

1100.00 WETLANDS CONSERVATION DISTRICT

1101.00 Purpose and Intent

The purpose of the Wetlands Conservation District is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been found to be subject to high water tables for extended periods of time. It is intended that this Ordinance shall:

- a. Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection, discharge and recharge of groundwater supplies, and continuing existence of important wildlife areas;
- b. Prevent the development of structures and land uses on naturally occurring wetlands, which would contribute to pollution of surface and groundwater by sewage or toxic substances;
- c. Protect sensitive, unique and unusual natural areas;
- d. Protect the quality and quantity of existing and potential water supplies, aquifers and aquifer recharge areas;
- e. Encourage those uses that can be appropriately and safely located in wetland areas.

1102.00 Definitions

For the purposes of the Wetlands Conservation District the following definitions apply:

1102.01 Accessory Structure: For purposes of this Ordinance an accessory structure shall be considered any structure that serves and is in addition to a primary structure. Examples of an accessory structure include, but are not limited to sheds, gazebos and detached garages.

1102.02 Best Management Practices: When referring to forestry *Best Management Practices* are defined in a publication entitled "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" prepared by the New Hampshire Department of Resources and Economic Development, and Wt. 304.05 Logging Operations, Rules Governing Wetlands, April 21, 1997, as amended. When referring to stormwater management and erosion and sediment control, technical standards are contained in "Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire", DES, RCCD, 1992 and "Manual of Best Management Practices to Control Non-point Source Pollution: A Guide for Citizens and Town Officials," DES, November, 1997. When referring to agriculture, Best Management Practices are defined in the publications entitled "Manual of Best Management Practices for Agriculture in New Hampshire", Department of Agriculture, Markets & Food, June 1995, and "Best Management Wetlands Practices For Agriculture" July 1993, as amended.

1102.03 Bog: A wetland area distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage and/or highly acidic soil and/or water conditions.

1102.04 Buffer Zone: An upland area adjacent to a wetland or surface water where construction is not permitted.

1102.05 Certified Soil Scientist: A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II.

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- 1102.06 Certified Wetland 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.
- 1102.07 Erosion Control Measures: For purposes of this district, all construction and/or development shall incorporate design standards for erosion and sedimentation control which at a minimum reflect the standards set forth in the document, "Stormwater Management & Erosion & Sediment Control for Urban & Developing Areas in New Hampshire", DES, RCCD, 1992, and Chapter Env-Ws 415 of the NH Code of Administrative Rules.
- 1102.08 Hydric Soils: Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.
- 1102.09 Natural Vegetative Buffer: For purposes of this district shall mean, where existing, a natural woodland buffer shall be maintained within the Wetland Conservation District.
- 1102.10 Prime Wetland: Under the New Hampshire statute (RSA 482-A) for protecting wetlands from "despoliation and unregulated alteration", municipalities are able to designate some of their high value wetlands as "Prime Wetlands" (RSA 482-A:15). These designated wetlands are given special consideration by the Wetlands Board in permit application reviews within the scope of RSA 483-A and NH Code of Administrative Rules WT 700.
- 1102.11 Primary Structure: For purposes of this Ordinance a primary structure shall be considered the main structure on a lot that serves as a residence or a place of business.
- 1102.12 Site Specific Soils Map: A map developed from information prepared in accordance with "Site Specific Soils Mapping Standards for New Hampshire and Vermont," Society of Soil Scientists of Northern New England Publication No. 3, 1997, as amended.
- 1102.13 Special Exception: A use of land or buildings that may be permitted, subject to specific conditions that are set forth in the Ordinance. RSA 674:33 gives the local zoning board the power to grant those exceptions, which are clearly specified in the Ordinance.
- 1102.14 Surface Waters: Those waters, as defined by RSA 484-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.
- 1102.15 Wetland: 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. Wetlands generally include, but are not limited to, swamps, marshes, bogs, vernal pools and similar areas. For the purpose of determining buffer zones for site plan and subdivision review wetland boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands, by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.
- 1102.16 Wetlands Conservation District: The Town of Brookline Wetlands Conservation District is defined as all wetland areas, surface water bodies, and the associated buffers as defined in Section 1102.04 Buffer Zone. The limits of the Wetlands Conservation District are determined to include designated Prime Wetlands, as described in the Brookline Prime Wetlands Report dated January 1992.

