

Harrisville Planning Board

Public Hearing on Proposed Land Use Amendments

November 10, 2020

NOTE: New Language is shown as *bold italic*; language to be deleted is shown as a ~~strikethrough~~.

Proposal #1: Amendment to Article VI

6.1.3. There shall be a minimum distance of fifty (50) feet between any structure and the nearest boundary of any public right-of-way. No structure shall be placed closer than forty (40) feet to the side and rear boundaries of the lot. *By Special Exception the following structures may be located no less than twenty-five (25) feet from the nearest boundary of any public right-of-way or side and rear boundaries of the lot: patios, gazebos, greenhouses, garages, storage sheds, hot tubs, swimming pools, and similar structures.*

Proposal #2: Amend Article XXVI - Definitions

Revise the definition of Accessory Building as follows:

~~ACCESSORY BUILDING~~ ***STRUCTURE***: A subordinate ~~building or portion of the main~~ *structure or* building on a lot, the use of which is customarily incidental to that of the main or principal building.

Proposal #3: Amend Article XI – Historic District

Correct the District boundary by changing the designation of Lot 61-3 to Lot 61-4.

Proposal #4: Amend Article VI & Article X

Delete Section 6.3, and Section 10.3, both dealing with Accessory Dwelling Units that are redundant, since ADU's are addressed in Article XXIX.

Proposal #5: Wetlands Protection Overlay District

I. ARTICLE XII WETLANDS CONSERVATION OVERLAY DISTRICT

12.1. AUTHORITY. By the authority granted in N.H. RSA 674:16-17 and 674:20-21, and in the interest of public health, safety and general welfare, the Harrisville Wetlands Conservation Overlay District (hereinafter known as “the District”) is hereby enacted.

12.1.1. Compliance with this ordinance does not relieve any property owner from complying with applicable state regulations regarding wetlands. A Wetlands Permit from the [NHDES Wetlands Bureau](#) is required for excavating, removing, filling, dredging or constructing structures within state jurisdictional areas, including wetlands and surface waters, *pursuant to RSA 482-486 and DES Env-Wt 100-900.*

12.2. PURPOSE. The District is hereby enacted for the following purposes:

12.2.1. To regulate the uses of lands subject to standing water or extended periods of high-water table.

12.2.2. To control the development of structures and land uses on naturally occurring wetlands that would contribute to the pollution of surface and groundwater.

12.2.3. To prevent the destruction of natural wetlands, which provide flood protection, groundwater recharge, pollution abatement, and the augmentation of stream flow during dry periods, and which are important for such other reasons as those cited in RSA 482- A:1.

12.2.4. To prevent unnecessary or excessive expenses to the town and to provide and maintain essential services and utilities, which arise because of unwise use of wetlands.

12.2.5. To allow those uses that can be appropriately and safely located within wetlands areas and which do not adversely impact water resource supplies.

12.2.6. To preserve and enhance the values associated with wetlands of this Town, including noteworthiness, uniqueness/heritage, and scenic quality.

12.2.7. To provide a buffer around the wetland in order to protect the essential functions of wetlands which are: ecological integrity; aquatic habitat; flood storage; groundwater recharge/discharge; nutrient removal; sediment stabilization; wildlife habitat; nutrient reduction; and sediment retention/trapping.

Synopsis of Changes

- Added 12.1.1 to inform of the need to also seek approval from DES if necessary, and add references to the specific state statutes and DES rules

- Added 12.2.6 & 12.2.7 to include protection of the functions and values of wetlands as a purpose for the ordinance.

12.3. DEFINITIONS

12.3.1. Bog. A bog is a non-forested or open wetland that is not dominated by trees, although they may be distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil. They have water at or near the surface at least part of the year, and may have a more or less distinct border defined by the surrounding forest.

12.3.2. Buffer. The protected uplands adjacent to wetlands and vernal pools.

12.3.3. Vernal Pool. A body of water, typically seasonal, that provides breeding habitat for certain amphibians and invertebrates, as well as a wide variety of other wildlife species, but it does not support fish population. It is a small, seasonal wetland that lacks an inlet and outlet and during the dry seasons may only be recognizable as an isolated depression in the forest floor.

