

**Town of Northwood
Planning Board Meeting
January 7, 2021**

Chair Strobel called the meeting to order at 7:00 PM.

Chair Strobel stated: As Chair of the Northwood Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

PRESENT: Chair Bob Strobel, Duane Curry, Selectmen's Representative Hal Krieder and Lee Baldwin, Betty Smith Victoria Parmele, Tim Jandebour, and Joe McCaffrey (all members listed participated electronically)

TOWN STAFF PRESENT: Linda Smith and Susan Austin, Land Use Department. James Burdin, Town Planner.

VOTING DESIGNATION: Chair Bob Strobel, Selectmen's Representative Hal Krieder and Lee Baldwin, Betty Smith Victoria Parmele, Tim Jandebour, and Joe McCaffrey

PUBLIC HEARING: 2021 ZONING AMENDMENTS

Mr. Burdin presented the draft 2021 zoning amendment by sharing his screen with the board (see below) He stated that his comments at the end of the document summarize, primarily for the benefit of the public, why they are making these changes. Everything in this document has been reviewed by town legal, and the only request was a minor change to the ballot that has already been made. If the board is agreeable to the document as it stands now, they can vote to send it to the ballot, or have if they prefer to have a second public hearing, they can choose to do that. To reiterate why they are making the change to the wetland overlay district, it's a bit confusing and conflicting, and they have had a couple of cases in recent years where they have had to tease out some of the language and the board had to make some decision about how to resolve some things that were confusing. They are trying to make this more user friendly, while keeping the same level of regulations. Mr. Burdin went through the changes in the document.

Amend Section VI.A Wetlands Conservation Overlay District to update those uses permitted by right and by Special Exception within the Wetlands Conservation Overlay and its required setback areas; to clarify the process and required application materials for granting a special exception; and to clarify the standards regulating Prime Wetlands and wetlands within the Conservation Area Overlay District by introducing a new term, "High-Priority Wetlands", and creating a new Section VI.A(6) regarding their regulation.

Full Amendment

For the purposes of this document, items that are proposed to be deleted are depicted in ~~red strikethrough~~. Items that are proposed to be added are depicted in blue underline. Items that are being relocated are shown as ~~deleted~~ from their current location and added in their new location

Mr. Burdin stated that the purpose statement of this section hasn't changed.

VI. OVERLAY DISTRICTS.

VI.A.Wetlands Conservation Overlay District

Approved by the Planning Board on January 28, 2021

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VI.A.(1)PURPOSE In the interest of public health, convenience, safety and general welfare, the regulations of this District are intended to guide the use of areas of land that have soils that are saturated or inundated for extended periods of time during the growing season, and:

- (a) To allow those uses that can be located appropriately and safely in wetland areas and ensure their proper design.
- (b) To protect naturally-occurring wetlands from pollution of surface and ground water by sewage or other contaminants.
- (c) To protect potential water supplies, existing aquifers, and aquifer recharge areas.*(Rev. 3/03)*
- (d) To prevent the destruction of wetlands which provide flood protection, recharge of ground water supply, retention of sediments, attenuation of nutrients, augmentation of stream flow during dry periods and continuing existence of important wildlife areas.
- (e) To protect the Town from unnecessary or excessive expenses in providing or maintaining essential services and/or utilities which might be required as a result of misuse or abuse of wetlands.

Mr. Burdin stated they restructured this section a bit. They have not changed anything about what goes into the overlay, but the existing overlay has two different subsets of wetlands that are regulated more strictly. Those are 1.) wetlands that have been designated as prime wetlands, and 2.) wetlands that overlap with the conservation overlay district. Both of those higher priority wetlands are regulated the same way. What they have done in this description of the boundary areas is they have pulled the descriptors, the maps and the mention of the overlap area and given it its own section with it's own name. It's easier to refer to those two categories of wetlands by one name. They have the entire descriptor of where to find them in one place.

VI.A.(2) OVERLAY DISTRICT BOUNDARIES the Wetlands Conservation Overlay District shall include all areas that meet the criteria, as outlined in Section 1 below, and may be defined by the National Cooperative Soil Survey conducted by the US Department of Agriculture in their Soil Survey of Rockingham County, New Hampshire, dated October 1994. ~~Nineteen wetland areas, as listed on page 9 of the "Northwood Wetlands Inventory and Prime Wetland Designation Project Final Report, April 1999" and as identified on the map titled "Prime Wetlands of Northwood, December 1999" are designated prime wetlands within the scope of RSA 482-A:15 and the NH Code of Administrative Rules WT700 and are included in the district. (Rev. 3/00 & 3/02))~~

