

MARCH 9th, 2010

2.2.75 Definitions: Replace existing definition for “variance” with definition in accordance with revised NH RSA 674:33, I . (See below.)

Variance:

The zoning board of adjustment shall have the power to:

- a. Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
- b. Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:
 1. The variance will not be contrary to the public interest;
 2. The spirit of the ordinance is observed;
 3. Substantial justice is done;
 4. The values of surrounding properties are not diminished; and
 5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - A. For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - ii. The proposed use is a reasonable one.
 - B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

4.2 Schedule 1 Notes: #2: Accessory Dwelling Units

Replace existing language with the following;

(e) The accessory dwelling unit is limited to 720 sq. ft.

5.1.2 Non-Conforming Uses: Expansion of:

Revise as follows:

Expansion of a non-conforming use is prohibited except by variance.

- A. The non-conforming use may not be physically extended, reconstructed, enlarged or structurally altered so as to create changes in said use except in conformity with this Ordinance.
- B. Any change in the purpose, manner, or extent of a non-conforming use is permitted only by variance.

5.1.4 Non-Conforming Uses: Continuance of:

Revise as follows:

- A. A non-conforming use shall be allowed to continue as long as its purpose, manner or extent does not change.

5.2. Special Exceptions:

Replace special exception criteria (H) language with the following:

- H. That the use shall not adversely affect abutting or nearby property values.

7.2 Open Space Development, Objectives:

Add the following two objectives:

- 7.2.6 To preserve those areas of the site that have the highest ecological value, for example, wildlife habitat including rare and exemplary species and habitats, water resources, wetlands, streams and rivers.
- 7.2.7 To create a contiguous network of open spaces or “greenways” by linking the common open spaces within the subdivision and to open space on adjoining lands wherever possible.

7.3 Open Space Development, Definitions:

Add the following definition:

7.3.4 Greenways: A contiguous network of open space providing connectivity and movement between larger tracts of protected land.

7.5 Open Space Development, Single Family Open Space Development:

Revise as follows:

7.5.1 The minimum area for a Single-family Open Space Development shall not be less than five (5) acres of contiguous land where single family open space is permitted.

7.5.6 Open Space Development, Single Family Open Space Development, Internal Setback Requirements:

Revise by changing title, inserting a new subparagraph C, and replacing the current subparagraph C with D as follows:

7.5.6 Internal Dimensional Requirements

7.5.6.C. Detached single family units on one parcel shall be set apart from each other a minimum of twenty-five (25) feet.

7.5.6.D Structures shall be a minimum of fifteen (15) feet from side yard property lines and (twenty) 20 feet from rear yard property lines.

9.1 Wetlands Conservation District

Delete in its entirety and replace with the following:

9.1.1 Purpose and Intent: The purpose of the Wetlands Conservation District is to protect the public health, safety and general welfare of the community by promoting the most appropriate use of land and the protection of wetland ecosystems and water quality in accordance with the goals and objectives of the most recent Exeter Master Plan. It is intended that this article shall:

- A. Prevent the development of structures and land uses on wetlands and areas of very poorly drained soils and poorly drained soils and /or their buffers which will contribute to pollution of surface and groundwater by sewage or toxic substances or sedimentation;
- B. Prevent the destruction of, or significant changes to, those wetland areas, related water bodies, and adjoining land which provide flood protection;
- C. Protect wetland systems that provide filtration of water flowing into ponds and streams, augment stream flow during dry periods and which connect to the ground or surface water supply;

- D. Protect wildlife habitats, maintain ecological function and support other public purposes such as those cited in NH RSA §482-A:1;
- E. Protect potential water supplies and existing aquifers (water bearing stratum) and aquifer recharge areas;
- F. Prevent unnecessary or excessive expense to the Town for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of development in wetlands;
- G. Prevent damage to structures and properties caused by inappropriate development in wetlands.

