall be delineated based on hydrophytic vegetation, hydric soils and wetland hydrology in accordance with techniques outlined in the Corps of Engineers wetlands Delineation Manual, Technical Report Y-87-1 (January 1987) and defined by NH RSA 482-A:2.X (as amended). (2017)
- D. **Buffers:** The buffer area shall be measured from the edge of any stream, pond, or wetland in a horizontal plane. The buffer is the area adjacent to a wetland and/or open water which should be kept free of uses that may introduce or facilitate pollution, sedimentation or other harmful effects to the wetland. The buffer shall include the area within ~~twenty five (25) feet~~ fifty feet (50) from any wetland, stream, ~~or pond area,~~ surface water or vernal pool. For the water bodies named in 6.02.3:E, the buffer shall be at least fifty (50) feet ~~one hundred (100) feet~~ from the edge of any stream, pond, or wetland in a horizontal plane. (2017)
- E. **Surface waters with ~~50 foot~~ 100 foot buffer area:** The following water bodies together with any adjacent very poorly drained wetlands are protected by a fifty (50) one-hundred (100) foot buffer. These 2nd Order and higher streams are described in the Conservation Plan, an Appendix of the Town Master Plan. (2017)
 - 1. **Birch Brook:** from its commencement at the wetland lying between Whitten Road and Chappell Drive to its junction with Great Brook,
 - 2. **Compressor Brook:** from its commencement as follows:
 - a. Compressor Brook, East Branch: from its entry into Milford at the Milford/Brookline Town Line in the southeast portion of Milford to its junction with Compressor Brook south of Melendy Road and east of Ruonala Road,
 - b. Compressor Brook, West Branch: from its beginning at a wetland on the west side of Ball Hill

Road to its junction with Compressor Brook, East Branch, as described in a. above,

c. Compressor Brook: from the junction of the East Branch and the West Branch south of Melendy Road and east of Ruonala Road to its junction with Great Brook,

3. **Great Brook:** from its commencement at Mile Slip Road, approximately one thousand five hundred (1,500) feet south of Mason Rd. to Railroad Pond, and from Railroad Pond to the Souhegan River, including its passage through said pond,
4. **Hartshorn Brook:** from the Mont Vernon/Milford Town line, through Hartshorn Pond to its junction with the Souhegan River,
5. **Mitchell Brook:** from its entrance into Milford at the Milford/Mason Town line to its junction with Spaulding Brook,
6. **Ox Brook:** from its beginning in a wetland west of Melendy Road to its junction with Compressor Brook,
7. **Purgatory Brook:** from its entrance into Milford at the Milford/Lyndeborough Town line, to its junction with the Souhegan River,
8. **Spaulding Brook:** from its entrance into Milford at the Milford/Mason Town line to its exit from Milford at the Milford/Brookline Town line,
9. **Tucker Brook:** from its entrance into Milford in the vicinity of the granite bound on the Milford/Wilton Town line, to its junction with the Souhegan River,
10. **Compressor Pond,**
11. **Hartshorn Pond,**
12. **Railroad Pond,**
13. **Osgood Pond,**
14. **Souhegan River, see 6.02.3.G.**

F. Surface waters with one hundred (100) foot buffer:

Peatlands: Due to their rarity and fragility, these unique wetlands shall be protected by a one hundred (100) foot buffer.

G. Shoreland Water Quality Protection Act (2017)

Osgood Pond and the Souhegan River with the exception of the Urbanized Exemption Parcels are subject to the Shoreland Water Quality Protection Act, NH RSA 483-b as may be amended from time to time. The Shoreland Water Quality Protection Act addresses activities within two hundred and fifty (250) feet of great ponds and fourth order streams. The Souhegan River is a fourth order stream.

6.02.4 DEFINITIONS

Bank/Edge of Wet: The transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wt [301.01102.15](#) indicates a change from wetland to upland. (2017)

Buffer: An upland area adjacent to a wetland and/or surface water which serves to filter surface water flowing into the wetland.