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- 1102.17 Wet Meadow: An area typically dominated by herbaceous non-woody vegetation less than three feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained soil conditions as defined by “Site Specific Soils Mapping Standards for New Hampshire and Vermont,” Society of Northern New England Publication No. 3, 1997, as amended.
- 1102.18 Vernal Pool: A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates and is free of adult fish populations.
- 1103.00 Jurisdiction**
- 1103.01 Relation to Other Districts. In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Brookline, that district whose regulations are more restrictive shall apply.
- 1103.02 State and Federal Regulations. The Town of Brookline Wetlands Conservation District Ordinance is in addition to state and federal regulations governing wetlands and surface waters, including any permitting process.
- 1103.03 Existing Unimproved Lots. This Ordinance shall not prohibit the construction of, or additions to, principal and accessory structures within the buffer zone on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 9, 1999. Unimproved lots that have been approved for subdivision or which otherwise legally existed on or before March 10, 2004 may use wetlands to satisfy up to 25% of the minimum lot area requirements. New construction on a legal previously approved vacant lot will only be permitted upon determination by the Planning Board that it is not reasonably feasible to locate the structure outside of the buffer zone, prior to the issuance of a building permit. Any construction permitted within the buffer zone shall minimize harm to the wetland or surface water. The Planning Board may seek input from the Conservation Commission during the review process. (March 10, 2004)
- 1103.04 Existing Improved Lots. For lots with improvements legally existing on or before March 9, 1999, all additions to principal and accessory structures, and the erection of new accessory structures within the Wetland Conservation District require a wetland special exception prior to the issuance of a building Permit.
- 1103.06 Preexisting Uses. This Ordinance shall not prohibit the continuation of a legally preexisting use in the Wetland Conservation District, however, the use may not be expanded without a special exception granted by the ZBA.
- 1103.07 Prime Wetlands. These wetlands are described in the Brookline Prime Wetlands Report dated January 1992, and are as follows:

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<u>Wetland Number</u>	<u>Location</u>	<u>Tax Map Sheet</u>
2	W. of Route 13 near Milford	B
3	Scabbard Mill Brook N.	B
5	Palmer land w. of Route 13	B
6	Scabbard Mill Brook S.	B, D
9	Spaulding Brook	A, C
10	North Stream	C, E
12	Lake Potanipo	E, L
15	Talbot-Taylor area	G
16	Pout Pond	H
18	Wallace Brook	J
20	Nissitissit River/Campbell's Meadow	K

1103.08 Prime Wetland Designation. The designation of each prime wetland is included on separate maps correlated to the report. Both the aforementioned maps and report are incorporated in this Ordinance by reference and are on file at Town Hall. Designated prime wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987₂ and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

1103.09 Wetlands Incorrectly Delineated. In the event that an area has been incorrectly delineated as part of the Wetland Conservation District or as a Prime Wetland, and evidence to that effect is presented to the satisfaction of the Planning Board or their representative in site plan reviews or subdivision, or to the satisfaction of the Selectboard or their representative in other cases, or the Conservation Commission, the restrictions contained in this Ordinance shall not apply. Wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987₂ and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

1103.10 Wetlands Exempt. The regulations and restrictions set forth in this District shall not apply to the following wetland areas or their buffer zones:

- a. manmade ditches and swales
- b. sedimentation/detention basins or ponds
- c. manmade agricultural/irrigation ponds and swales
- d. fire ponds, drafting basins and cisterns
- e. a septage or manure lagoon
- f. silage pits
- g. an isolated wetland or surface water of 3000 s.f. or less which does not meet the definition of a bog, vernal pool, or wet meadow