9.1.2 Applicability: All proposed development, removal of vegetation, and alteration/disturbance of the land including but not limited to drainage, wastewater disposal system, wells and other utilities within the wetlands conservation overlay district is subject to this ordinance.

9.1.3 Boundaries: The Wetlands Conservation Overlay District includes

- A. Surface waters of the State.
- B. Wetlands of any size including but not limited to swamps, bogs, marshes, ponds, lakes, and vernal pools.
- C. Inland streams shown on USGS 7.5x15 minute quadrangle maps, including intermittent streams.
- D. Man-made drainage structures including but not limited to detention ponds, retention ponds, and drainage swales shall not be considered part of the Wetlands Protection Overlay District.
- E. A wetland buffer area comprised of all land parallel to and measured from the edge of the wetland boundary on a horizontal plane to a width defined below:
 - 1. Prime Wetland Buffers: Includes all areas extending 100' from the boundary of areas identified in the 2005 Prime Wetland Report and registered with the NH Wetlands Bureau. This 100 foot buffer is a "No Cut-No Disturbance" buffer.

2. Exemplary Wetland Buffers: Includes all areas extending 50 feet from the boundary of wetlands designated as an exemplary natural community by the NH Natural Heritage Bureau. This 50 foot buffer is a “No Cut – No Disturbance” buffer.
 3. Very Poorly Drained Soils (Hydric A) Buffer: Includes all areas extending 50 feet from the boundary of such wetlands. This 50 foot buffer is a No Cut- No Disturbance buffer. No subsurface wastewater disposal system shall be constructed within seventy-five feet (75') of the edge of any Type A Hydric Soil.
 4. Poorly Drained Soils (Hydric B) Buffer: Includes all areas extending 40 feet from the boundary of such wetlands. This 40 foot buffer is a No Cut- No Disturbance buffer. No subsurface wastewater disposal system shall be constructed within fifty feet (50') of any Type B Hydric Soil.
 5. Inland streams Buffer (including intermittent streams): Includes all areas extending 25 feet from the top of the bank. This 25 foot buffer is a No Cut- No Disturbance buffer.
 6. Vernal Pool Buffer (200 square feet or greater): This includes all areas extending 75 feet from the boundary of vernal pools. This 75 foot buffer is a “No Cut- No Disturbance” buffer.
- F. **Boundary Appeals**: In the event that the Building Inspector, the Planning Board, or the Conservation Commission questions the validity of the boundaries of a wetland area on a specific parcel of land, or upon written petition of the owner or any abutter of the said property to the Planning Board, the Board may call upon the services of a scientist qualified to delineate wetlands in accordance with the standards and criteria specified in sub-article B. above in order to examine said area and report the findings to the Planning Board for their determination of the boundary. Expenses incurred in retaining these services shall be paid by the landowner.

9.1.4 Definitions:

- A. Buffer: The protected upland areas adjacent to all systems described within the Wetlands Conservation Overlay District. This area acts as essential maintenance and protection of wetland value and function.
- B. Certified Wetlands Scientist: A person qualified to delineate wetland boundaries and prepare wetland maps who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II-A.
- C. Development: Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading excavation or drilling activities.
- D. Exemplary Wetlands: The NH Natural Heritage Bureau tracks "exemplary" natural communities including wetlands. To qualify as exemplary, the wetland in a given place must be of a rare type, or must be a very old occurrence of a common community in good condition.
- E. No cut / No disturb: Prohibit activities which involve the cutting or clearing of native vegetation, compaction, re-contouring or grading the natural surface of the land or alteration of water flow.
- F. Prime Wetlands: Those areas designated Prime Wetlands in accordance with RSA 482-A:15, and the NH Code of Administrative Rules Env-Wt 700.
- G. Vernal Pool: A body of water, typically seasonal, that provides essential breeding habitat for certain amphibians and invertebrates, does not support viable fish population, and meets the criteria established by the New Hampshire Fish and Game Department, Nongame and Endangered Wildlife Program, *Identification and Documentation of Vernal Pools in New Hampshire*, rev 2004. In accordance with the NH Code of Administrative Rules Env Wt-101.99, this does not include areas that contain these characteristics but are the result of on-going anthropogenic activities that are not intended to provide compensatory mitigation, including but not limited to: (1) Gravel pit operations in a pit that has been mined at least every other year; and (2) Logging and agricultural operations

conducted in accordance with all applicable New Hampshire statutes and rules.