- (a) The location of a wetland boundary in any particular case must be determined by on-site inspection of all three characteristics of wetlands, namely, hydrology, hydric soils, and hydrophytic plants, as recognized by the Army Corps of Engineers in Technical Report Y-87-1, The Corps of Engineers Wetland Delineation Manual, and as cited in the New Hampshire Wetland Rules WT 101.82. This boundary shall be delineated and identified as a jurisdictional boundary by a licensed wetland scientist using the above Army Corps delineation method, the Site-

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Specific Soil Mapping Standards for New Hampshire or other appropriate standards as listed in the New Hampshire Wetland Rules Env-Wt 100 through 800 or its successor rules. When such information is submitted, it shall supersede more generalized information, such as that obtained from the county soil survey. (Rev. 3/09)

- (b) If there is question or dispute as to the boundary of this overlay district, the owner of the property or any abutter may petition the town to hire a licensed wetland scientist to examine the area and report all findings to the town. The cost of such action shall be paid by the petitioner. (Rev. 3/03)

- (c) [High-Priority Wetlands. Nineteen wetland areas, as listed on page 9 of the “Northwood Wetlands Inventory and Prime Wetland Designation Project Final Report, April 1999” and as identified on the map titled “Prime Wetlands of Northwood, December 1999” are designated prime wetlands within the scope of RSA 482-A:15 and the NH Code of Administrative Rules WT700 and are included in the district. These Prime Wetlands, as well as areas where the Wetland Conservation Overlay District as described above overlaps with the Conservation Area Overlay District shall constitute High-Priority Wetlands, with further limitations as described in Section VI.A.\(6\) of this overlay.](#)

Over the next two sections, they have made a few changes. Where they were previously described as permitted uses, and uses that were permitted with a special exception, they changed it to refer to them as impacts to the wetlands, instead of uses more generally. There were some uses that were described that may not impact the wetlands. The important thing is whether there is a structure being built or disturbing the wetland. It's a little less important than if you were disturbing it for the purpose of putting a single-family home versus a duplex versus a corner store, etc. In this case, they made minor changes generally throughout the section replacing the term use with impact. They strengthened the language a little bit to say that even though some of these impacts are permitted by right, you need no permission from ZBA or anyone else, separate from review from NHDES. It makes it clear that if someone is going to impact the wetland in one of these ways, the expectation is that it would not be impacted any more than necessary. In consultation with the Conservation Commission, they wanted to allow for the cutting of vegetation or other activities that would be necessary for removal of invasive or noxious species in particular. They previously had a blanket exception to allow by right driveway crossings to a single family or two-family residential structure. The reason this exception was put in was that the ZBA did not want to hear cases regarding a culvert crossing or a driveway crossing over a drainage swale along the road. The ZBA didn't want to have to issue a ditch variance every time someone needed a driveway culvert. It was not originally intended to allow for a single-family home several hundred feet towards the back of the property and have a significant impact on a jurisdictional wetland. They have tried to put in a few limitations to keep this limitation in some common sense of form, so that they aren't putting extra work on the ZBA. But they want to make sure its limited only to what it was originally intended. The impact must be less that 200 square feet of wetland area, and it must be located within 100 feet of the road that's providing access.

VI.A. (3)PERMITTED ~~USES~~ IMPACTS Permitted ~~uses~~ [impacts within the Wetland Conservation Overlay District](#) are those that will not require the erection or construction of any permanent [road](#), structure or building, will not alter the

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natural surface configuration by the addition of fill or by dredging (not including the limited activity described in section (8)), or will not compromise the purpose of this overlay district, and that are otherwise permitted by the Development Ordinance. ~~Such uses may include the following or similar uses:~~ Such impacts will be limited to the minimum impact necessary to achieve the intended purpose, and the wetland area shall be restored to a suitable natural condition to the greatest extent possible following the impact and shall utilize best-management practices to prevent erosion, sedimentation, and/or pollution of the Wetland Conservation Overlay District. Such impacts may include the following or similar impacts:

(Rev. 3/02)