Bog: A wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soils and/or water conditions.

Great Pond: Any natural water body having an area of ten (10) acres or more.

Fen: Unique wetlands characterized by saturated organic soils (well-decomposed peat) fed by neutral to somewhat alkaline groundwater.

Marsh: A wetland that is distinguished by the absence of trees and shrubs, which is dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

Peatlands: Wetlands with thick organic soil, often with a characteristic floating mat of mosses, sedges, shrubs, and/or trees in very acidic conditions, includes bogs and fens.

Stream, Intermittent: A place where water flows for sufficient duration and/or in sufficient quantity to maintain a channel.

Stream, Perennial: Any channel, natural or manmade, which has water present for twelve (12) months of a normal year but which may dry up during a period in which the rainfall is less than sixty (60) per cent of average for more than three consecutive months.

Surface water: Streams, lakes and ponds, including marshes, watercourses and other bodies of water, natural or artificial. ~~[NH RSA 485-A:2 XIV]. (2015)~~ [NH RSA 485-A:2 XIV (2017); Env-Wt 104.33]. (2019)

Vernal Pool: A surface water or wetland, including an area intentionally created for purposes of compensatory mitigation, which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and further defined in New Hampshire Code of Administrative Rules Chapter Env-Wt ~~101.108104.44~~ (as amended). ~~(2017)~~(2020)

Very poorly drained: Water is removed from the soil so slowly that free water remains at or on the surface during most of the growing season.

Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

6.02.5 ACCEPTED USES: (2017)

A. **Wetlands:** Any of the following uses, the execution, construction or placement of which do not permanently and significantly alter the natural flow of ground or surface water, and that are otherwise permitted by the Zoning Ordinance. (2011)

1. Projects that fall under the Wetland ~~Bureau's Minimum Impact Expedited Permit Application Statutory Permit by Notification (SPN) Env-Wt 308.01,04 or Lower Scrutiny Approval (LSA) Permits by Notification Env-Wt 309.05.~~ These projects, however, must be approved-reviewed by the

- Conservation Commission prior to ~~approval-submission by to~~ the Wetlands Bureau. (2017)
2. Repair or reconstruction of an existing legal structure that meets the following conditions:
 - a. Where the size, location and configuration remain the same
 - b. The work shall not require the utilization of tracked or wheeled equipment in the water or wetland; (2017)
 - c. ~~The work shall not require the utilization of tracked or wheeled equipment in the water or wetland;~~
 - d.c. The structure has not been abandoned. Failure to maintain an existing structure in a state so that it is functional, and intact, for a period of five (5) years shall be prima facie evidence of abandonment or non-use.
 3. Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided that the roots of the vegetation are not disturbed, and that the ground is frozen or sufficiently dry to avoid making ruts and that the area is stabilized once thawed and that the project is not located in prime wetlands.
 4. Hand raking of leaves or other organic debris from the shoreline or lake bed provided that:
 - a. At the time raking is done, the area is exposed by draw down, or
 - b. Raking does not disturb vegetative roots. ~~and is limited to less than nine hundred (900) square feet of area.~~
 5. Management of a beaver dam as provided in ~~NH RSA 210:9,II and Env-Wt 308.01.g~~NH RSA 210:9 (as amended). (2017)
 6. Removal of a beaver dam by hand or machine provided:
 - a. Machinery does not enter the water or create any impact by filling or dredging to adjacent surface waters, wetlands, or their banks;
 - b. All dredged materials are placed out of wetlands and out of the defined buffer area, and
 - c. Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water to cause erosion or siltation.
 7. Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in 6.02.5:A.3.
 8. Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous materials.
 9. ~~Other activities as noted in NH Wetlands Bureau Code of Administrative Rules Wt. 303.05.~~
- B. **Buffer Zones:** Any of the following uses that do not alter the surface configuration by the addition of fill, removal of soil, or obstruct in any manner the natural flow of ground or surface water, or disturb in any manner the ground itself to any depth and that are otherwise permitted by the Zoning Ordinance.
1. Forestry, subject to the provisions of RSA 227-J:6, as amended, and tree farming in accordance with good silvicultural practices, outlined in *Good Forestry in the Granite State: Recommended Voluntary Management Practices for New Hampshire*, as amended. (2017)
 2. Agriculture, as defined in NH RSA 21:34-a, as amended, including growing and harvesting of crops using best management practices detailed in *best Management Wetland Practices for Agriculture in NH*, as amended. (2017)
 3. Buildings and structures not to exceed one hundred twenty (120) square feet and without sanitary plumbing and raised above-ground on concrete or similar blocks placed on the ground