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1104.00 Wetlands Conservation District Permitted Uses

1104.01 Permitted uses are those that do not result in the erection of any structure or alter the surface configuration by the addition of fill, and that are otherwise permitted by the Brookline Zoning Ordinance. Such uses include the following:

- a. Forestry and tree farming, using the best management practices, as defined in Section 1102.02, to protect streams from damage and to prevent sedimentation;
- b. Cultivation and harvesting of crops according to recognized soil conservation practices, *as defined in “Best Management Practices for Agriculture in New Hampshire”, Department of Agriculture, Markets and Food, June, 1995*, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
- c. State-approved water impoundments;
- d. Construction of wells and water feed lines for water supply;
- e. Maintenance of existing drainage ways, such as streams, creeks or other paths of normal runoff water;
- f. Conservation areas, nature trails, parks and recreation uses consistent with the purpose and intent of this Ordinance;
- g. Dry hydrants, drafting basins and fire protection ponds.

1104.02 The following uses shall be permitted in the Wetland Conservation District, provided applicable erosion control measures are in place, there is repair and restoration of any disturbed areas and all available mitigation measures to address changes in water quality and quantity as required by Town Staff and recommended by the Conservation Commission are employed. However, all projects listed below together with any disturbance of the buffer zones involved therein shall be presented to the Conservation Commission, with a request for review in writing, as required by the New Hampshire Wetlands Bureau, for its intervention, opinion, recommendations and/or approval.

- a. Streets, roads, driveways 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 so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the Wetlands Conservation District;
- b. Drainageways, swales, culverts, and other devices to control the volume and timing of stormwater runoff.
- c. Stormwater detention basins, settling basins and other methods of improving the quality of stormwater runoff.
- d. Regrading of the ground surface within the buffer zone of the Wetland Conservation District but not inside the wetland boundaries.

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1105.00 Prohibited Uses in the Wetland Conservation District

Land uses that pose a particular threat to wetlands and surface waters shall be prohibited within the Wetland Conservation District:

- a. Salt storage sheds
- b. Automobile junk yards
- c. Solid or hazardous waste facilities
- d. Use of fertilizer, except lime and/or wood ash
- e. Bulk storage of chemicals, petroleum products or hazardous materials
- f. Sand and gravel excavations as defined in RSA 155-E
- g. Processing of excavated materials
- h. Dumping or disposal of snow collected from roadways or parking areas

1106.00 General Requirements

- a. The buffer zone shall include an area of fifty (50) feet, measured on a horizontal plane from the delineated edge of a wetland or the mean high water mark of a surface water, as appropriate.
- b. Appropriate erosion control measures must be in place prior to construction, properly inspected and maintained through stabilization, and removed with appropriate disposal of silt, debris and erosion control materials.
- c. Any disturbance to the surrounding buffer zone due to construction must be repaired upon completion of the project.
- d. Provision must be made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District.
- e. Construction or enlargement of septic tank or leach field shall follow New Hampshire State regulations regarding setbacks from wetland areas (50'), except in those locations where the soil type is coarse textured with rapid to very rapid permeability, as referenced in the Soil Survey for Hillsborough County, where a 125' setback shall be required from the edge of any wetland that shall be protected by the Wetland Conservation District.
- f. Construction involving the erection of any structure and alteration of the ground surface configuration, which requires a building permit, shall not occur within any portion of the Wetland Conservation District, without required approvals. The applicant must provide written documentation in compliance with Section 1102.15 to the Building Inspector, prior to the issuance of a building permit, verifying that the proposed construction is in compliance with the buffer zone requirements of this Ordinance.
- g. There shall be no net increase in peak flow or overall volume of stormwater runoff in the Wetland Conservation District as a result of any development, in accordance with "Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New

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Hampshire”, DES, RCCD, 1992, and Chapter ENV-Ws 415 of the “NH Code of Administrative Rules. Calculations shall be based on 2 and 10 year storm events.