- H. Surface Waters of the State: Pursuant to RSA 485-A:2.XIV, perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on state, marshes, water courses, and other bodies of water, natural or artificial.
- I. Wetland: Pursuant to RSA 482-A:2.X, an area that is inundated or saturated by surface or groundwater 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. They include, but are not limited to, swamps, bogs, marshes, ponds, lakes, and all such areas as included in the jurisdictional definition of the New Hampshire Wetlands Board Administrative Rules, Chapter Wt 100 as subsequently amended.
- J. Wetland Delineation: Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology, in accordance with the techniques outlined in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (January 10, 1989).

9.1.5 Permitted Uses: The following uses, to the extent permitted in the underlying zoning district, shall be permitted in the Wetlands Conservation Overlay District as specified, provided that the proposed use will not cause a degradation of the wetland.

- A. Agriculture, including grazing, hay production, truck gardening and silage production provided that such use is shown not to cause significant increases in surface or groundwater contamination by pesticides or other toxic or hazardous substance and that such use will not cause or contribute to soil erosion provided that the activity does not impact the prime wetlands 100' buffer.
- B. Forestry and tree farming to include the construction of access roads for said purpose.
- C. Wildlife habitat development and management.
- D. Recreational uses consistent with the purpose and intent of this article.

- E. Conservation area and nature trails.
- F. Water impoundment and the construction of well water supplies.

9.1.6 Conditional Uses:

A. Conditional Use Permit: Under the enabling authority granted by NH RSA §674:21 II, the following uses are only permitted in the Wetlands Conservation Overlay District pursuant to the issuance of a conditional use permit by the Planning Board provided that all of the conditions listed in article 9.1.6.B below are met:

1. Construction of roads and other access ways, parking areas, utilities, structures, drainage systems, wells and wastewater disposal systems and other site improvements that impact the Wetlands Conservation Overlay District, provided that the proposed construction is essential to the productive use of land not within the Wetlands Conservation Overlay District.
2. If prime wetlands are involved then the following:
Agriculture activities including grazing, hay production, truck gardening and silage production provided that such use is shown not to cause increases in surface or groundwater contamination by pesticides or other toxic or hazardous substance and that such use will not cause or contribute to soil erosion.
3. Forestry and tree farming consistent with the best management practices as published by the NH Department of Resources and Economic Development and NH Cooperative Extension. As specified, in Logging Operations (Env-Wt 304.05), all skid trails, truck roads and log landings shall be located 50 feet from streams or ponds and designed using appropriate erosion control devices. Stream and wetlands crossings shall be kept to a minimum in size and number.

B. Conditions:

1. That the proposed use is permitted in the underlying zoning district;

2. That the use for which the permit is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation Overlay District;
3. That the design, construction and maintenance of the proposed use will, to the extent feasible, minimize detrimental impact on the wetland or wetland buffer and that no alternative design which does not impact a wetland or wetland buffer or which has less detrimental impact on the wetland or wetland buffer is feasible;
4. In cases where the proposed use is temporary or where construction activity disturbs areas adjacent to the immediate use, that the landowner agrees to restore the site as nearly as possible to its original grade and condition following construction;
5. That the proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reasons;
6. That all required permits shall be obtained from the New Hampshire Department of Environmental Services Water Supply and Pollution Control Division under NH RSA §485-A: 17, the New Hampshire Wetlands Board under NH RSA §483-A, and the United States Army Corps of Engineers under Section 404 of the Clean Water Act.

