

DRAFT PREPARED BY John Wilson (10-2-15)
FOR Planning Board Discussion
Oct 20, 2015

Shoreland Provisions Zoning Ordinance

ARTICLE XVI SHORE LAND OVERLAY DISTRICT

- A. Authority and Purpose: All lakes are essentially fragile. In order to protect the lakes, actual Use of lake side Lots is being limited through the establishment of a Shore Land Overlay District.

Most of the land immediately adjacent to New Hampshire's lakes, ponds and rivers is overlaid by soil types characterized by above average erosion and drainage hazards. These lands require conservation and land management practices which minimize environmental and aesthetic degradation.

The Town of New London hereby adopts this Shore Land Overlay District and accompanying regulations in order to:

1. Protect, maintain and enhance the water quality of the lakes;
2. Conserve and protect aquatic and terrestrial habitat associated with lake areas;
3. Preserve and enhance those recreational and aesthetic values associated with the natural shore land and lake environment;
4. Encourage those Uses that can be appropriately located adjacent to shorelines; and
5. Protect and promote public health, resource conservation, and the general welfare.

This Ordinance is authorized by 483-B:8 Municipal Authority.

Commented [J1]: This gives a more explicit authority.

Deleted: RSA 674:21, I(j), Innovative Land Use Controls, Environmental Characteristics Zoning.

- B. Shore Land Overlay District Boundaries: The Shore Land Overlay District extends to a line 250 feet inland from the Reference Line on all of the following lakes and ponds: Clark Pond, Goose Hole Pond, Little Lake Sunapee, Lake Sunapee, Messer Pond, Murray Pond, Otter Pond and Pleasant Lake.

Commented [J2]: Because the term "Reference Line" is used frequently and is the basis of most of the important measurements, I suggest that the State's definition be included in the Town's list of definitions. "Reference Line - For all lakes 10 acres in size, the surface elevation as listed in the DES Consolidated List of Water Bodies"

- C. Permitted Uses: The following Uses are permitted provided that they shall be conducted according to applicable provisions:

1. Docks and existing boathouses are permitted subject to the following restrictions.
 1. a. New dock construction and existing dock maintenance or replacement are permitted subject to required state permits, standards, and regulations. The attachment of the dock to the shoreland shall be the least impacting alternative as permitted by the State. (Amended May 2014)
 1. b. Maintenance or replacement of existing boathouses which will not increase the use, size or footprint of the structure is permitted subject to required state permits, standards, and regulations. Construction of new boathouses is not permitted. (Amended May 2014)
2. Single Family Residence and accessory Structures and Uses provided that all Buildings and Structures shall be set back a minimum of 50 feet from the Reference Line and constructed in accordance with the erosion control requirements of Section F. No construction or land disturbance whatsoever will be permitted within the Waterfront Buffer, except as provided in Section C.4., D.2. and G. below. Unless special construction practices ensure that no land disturbance will occur in the Waterfront Buffer as a result of construction activities, all Structures must be set back a minimum of 10 feet from the Waterfront Buffer to accommodate land disturbance resulting from such activities.

Commented [J3]:

Commented [J4R3]: "of" added

3. Sub-surface sewage disposal facilities provided that they shall be set back in accordance with state requirements.
4. A permanent pathway, stairway or walkway with a maximum width of six (6) feet within the Waterfront Buffer provided it is configured in a manner that will not concentrate stormwater runoff or contribute to erosion and is constructed with adequate soil erosion control measures as outlined in Section F below.
5. Replenishment of existing Beaches as provided in D.2. below.
6. Retaining walls within the Waterfront Buffer, as permitted in Section G.2.c(5) below.

Deleted: is

Deleted: permitted

Commented [J6]: Correct "d" to "c".

Deleted: d

D. General Provisions:

1. The traveled portion of a road shall be set back beyond the Waterfront Buffer except for bridges and bridge approaches and access ways for firefighting equipment and boat launching. All new roads shall be constructed in accordance with an Erosion and Sediment Control Plan approved by the Planning Board as part of the final Subdivision application and approval.
2. Construction of a new Beach or expansion of an existing Beach is not permitted. Replenishment of an existing Beach is permitted only under the following conditions:
 - a. No more than 6 cubic yards of replenishment material is permitted to be added in any 6 year period; and
 - b. Approval is obtained from the NH Department of Environmental Services for a Minimum Impact Expedited Wetlands Permit Application after review and comment by the New London Conservation Commission.
3. Lots within the Shore Land Overlay District shall not be used as common areas for Waterfront Access or for the purpose of granting deeded rights or access to residents of multiple units and/or non-waterfront properties, regardless of the location of such properties. For the purpose of this section, the term "common area" shall mean an area used by a group of 3 or more different households or by an association, club or organization consisting of 3 or more members.
4. Rights to gain access to a water body by or through a shore land Lot shall not be created or attached to any real estate. Waterfront Access shall be gained only in accordance with the standards set forth below and subject to Planning Board approval.
5. As an additional means to implement the purposes of this Article as articulated in Paragraph A., this section authorizes the Planning Board to adopt regulations which require environmentally sound measures governing the Development of a tract of land, including, but not limited to, cutting restrictions, the proper design, layout and location of Building Envelopes, the appropriate siting of Structures and improvements, and erosion control procedures for new Lots located in the Shore Land Overlay District through the Subdivision process.