- h. The Brookline Conservation Commission may require design construction and maintenance methods be prepared by a professional engineer (PE) and shall include restoration of the site, as nearly as possible to its original grade and condition. In the case of a development which involves only a single-family or a two-family dwelling unit or the carving out of a single lot designated for construction of only a single-family or two-family dwelling unit, this requirement may be waived by the BCC, with a written request by the applicant.
- i. Construction shall not proceed until all applicable state and federal permits have been issued.

1107.00 Special Exceptions

1107.01 Procedure

- a. The application for Special Exception must be submitted to the Conservation Commission for review. The Conservation Commission may require review by the Natural Resources Conservation Service, upon submission of applicable fees by the applicant for this service. The Conservation Commission shall make findings of fact regarding the quality of the affected wetlands and the suitability of the proposal.
- b. Evidence to support the application shall be submitted in writing to the Zoning Board of Adjustment, with fees for proper notification, accompanied by written findings of fact from the Conservation Commission.

1107.02 Additions to existing structures within the buffer zone

a. Requirements

- i. Structures within the buffer zone are permitted to expand within the buffer zone up to 600 square feet beyond the footprint that existed on March 9, 1999.
- ii. Expansion may only be permitted to occur away from the edge of the wetland or high water mark, unless a finding made in accordance with Section 1107.04 determines that there will be no negative impact on the wetland and a previous disturbance prior to the adoption of this Ordinance is documented, in which case the expansion may extend to encompass the previous disturbance, but in no case should the buffer be reduced to less than 25 feet.
- iii. Expansion outside the buffer zone is not limited by this Section of the Ordinance.

b. Criteria

The Zoning Board of Adjustment shall grant a special exception permitting the expansion of an existing structure within the buffer zone upon determining that, in light of findings of fact from the Brookline Conservation Commission, the proposed expansion does not conflict with the purpose of the Wetland Conservation District and is otherwise permitted by the Zoning Ordinance.

1107.03 Accessory structures within the buffer zone

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a. Requirements

- i. The accessory structure shall not exceed twenty feet in height.
- ii. The accessory structure must have a total building footprint no larger than two hundred fifty (250) square feet.
- iii. The accessory structure and associated limits of construction must be set back at least 25 feet from the delineated edge of the wetland or surface.
- iv. The land on which the accessory structure is to be built must have a slope no greater than 25%.

b. Criteria

The Zoning Board of Adjustment shall grant a special exception permitting an accessory structure within the buffer zone upon determining that, in light of findings of fact from the Brookline Conservation Commission, the accessory structure does not conflict with the purpose of the Wetland Conservation District and there is no land outside the buffer zone where the accessory structure could reasonably be placed.

1107.04 Reduction of the Wetland Conservation District Buffer Zone

a. Requirements

- i. A Wetland Functions and Values Assessment (using the New Hampshire Method for the Evaluation of Wetlands) shall be performed by a Certified Soil Scientist or Certified Wetland Scientist, at the applicant's expense.
- ii. Under no circumstances shall a reduction be permitted to the buffer surrounding any designated Prime Wetland.

b. Criteria

The Zoning Board of Adjustment shall grant a special exception permitting a reduction of the buffer zone upon determining that, in light of findings of fact from the Brookline Conservation Commission, the results of the Wetland Functions and Values Assessment indicate that the wetland is of such value that the proposed use will not conflict with the purpose of this Ordinance.

1107.05 Use of wetlands to satisfy minimum lot size requirements

a. Requirements

- i. The lot must be unimproved.
- ii. The lot must have been approved for subdivision or must otherwise have legally existed on or before March 10, 2004.

b. Criteria

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The Zoning Board of Adjustment shall grant a special exception permitting the use of wetlands to satisfy up to 25% of the minimum lot size requirements upon determining that, in light of findings of fact from the Brookline Conservation Commission, the proposed use will not conflict with the purpose of this Ordinance.

1108.00 Severability

If any section, provision, portion, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair, or invalidate any other section, provision, portion, clause or phrase of this Ordinance.