12.3.4. Wetland. Pursuant to RSA 482-A:2, X, an area that, either through surface water or ground water, is wet enough and wet for a long enough period of time, to support a predominance of vegetation that grows in saturated soil conditions. Wetland soils usually have developed special characteristics, and have water at or near the surface. In order for an area to be deemed at wetland, **all** three of the following must be present:

- **Hydric soils** – soils that are saturated or flooded during the growing season sufficient to produce anaerobic conditions in the upper soil layers.
- **Hydrophytic vegetation** – greater than 50% of the vegetation present is adapted for life in saturated soil conditions.
- **Hydrology** – Evidence exists that demonstrates the soils in the area are inundated with water either permanently or periodically at some time during the growing season.
- Examples of wetlands include, but are not limited to: swamps, bogs, marshes, forested wetlands, wet meadows and vernal pools.

12.3.5. Forested wetlands are dominated (or potentially dominated) by trees taller than 20 feet. Forested wetlands vary widely in their characteristics, often have relatively little water directly at the surface, and have indistinct borders. They may require considerable expertise to identify.

12.4. DISTRICT BOUNDARIES. The District consists of:

12.4.1. Wetlands of any size.

12.4.2. A buffer area extending out 100 feet from the wetland edge.

Synopsis of Changes

- Added a new Definition section.

NOTE: with the addition of this section, and others below, the numbering of this document will not match the numbering of the existing ordinance.

- Incorporates the current Army Corp of Engineers definition of wetlands, which is the standard used now, instead of using poorly-drained and very-poorly drained soils.

- Amended District Boundaries to base the district on wetlands as defined, rather than on a map, and including a 100-foot buffer around the wetlands.

12.5. GENERAL PROVISIONS.

12.5.1. Boundary Delineation: Boundaries of the Wetlands Conservation Overlay District are to be delineated on any lot that is the subject of subdivision or site plan; and for any driveway or building permit application for any development that may be within 100 feet of a wetland.

12.5.2. Boundary Disputes: In the event that the Select Board or Conservation Commission question the validity of the boundaries of a wetland area on a specific parcel of land, or upon the written petition of any abutter, the applicant may be required to engage the services of a certified wetland or soil scientist to determine the exact location of the District.

12.5.3. Lot size determination: Wetlands may be used to fulfill twenty-five (25%) percent of the minimum lot size required by Town ordinances and subdivision regulations, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations.

12.6. SPECIAL PROVISIONS.

12.6.1. There shall be a 100-foot buffer around all wetlands greater than 3,000 square feet and vernal pools of any size, with no alteration of natural vegetation allowed.

12.6.2. There shall be a 25-foot no-build buffer around all wetlands of 3,000 square feet or less, with no alteration of natural vegetation, no habitable buildings and no permanent foundations.

12.7. PERMITTED & RESTRICTED USES.

12.7.1. The uses listed below are consistent with the protection of wetland functions and values.

a. Agriculture, including grazing, hay production, truck gardening and silage production, provided that such use is shown not to cause significant increase in surface or groundwater contamination by pesticides or other toxic or hazardous substances, and that such use will not cause or contribute to soil erosion.

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 Section 12.2 of this article.

e. Conservation areas and nature trails.

Synopsis of Changes

- Added 12.5.1 that requires wetlands to be delineated before approvals are granted for all work.
- Amended 12.5.2 to remove the requirement to have the Planning Board be the arbiter of boundary disputes.

- Added 12.6 as new section that specifies a buffer and a setback around certain size wetlands.

- Added 12.7 as a new section that incorporates provisions from the existing ordinance for permitted uses in poorly-drained and very-poorly drained soils.

f. Water impoundment and the construction of well water supplies.

g. Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.

12.7.2. The following uses may be allowed, provided they do not involve the recontouring or grading of the land, filling, dredging, or draining the wetland, change the flow of water, result in any pollution, or substantial clearing of vegetation:

12.7.2.1. The construction or reconstruction of unpaved walkways, fencing, stone walls, and stacks of cordwood, provided they do not create a barrier to wildlife movement.