- (a) Forestry activities It is recommended that these activities be conducted in accordance with Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, as published by the NH ~~Department of Resources and Economic Development, Division of Natural and Cultural Resources~~, and with suitable notification to the New Hampshire Wetlands Bureau, when required;
- (b) Agriculture activities It is recommended that ~~the~~ these activities be conducted in accordance with the manual of Best Management Practices for Agriculture in New Hampshire, published by the NH Department of Agriculture;
- (c) Ponds and well recharge sources conducted in accordance with any dredge and fill permitting requirements of the State of New Hampshire;
- ~~(d) — Wildlife refuges;~~
- ~~(e)~~ (d) Parks and such recreational uses as are consistent with the purpose and intent of the Ordinance;
- ~~(f)~~ (e) Conservation areas, wildlife refuges, nature trails, and other educational or scientific purposes. ~~;~~ and
- ~~(g)~~ (f) Open spaces as permitted or required by the Subdivision Regulations, the Development Ordinance, or in conjunction with a use which may be permitted in an adjacent district where an adequate open space area is not available within the adjacent district.
- (g) Cutting of vegetation, disturbance, and placement or construction of temporary structures or materials as necessary for the removal of invasive or noxious species, in accordance with best management practices.
- (h) ~~Driveways~~ De minimis driveway crossings and culverts for a single-family or two-family residential structure and their accessory uses, provided all state permits are obtained. ~~(Rev. 3/09) Such crossings must impact less than 200 square feet of wetland area and be located within 100 feet of the road providing access to the property, otherwise a special exception for “impacts essential to the productive use of land not within the Wetland Conservation Overlay District” shall be required (Rev. 3/21)~~

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Mr. Burdin stated that they did a bit of reordering in this section. He felt that it was important to have the setbacks come before the special exception section. Because the special exception is how they are granting relief to those two prior areas. In this case, most of this language was already existing. B is an added section. There was also in the existing subsection 5, a provision that allowed preexisting non-conforming lots to automatically reduce the distance of the setback, and in discussion with the board they decided to eliminate that provision. It was felt that under those circumstances the landowner could make the case that they needed this impact to use their property, and that is justification for the ZBA to grant relief.

VI.A (4) SETBACKS

- (a) Structures shall not be placed within 20 feet of the edge of a wetland unless they are deemed necessary for a permitted impact as described in §VI(A)(4) or unless a Special Exception has been obtained in accordance with §VI(A)(5).
- (b) Any construction, alteration of terrain, or other disturbance within the 20-foot setback shall utilize best-management practices to prevent erosion, sedimentation, and/or pollution of the Wetland Conservation Overlay District. (Rev. 3/21)

Mr. Burdin stated that what is now Section VI, impacts allowed by special exceptions, similarly to the impacts allowed by right, they are changing a lot of uses to impacts. Two more are highlighted that he would like to amend to impacts before the board sends this to the ballot. Within this section are the criteria that the ZBA must consider against a special exception request. For impacts to the wetlands that are essential to the use of land elsewhere on the property, there were 5 criteria, now they are proposing 6. Some of it is just rephrasing, but they also wanted to stipulate that the Conservation Commission provide their comments in writing. The second item is new, and it's that the applicant needs to submit sufficient information necessary to demonstrate that the proposed impacts are essential for what they want to do. The second set of special exception criteria to undertake a use that is permitted by the ordinance but requires an impact directly to the wetland or it's setback. In this case, the use is permitted but it occurs outside of the wetland and you have to cross through the wetland to get there. For the second set of special exception criteria, Mr. Burdin suggests that the language of number 1 be the same as the language of the other number one, to have the benefits of the written comments, findings and meeting with the Conservation Commission first. Number 2 is the same language regarding sufficient information for the ZBA to make its decision. 3,4, &5 remain unchanged only renumbered.

VI.A. ~~(4)~~ (5) USES IMPACTS ALLOWED BY SPECIAL EXCEPTIONS Special exceptions may be granted by the Zoning Board of Adjustment, upon notice and hearing as prescribed in RSA Chapter 676, for the following ~~uses~~ impacts within the Wetlands Conservation Overlay District and its setbacks:

- (a) Those ~~uses~~ impacts to the Wetlands Conservation Overlay District or its setbacks that are essential to the productive use of land not within the Wetlands Conservation Overlay District shall be allowed by Special Exception. Those uses include, but are not limited to: the construction of roads, driveways, or other access ways, utility rights-of-way and easements, including power lines and pipelines, with adequate provisions

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where called for, for the continued, uninterrupted flow of surface run-off water. The ZBA shall grant a Special Exception, provided the following are met:

[1] ~~after~~ the applicant ~~meets~~ shall first meet with the Conservation Commission, and written findings by the Northwood Conservation Commission regarding the proposal, including but not limited to minutes of the meeting at which the proposal was discussed, are submitted with the Special Exception application, are reviewed by the ZBA, and are made part of the record of the case; and

~~[2]~~ the applicant shall submit sufficient information necessary to demonstrate that the proposed impacts are essential for the productive use of land not within the Wetland Conservation Overlay; and (Rev. 3/21)

~~[2]~~ [3] dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setbacks, even if this requires adjustments in design outside of this overlay district; and

~~[3]~~ [4] there shall be provisions made to restore the site as nearly as possible to its original grade and condition; and
(Rev. 3/01)

~~[4]~~ [5] a state wetlands permit shall be obtained when required.