- surface in such a manner as to permit the natural flow of any surface water,
4. Decks raised above the ground so as to permit the natural flow of any surface waters,
 5. Potable water supply wells and their associated water lines and associated power lines, provided there are adequate erosion control measures in place during work and repair of any disturbance,
 6. Monitoring wells for observation purposes, provided there are adequate erosion control measures in place during work and there is repair of any disturbance,
 7. Driveway access if the impact is less than that allowed by the activities permitted in NH Wetland Rules Env-Wt 308 and 309. The access is to be located where it causes the least impact to the surrounding landscape.
 8. Water impoundments for wildlife/fire protection/stormwater/recreational/agriculture use as approved by the Planning Board and/or Board of Adjustment with Milford Conservation Commission guidance.
 9. Pre-existing uses within the Wetland Conservation District will conform to Article 2.02.0 of the Milford Zoning Ordinance. A use or structure lawfully existing prior to the enactment of the Zoning Ordinance (3/11/69), and that is maintained after the effective date of the Ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is situated.
 10. Replacement or repair of any existing septic system confirmed to be in failure provided:
 - i. The system requiring replacement or repair was in place prior to the date of adoption of this ordinance
 - ii. Prior to commencement of such replacement or repair, the property owner has obtained any and all required State and local construction approvals and permits; and
 - iii. The planned replacement or repair will not expand the intensity of use of the structure(s) it is intended to serve.

6.02.6 A SPECIAL EXCEPTION IS REQUIRED FOR:

- A. **Wetlands:** A Special Exception Permit from the Board of Adjustment is required for any project not listed in 6.02.5:A that is located within a wetland and is not in the right-of-way of a public road. (2017)
- B. **Buffer:** A Special Exception from the Board of Adjustment is required for any project not listed in ~~6.02.5.A. and B. that is located within a wetland buffer and not in the right of way of a public road. (2011)~~
- C. The Board of Adjustment, in acting on an application for a special exception in the Wetlands Conservation District, shall take into consideration the conditions as noted in 10.02.1.
- D. The Board of Adjustment may grant a Special Exception for such projects after the application for the Special Exception has been reviewed and reported upon by the Milford Conservation Commission and forwarded to the Board of Adjustment within forty (40) days of a public meeting at which the Conservation Commission first received detailed plans on the project.
- E. The Planning Board may also be required to submit a report to the Board of Adjustment, if requested by the Board of Adjustment. The Planning Board shall submit its report within the above specified forty (40) day period.

6.02.7 CRITERIA FOR EVALUATION

- A. For all projects requiring a Special Exception the applicant shall demonstrate by plan or example that the following factors have been considered in their design:
 - 1. The need for the proposed project;
 - 2. The plan proposed is the alternative with the least impact to the wetlands, surface waters and/or their associated buffers;
 - 3. The impact on plants, fish and wildlife;
 - 4. The impact on the quantity and/or quality of surface and ground water;
 - 5. The potential to cause or increase flooding, erosion, or sedimentation;
 - 6. The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland, wetland complex and/or buffer area were also permitted alterations to the wetland and buffer proportional to the extent of their property rights;
 - 7. The impact of the proposed project on the values and functions of the total wetland or wetland complex.

- B. The Town of Milford shall place emphasis in preserving peatlands and marshes. This priority shall be based upon the rarity of those environments and the difficulty in restoration of the value and function of those environments.