Commented [J7]: Why not end sentence here – much clearer and better?

Deleted: ,

Deleted: except as provided herein and subject to Planning Board approval.

Deleted: unrelated persons

Commented [J8]: Maybe this requires no change but what happens if three unrelated people living in the same household live on the same lot?

E. Specific Provisions for Residential Development with Waterfront Access: All residential Development with Shore Frontage or rights of access to Shore Frontage shall meet the following minimum requirements:

1. Each Dwelling Unit with direct water access and whose Shore Frontage is part of the Lot dimension shall have a minimum Shore Frontage of 200 feet.

F. Stormwater & Erosion Control for Construction:

1. All new Structures, modifications to existing Structures, and excavation or earth moving within the Shore Land Overlay District shall be designed and constructed in accordance with the Stormwater & Erosion Control Design Standards contained in the New London Land Subdivision Control Regulations, dated October 23, 2007, as amended, and in compliance with all rules adopted by the New Hampshire Department of Environmental Services for terrain alteration under RSA 485-A:17 to manage Stormwater, control erosion and sediment, during and after construction. The design of Stormwater management systems shall ensure that the post-development total runoff volume does not exceed the pre-development total runoff volume consistent with Section V.L.L.2 of the New London Land Subdivision Control Regulations.
2. New structures and all modifications to existing structures within the protected Shore Land Overlay District shall be designed and constructed to prevent the release of surface runoff across exposed mineral surfaces.
3. Erosion and sedimentation control plans shall describe the nature and purpose of the land disturbing activity; the amount of grading involved; and a description of the soils, topography, vegetation, and drainage at the site; and a complete site plan illustrating erosion control devices, stormwater management structures and other measures intended to manage stormwater and erosion during and after construction. For minor land disturbances such as stairway and pathway construction, the Board of Selectmen may reduce the amount of detail needed in an erosion control plan. The Board of Selectmen shall review and decide to approve or deny all plans before issuing a Building permit, and may require the applicant to post a bond or other security to assure conformance with approved plans. The security shall not be released until the Board of Selectmen has certified completion of the required improvements in accordance with the plan. The Board of Selectmen may request the Conservation Commission to review the plan and make recommendations.
4. Erosion and sedimentation control plans shall be developed in conformity with the guidelines of the U.S.D.A. Natural Resources Conservation Service and with guidelines of the N.H. Department of Environmental Services under RSA 485-A:17. Erosion control measures shall be installed and subsequently inspected by the Board of Selectmen or its designee, as described in ARTICLE XXVII Enforcement of this Ordinance, before construction and grading begin.

G. Waterfront Buffer:

1. The Waterfront Buffer shall be the protected Shore Land within 50 feet of the Reference Line. The purpose of this buffer shall be to protect the quality of public waters while allowing the property owner discretion with regard to water access, safety, viewscape maintenance, and lot design.
2. Within the Waterfront Buffer all of the following prohibitions and limitations shall apply:
 - a. No chemicals, including pesticides of any kind or fertilizers, except limestone, shall be applied.
 - b. Rocks and stumps and their root systems shall be left intact in the ground.

Deleted: 2. . Lots within the Shore Land Overlay District used as common waterfront areas or for the purpose

Deleted: of Waterfront Access shall meet the following minimum criteria.¶

¶ a. . The shore front common area shall contain a minimum of two acres.¶

¶ b. . The shore front common area shall have a minimum of 200 feet of Shore Frontage for the first Dwelling Unit or member having a right of Use, and an additional 50 feet of Shore Frontage for each additional Dwelling Unit or member.¶

¶ c. . No Building shall be permitted other than toilet and changing facilities.¶

¶ d. . No more than 25 percent of the total Shore Frontage may be dedicated to docks or other Structures designed to accommodate boating. All docks require a permit from the New Hampshire Department of Environmental Services (NHDES). Applications for dock permits shall be reviewed by the Conservation Commission. In making its recommendations to the NHDES and the Planning Board, the Conservation Commission shall consider the size and depth of the water area, the total Shore Frontage proposed for the common area, boat traffic already existing in the area, impact on neighboring property owners, protection of water quality, wildlife habitat, and public safety.¶

¶ e. . One off-street parking space (300 square feet) shall be provided for each Dwelling Unit situated more than 1/4 mile from the shore front common area. Parking areas shall be set back a minimum of 75 feet from the Reference Line. A buffer of natural vegetation shall be maintained between the beach and/or docking area and the parking area to screen the parking area from the lake and to enhance erosion control. The buffer may include facilities permitted within the shore front area.¶

¶ f. . Toilet facilities, approved by the New Hampshire Department of Environmental Services, shall be provided.¶

¶ 3. . Any Use of a common area or area of access for business or commercial purposes shall not be permitted.