~~[5]~~ [6] a Special Exception is not required when the use meets the criteria for a permit by notification as defined by the NH Wetlands Bureau Code of Administrative Rules. (Rev. 3/00)
(Rev. 3/05)

(b) The undertaking of a use permitted by this Ordinance but which requires an impact not otherwise permitted in the Wetlands Conservation Overlay District or its setback shall be allowed by Special Exception. The ZBA shall grant a Special Exception, provided the following conditions are met:

[1] ~~after~~ the applicant ~~meets~~ with the Conservation Commission, findings by the Northwood Conservation Commission regarding the proposal are submitted with the Special Exception application, are reviewed by the ZBA, and are made part of the record of the case; and

~~[2]~~ the applicant shall submit sufficient information necessary to demonstrate that the proposed use of the property cannot feasibly be implemented without the proposed impacts; and

~~[2]~~ [3] dredging, filling or other alteration shall be designed to minimize adverse impact on the wetland and its setbacks, even if this requires adjustments in design outside of this overlay district; and

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- ~~{3}~~ [4] there shall be provisions made to restore the site as nearly as possible to its original grade and condition; and
- ~~{4}~~ [5] state wetlands permit shall be obtained when required.

Mr. Burdin stated that this section was being deleted because it was relocated.

VI.A (5) SETBACKS

- ~~(a) — Where the Wetland Conservation Overlay District and the Conservation Area Overlay District overlap, or where there exists a prime wetland, a 100 foot setback area shall be maintained. No structures shall be constructed within this setback. Vegetation within this buffer area shall remain in its natural state. (Rev. 3/00)~~
- ~~(b) — Structures shall not be placed within 20 feet of the edge of a wetland unless a Special Exception for the structure and use have been obtained in accordance with §VI(A)(4)(b). The 20 foot setback may be reduced on pre-existing non-conforming lots in accordance with § VII(C)(4). If the setback is reduced in accordance with § VII(C)(4), structures shall not be closer to the wetland than the reduced setback allows unless a Special Exception for the structure and use have been obtained in accordance with § VI(A)(4)(b).~~

Mr. Burdin stated that all of these requirements already existed, previously they had been tucked under the setbacks. They are proposing to keep that setback, but they felt they needed to pull out a description of the high priority wetlands and organize that requirement better. There is a separate purpose statement specific to this higher regulated portion of the wetland. The section B regarding setbacks says it is 100 feet. Section C is where the rules are listed for this specific wetland.

VI.A (6) HIGH-PRIORITY WETLANDS

- (a) The purpose of this section shall be to further protect wetland areas which are, by their quality, importance, or location, prioritized for conservation. These wetland areas shall be identified as described in Section VI.A.(2)(c).
- (b) Setbacks. High-Priority Wetlands shall be protected by a 100-foot setback.
- (c) No disturbance, dredging, filling, or construction of structures, driveways, or roads shall be permitted in High-Priority Wetlands or within the 100-foot setback. Vegetation within High-Priority Wetlands and within the 100-foot setback shall remain in its natural state. The sole exceptions shall be the following, which are permitted by right:

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- [1] Cutting of vegetation, disturbance, and placement or construction of temporary structures or materials as necessary for the removal of invasive species. Such impacts shall be limited to the minimum necessary for removal or management of the invasive species, and impacted area shall be restored to a suitable natural condition as soon as possible following the impacts. Such impacts shall follow best-management practices for removal of invasive or noxious species.
- [2] Disturbance, alteration of terrain, cutting of vegetation, and placement or construction of temporary structures or materials as necessary for the implementation of a forest, habitat, or wildlife management plan. Such impacts shall be limited to the minimum necessary for the implementation of the plan, and all impacted areas shall be restored to a suitable natural condition as soon as possible following the impacts. A copy of any forest, wildlife, or habitat management plan or any other relevant documentation shall be provided to the Town for reference.
- [3] Any party proposing to undertake impacts permitted by this section are encouraged, but not required, to consult with the Northwood Conservation Commission concerning their proposal.
- (d) Relief. Any special exception or other mechanism which may otherwise provide relief to Section VI.A Wetland Conservation Overlay District shall not be construed to apply to Section VI.A.(6) High-Priority Wetlands. Relief to any provision of this section may only be granted via the issuance of a variance by the ZBA.

