

Harrisville Planning Board

Proposed Zoning Amendments for Town Meeting

March 9, 2021

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

Amendment #1: Amend Article VI as follows:

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.*

Amendment #2: 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.

Amendment #3: Amend Article XI – Historic District

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

Amendment #4: 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.

Explanatory Notes

The purpose of Amendment #1 is to allow flexibility in the placement closer to boundaries lines of small structures that are not occupied living spaces.

The purpose of Amendment #2 is to remove redundancy in the Ordinance.

The purpose of Amendment #3 is to correct a clerical error.

The purpose of Amendment #4 is to better reflect the various categories of built objects that can be accessory to a primary building.

Amendment #5: Wetlands Protection 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.

Explanatory Notes

The purpose of Amendment #5 is to remove and replace Article XII in order for the ordinance to reflect current science of wetland functions and values and means of protection.

- 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.

12.4.3. Public waters as defined by RSA 483-B are exempt from the provisions of this ordinance. Wetlands that occur outside of the mean high-water level of public water are subject to the provisions of this ordinance.

Explanatory Notes

- Added a new Definition section.
- The wetland definition 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, except as otherwise permitted in this ordinance.

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.

The distance shall be measured on the subject property and as best as can be determined from abutting properties.

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.

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

Explanatory Notes

- 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.

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)~~

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.

Explanatory Notes

- 12.7.2.2 will be deleted from this ordinance and replaced in the Floodplain Management Ordinance. There will be a separate ballot article to place this language into the Floodplain Ordinance
- Added 12.8 as a new section to allow certain uses/activities to occur 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.

Explanatory Notes

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

12.9.3.5. 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.

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.

12.9.5. EXEMPTION FOR RESIDENTIAL STRUCTURES.

Construction of additions and extensions to pre-existing one and two-family dwellings within the wetlands district may be permitted provided that:

12.9.5.1. The dwelling lawfully existed prior to the effective date of this article;

12.9.5.2. It can be demonstrated that no practical alternative exists elsewhere on the lot;

12.9.5.3. Proposed construction footprints within the wetlands district minimize impacts on wetlands natural function (e.g., building on piers rather than foundations so that groundwater flows are uninterrupted); and

- Added 12.9.5.3 & 12.9.5.4 to existing exemption provisions.

12.9.5.4. The proposed construction complies with all applicable provisions of Article V, 5.3 (Non-conforming Structures) and Article XX, 20.1.2 (Special Exception Uses).

Amendment #6: Floodplain Management District

To remove the provisions of Section 12.5.3 in the existing Wetlands Protection Ordinance relating to watercourses and place them in Article XXVII, Floodplain Management Ordinance, as follows:

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

12.6.10.1. 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."

Explanatory Notes

- This provision is not specific to wetlands but rather to floodplain, and therefore rightly belongs back in the Floodplain Management Ordinance.