Commented [J10]: This is not needed. This RSA only gives State Agencies rule making power.

Deleted: under RSA 541-A

Deleted: , revised October 22, 2007

Commented [J12]: Add "the"

Commented [J13]: This is the new name for this service.

Deleted: Soil Conservation Service

Commented [J14]: Without "subsequently" this sounds as if the Selectment are part of the installation process.

Commented [J15]: "be" needs to be added

Draft prepared by John Wilson

No natural ground cover shall be removed except as necessary to accomplish uses permitted in Section C above or to plant native trees, saplings or shrubs. Pruning of shrubs and ground cover down to a height of 3 feet is permitted.

c. Starting from the northerly or easterly boundary of the property, and working along the shoreline, the Waterfront Buffer shall be divided into 50 by 50 foot segments. Within each segment a minimum combined tree and sapling score of at least 50 points shall be maintained. If for any reason there is insufficient area for a full segment, the number of points required to be maintained in that partial segment shall be proportioned to that required for a full segment.

(1) Tree and sapling diameters shall be measured at 4½ feet above ground and are scored as follows:

Diameter Score

- 1 inch to 6 inches: 1 point
- Greater than 6 inches to 12 inches: 5 points
- Greater than 12 inches: 10 points

(2) Dead, diseased, or unsafe trees or saplings (as determined by the Planning Board) shall not be included in scoring.

(3) If the total tree and sapling score in any 50 by 50 foot segment exceeds 50 points, then the Planning Board may authorize the removal of trees and saplings as long as the score for the remaining trees and saplings in that segment does not total less than 50 points. The remaining scores in partial segments shall be treated proportionally.

(4) The Planning Board may authorize the removal of trees and saplings on a segment of a property having less than the required minimum score of 50 points, as long as trees and saplings are replanted in sufficient quantity to equal or exceed the score that existed prior to the removal activity. The Planning Board shall not approve a cutting request that results in less than the required minimum score of 50 points or less than the score that existed prior to the request being filed.

(5) Owners of Lots that were legally developed prior to the adoption of this regulation may maintain but not enlarge cleared areas, including but not limited to existing lawns and beaches, within the Waterfront Buffer. Conversion or planting of cleared areas with native trees, saplings, shrubs and ground cover is encouraged but shall not be required unless it is necessary to meet the requirements of Section I. below. When necessary due to steep topography, retaining walls may be permitted to be installed as part of an overall plan to revegetate the Waterfront Buffer area. New terraces formed by the retaining walls within the Waterfront Buffer must be replanted with natural vegetation consisting of indigenous species of bushes, shrubs and trees. These terraces may not be used to create new grass lawns or to create more impervious surfaces such as stone patios and decks. Construction of retaining walls within the Waterfront Buffer which would require the removal of existing natural vegetative cover is not permitted unless it can be demonstrated through an erosion and sediment control plan that such retaining wall construction is essential for erosion control purposes. Construction of new lawns within Waterfront Buffer is not permitted.

- Deleted: ,
- Deleted: and shrubs
- Deleted: ,
- Deleted: and shrubs
- Deleted:
- Deleted: similarly
- Commented [J17]: This is a more descriptive word as to how this is done
- Deleted: ,
- Deleted: and shrubs

- (6) Normal trimming, pruning, and thinning of branches to the extent necessary to protect structures, maintain clearances and provide views is permitted. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom half of the trees and saplings.
- (7) When necessary for the completion of uses permitted in accordance with Section C. 1, 4, 5 & 6 above, and this section, a temporary 12 foot wide access path may be permitted, subject to approval by the Planning Board. The access path shall be completely restored and replanted with native species of trees, saplings, shrubs and ground cover upon completion of construction. In addition, trenching less than 2 feet in depth for the installation of utilities servicing docks and boathouses permitted under Section C. above, may be permitted, subject to Planning Board approval and compliance with Section F above.