Staff Comments

The intended purpose of these changes is to resolve numerous points of confusion in the existing overlay to make the entire section more user-friendly and explicit in its requirements. Minor regulatory changes are proposed in some sections. Staff has the following comments regarding proposed changes:

Section A(1): No changes are proposed

Section A(2): No regulatory changes are proposed. Both prime wetlands and locations where the Wetland Conservation Overlay District and Conservation Area Overlay District overlap are already regulated more strictly than other wetlands. Staff proposes the use of the term High-Priority Wetlands to provide a single term to refer to these areas of stricter regulation, and descriptions of how these areas are delineated have been moved from their current locations to appear under this term.

Section A(3): Several changes for clarity and organization, as well as minor regulatory changes. Changes to the introduction paragraph acknowledge that the spirit and intent of this overlay is to limit impacts to wetlands, so while some impacts are permitted by right, they should be

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minimized and mitigated wherever possible. New paragraph (g) adds impacts permitted by right at the encouragement of the Conservation Commission.

New Section A(4): The section regarding Setbacks has been relocated to appear before the section regarding Special Exceptions. Since Special Exceptions may grant relief to the regulations for the overlay proper and the setback areas, Staff preferred to establish the normal regulations in those areas first in the flow of the overlay. Paragraph (a) is existing and has merely been located (though a portion is proposed to be deleted as described below). Paragraph (b) is new and stipulates that any permitted activities within the setback must be done in a way that does not negatively impact the overlay area.

Section A(5): Renumbered from Section A(4). This section describes impacts that require a Special Exception and stipulates the requirements for issuing a Special Exception. Most changes are to clarify current requirements by explicitly stating aspects of how the ordinance is currently interpreted. Both sets of Special Exception criteria have a new paragraph [2] which explains that the burden of proof is on the applicant to submit materials that demonstrate why the impacts are necessary. The ZBA already operates with this understanding, but it has been added to be explicit.

Old Section A(5): The old Setbacks section has been relocated as described above. A portion of old section A(5)(b) regarding setbacks on pre-existing non-conforming lots is proposed to be deleted entirely. The Board felt that automatically reducing setbacks on pre-existing non-conforming lots was contrary to the spirit and intent of this overlay, and that new development under such circumstances should be subject to a Special Exception if it cannot comply with the full 20-foot setback. Non-conforming rights for pre-existing structures on these lots will not be affected by this change.

Section A(6): This is a new section dealing with the regulation of High-Priority Wetlands as delineated in Section A(2). The required 100-foot setback and stricter limitations on activities within that setback already exist in old Section A(5)(b), but have been reorganized in this section for clarity. Provisions that could previously be interpreted to apply only to the setback areas have been clarified to apply to both the setback area and overlay district itself. Two exceptions to the restrictions of this section have been added at the request of the Conservation Commission to allow certain environmental activities to occur by right. These activities are described in paragraphs A(6)(c) 1-3. These paragraphs make the proposed section less strict than the existing overlay regarding these issues. Paragraph A.(6)(d) explicitly clarifies the Town's current interpretation that relief in these high-priority areas cannot be granted using the Special Exception criteria for other sections of this overlay, meaning relief can only be granted by a variance.

Chair Strobel opened Public Comment

Pam Sanderson

Ms. Sanderson stated that she wanted to say kudos to Mr. Burdin for clarity, again the ZBA's roll is application of these zoning regulation. This looks very good.

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Chair Strobel closed public comment.

Mr. Burdin stated that once the board finishes discussion tonight they had two options. They could schedule a second public hearing, or they could vote to send these proposed changes to the ballot. In either case, he would suggest that the motion be for the document "as amended". Discussion ensued as to if they needed a second public hearing or not.

Ms. B. Smith made a motion to send the amended zoning amendments as presented to the ballot. Mr. Kreider seconded.

Discussion continued about a second public hearing.

**Ms. B. Smith withdrew her motion.
Mr. Kreider withdrew his second.**

**Mr. McCaffrey made a motion to send the proposed amendments as posted to the ballot.
Mr. Kreider seconded. Motion carried by roll call vote 7/0**

**Mr. Jandebaur made a motion to schedule a second public hearing for minor changes on
January 21, 2021 at 7 PM. Motion carried by roll call vote 7/0.**

INTERNAL BUSINESS

Ms. L. Smith stated that Betty Smith and Bob Strobel's positions were up for election this year.

ADJOURNMENT

Ms. Baldwin made a motion to adjourn at 8:51 PM. Selectman Kreider seconded. Motion carried by roll call vote 7/0

Respectfully submitted

Susan Austin, Land Use Assistant