~~12.7.2.2. WATERCOURSES (part of Floodplain Management Ordinance of the Town of Harrisville, adopted March 2006)~~

~~In riverine situations, prior to the alteration or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Inspector, in addition to the copies required by the RSA 482 A: 3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector, including notice of all scheduled hearings before the Wetlands Bureau.~~

~~The applicant shall submit to the Building Inspector certification provided by a registered professional engineer assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.~~

~~The Building Inspector shall obtain, review, and reasonably utilize any floodway data available from Federal, State, or other sources as criteria for requiring that all development located in Zone A meet the following floodway requirement:~~

~~"No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge."~~

Synopsis of Changes

12.7.2.2 should be deleted from this ordinance and replaced in the Floodplain Management Ordinance.

- Added 12.8 as a new section to specify what uses can be permitted between 50 and 100 feet from the wetland edge.

12.8. PERMITTED USES BETWEEN 50 AND 100 FEET FROM THE WETLAND EDGE, EXCLUDING VERNAL POOLS.

12.8.1. Pathways, decks, gazebos, pergolas, sheds, patios, or similar constructions, provided no more than 20% of the area is impacted and no permanent foundations are involved. Pre-existing lawns and structures shall be included in the 20% area calculation.

12.8.2. Planting of native trees, shrubs and ground covers.

12.9. SPECIAL EXCEPTION USES. Upon application to the Zoning Board of Adjustment (ZBA), a special exception may be granted for the following:

12.9.1. Accessory structures associated with legally preexisting primary structures if it can be demonstrated that no practical alternative exists elsewhere on the lot.

12.9.2. Footbridges, catwalks and wharves, however provided that said structures are constructed with non-toxic material on posts or pilings that do not obstruct the flow of water; and the natural contour of the wetland is preserved;

12.9.3. The construction of roads and other access ways, and for pipelines, power lines, and other transmission lines, provided that all of the following conditions are found to exist:

12.9.3.1. The proposed construction is essential to the productive use of land not within the District.

12.9.3.2. Design and construction methods will have a minimal detrimental impact upon the District and will include restoration of the site as nearly as possible to its original grade and condition.

12.9.3.3. No alternative route, which does not cross the District or has less detrimental impact on the wetland, is feasible.

12.9.3.4. Economic advantage alone is not reason for the proposed construction.

~~12.9.3.5. Prior to the granting of a permit under this section, the applicant shall agree to submit a performance security to the Select Board. The security shall be submitted in a form and amount, and with surety and conditions satisfactory to the Select Board, to guarantee that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to issuance of any permit authorizing construction.~~

12.9.3.6. The ZBA may require the applicant to submit an environmental impact assessment to evaluate an application made under this section. The cost of this assessment shall be borne by the applicant. The ZBA may also assess the applicant reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications.

Synopsis of Changes

- Added 12.8 as a new section to specify what uses can be permitted between 50 and 100 feet from the wetland edge.

- Section 12.9 combines the existing Conditional Use permits and special exception permit uses into one section, so that there is only one process for those uses that are deemed to require additional review.

12.9.4. Development on vacant nonconforming lots provided that all of the following conditions are found to exist:

12.9.4.1. The lot upon which an exception is sought was an official lot of record, as recorded in the Cheshire County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town.

12.9.4.2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot, which are outside the wetlands conservation district.

12.9.4.3. Because of the provisions of the District, no reasonable and economically viable use of the lot can be made without the exception.

12.9.4.4. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this article.

12.9.4.5. 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 reason.

12.9.4.6. The ZBA shall themselves, or upon petition from the Select Board, conservation commission or abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

~~12.8. EXEMPTION FOR RESIDENTIAL STRUCTURES. Notwithstanding other provisions of this article, the construction of additions and extensions to one and two family dwellings shall be permitted within the wetlands district provided that:~~

~~——— 12.8.1. The dwelling lawfully existed prior to the effective date of this article;~~

~~——— 12.8.2. The proposed construction conforms with all other applicable ordinances and regulations of the Town of Harrisville.~~

Synopsis of Changes

- Finally, Section 12.8 in the existing ordinance, Exemption for Residential Structures, is deleted. The exemption allows all residential structures that pre-exist the ordinance to expand and/or add additions. This appears to be contrary to the purpose and intent of the wetlands protection ordinance.