9.1.7 Environmental Impact Assessment: The Planning Board may require the applicant to submit an environmental impact assessment when necessary to evaluate the effects of proposed development on existing wetland natural resources. The cost of this assessment shall be borne by the applicant. The Planning Board may retain its own consultant to review the impact assessment and other materials submitted by the applicant, such expenses to be paid by the applicant.

9.1.8 Prohibited Uses: In reviewing an application for a variance from the provisions of this subsection, the Zoning Board of Adjustment may request that the Conservation Commission and/or the Planning Board review the application and provide written comment as to the potential impacts the proposed use may have on wetlands and wetland buffers. The following uses are not permitted in the

Wetlands Conservation Overlay District, notwithstanding that they may be permitted in the underlying zoning district:

- A. Salt storage
- B. Wastewater Disposal Systems (including a 4,000 square foot reserve area)
- C. Automobile junkyards
- D. Solid or hazardous waste facilities
- E. Use of fertilizer on lawns, except lime or wood ash
- F. Bulk storage or handling of chemicals, petroleum products, underground tanks, hazardous materials, or toxic substances as defined under NH RSA 147-A2, VII.
- G. Snow storage, unless in accordance with NH Department of Environmental Services Snow Disposal Guidelines (Document WMB-3, 2007)
- H. Sand and gravel excavations
- I. Processing of excavated material

9.1.9 Lot Size Determination:

- A. Areas defined as jurisdictional wetlands in this article may be used to satisfy up to twenty-five percent (25%) of the minimum lot size required by the zoning ordinance, provided that the remaining lot area is sufficient in size and configuration to accommodate adequately all required utilities such as sewage disposal and water supply, and will accommodate permitted structures and lot access.
- B. No open bodies of water may be used to satisfy minimum lot sizes.
- C. The twenty-five percent (25 %) limitation of this article may be increased up to fifty percent (50%) for minimum sized lots in the RU or R-1 districts that are served by municipal water and sewer, provided all setbacks are adhered to.

9.1.10 Non-Local Permits: Notwithstanding the provisions of this article or local approval of proposed uses, any permits required by the New Hampshire Department of Environmental Services Water Supply and Pollution Control Division under NH RSA §485-A:17, the New Hampshire Wetlands Board under NH RSA §482-A, or the United States Army Corps of Engineers under Section 404 of the Clean Water Act shall be obtained prior to the use or alteration of wetlands. Separate local approval of regulated uses in wetlands shall be required irrespective of obtaining non-local permits.

6.16 Healthcare District; and

3.2 Zoning Map:

Revise the Exeter Zoning Map by expanding the Health Care District as shown on the plan entitled "Zoning Amendment Proposal - Healthcare District Proposed Lines" and dated Nov. 5th 2009.

Also, replace 6.16.3 in its entirety with the following and add 6.16.4 and 5 as follows:

6.16.3 Parking Setbacks: No additional, or enlarged, parking areas shall be installed in the Healthcare District within fifty feet (50) of where the Healthcare District adjoins any residential district or residential uses.

6.16.4 Landscape Buffer: In addition to the building and parking setbacks in 6.16.2 and .3, the Planning Board, in its consideration of site plan review applications for site development or redevelopment within the Healthcare District, shall require landscaping and screening within the fifty (50) foot perimeter setback from any adjacent residential district or residential uses.

6.16.5 The portion of any building constructed within seventy five (75) feet of the boundary of the Healthcare District with any residential zone shall not exceed the height allowed in the adjoining residential zone. The Planning Board, when considering site plan review applications for construction of a portion of any building located more than seventy five (75) feet from said boundary which will have a height greater than that allowed in the adjoining residential zone, shall require the applicant to submit shadow studies evaluating the impact of the proposed construction on adjoining residentially zoned property.