Commented [J19]: Add comma

H. Natural Woodland Buffer:

1. A Natural Woodland Buffer shall be maintained within 150 feet of the Reference Line. The first 50 feet of this buffer is designated the Waterfront Buffer and is subject to the additional requirements of Section G, above. The purpose of the Natural Woodland Buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintain a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the Shore Land Overlay District.
2. For lots with one-half acre or less of land within the Natural Woodland Buffer, the vegetation within at least 25% of the area outside the Waterfront Buffer, exclusive of Impervious Surfaces, shall be maintained in an unaltered state. The percentage of area maintained in an unaltered state on legal non-conforming lots shall not be decreased.
3. For lots with greater than one-half acre of land within the Natural Woodland Buffer, the vegetation within at least 50% of the area outside the Waterfront Buffer, exclusive of Impervious Surfaces, shall be maintained in an unaltered state. The percentage of area maintained in an unaltered state on legal non-conforming lots shall not be decreased.
4. Dead, diseased, or unsafe trees, saplings, or shrubs located beyond the Waterfront Buffer that pose an imminent hazard to structures or have the potential to cause personal injury may be removed by the property owner without Planning Board approval, provided such removal does not contravene the intent of this provision. Preservation of dead and living trees that provide den and nesting habitat for wildlife are encouraged.

Commented [J20]: This should be added to be consistent with H.3.

I. Impervious Surfaces:

1. No more than 20% of the area of the portion of a lot located within the Shore Land Overlay District shall be composed of Impervious Surfaces, except as provided in paragraphs 2 and 3, below.
2. The Impervious Surface area of the portion of any lot located within the Shore Land Overlay District may exceed 20%, up to a maximum of 30%, provided a storm water management system is designed consistent with Section F above, approved by the Planning Board, and implemented and maintained to ensure that post-development total runoff volume shall not exceed the pre-

development total runoff volume. The total Impervious Surface area of the portion of any lot located within the Shore Land Overlay District shall not exceed 30%.

3. In addition, if the natural tree and sapling cover in the Waterfront Buffer does not meet the 50-point minimum score described in Section G above in any segment, then such segment shall be planted with native trees and saplings in sufficient quantity, type and location to meet the minimum score.
4. Property owners and developers are encouraged to seek creative solutions that utilize Low Impact Development techniques, such as those described in the New London Land Subdivision Control Regulations.

J. Nonconforming Buildings & Structures: Any Nonconforming Building or Structure located entirely or partly within the Waterfront Buffer of all lakes and ponds over 10 acres in size may be continued indefinitely, altered and/or expanded provided it complies with the following applicable provisions:

1. If the Nonconforming Building or Structure is located entirely within the Waterfront Buffer, then alteration or repair of the Building or Structure is governed by the following:
 - a. Alteration or repair of the Building or Structure is only permitted within the existing footprint and outside dimensions, consistent with the provisions of Article XX, Section B, 3, provided the result is a functionally equivalent use. No footprint change or vertical expansion of the existing structure shall be allowed. Any expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system shall require approval by the NH Department of Environmental Services.
 - b. Existing decks and porches located entirely within the Waterfront Buffer may not be covered, enclosed or expanded upward or outward beyond the footprint of the existing deck or porch.
 - c. Any Substantial Improvement of an existing Nonconforming Structure located within the boundaries of the 100 Year Floodplain must comply with the requirements of Article XV Floodplain Overlay District.
 - d. Improvements may include a new foundation, provided that all of the following conditions are met:
 - (1) The new foundation shall be constructed from a vantage point entirely outside the Waterfront Buffer, or from within the structure itself, in a manner that does not disturb any part of the Waterfront Buffer beyond the footprint of the existing building.
 - (2) No living space or basement area is added as a result of the new foundation.
 - (3) No change in the footprint (drip line) of the structure (within the Waterfront Buffer) will result from the new foundation.
2. If the Nonconforming Building or Structure straddles the Waterfront Buffer, then alteration or expansion of the Building or Structure is governed by the following:
 - a. Alteration or expansion of that portion of the Building or Structure located within the Waterfront Buffer is governed by the provisions outlined in section J.1., above.

Deleted: ,

Deleted: or Natural Ground Cover

Deleted:

Deleted: either

Deleted: or to provide at least an equivalent level of protection as provided by the minimum score, as determined by the Planning Board

Deleted:

Deleted: dated October 23, 2007, as amended

Commented [J24]: Small "a"

Deleted: A

b. Alteration or expansion of that portion of the Building or Structure located beyond the first 50 feet inland from the Normal High Water level is governed by the following:

- (1) Alteration or expansion is permitted upward, and outward to the side or rear of the Structure away from the lake.
- (2) Existing, covered porches located outside of the Waterfront Buffer may be enclosed and converted to habitable space and may be expanded upward over the footprint of the existing porch.
- (3) Existing decks located outside of the Waterfront Buffer may be expanded, covered, enclosed and/or converted to habitable space.

These provisions supersede the provisions outlined in Article XX Legal Nonconforming Uses, Nonconforming Buildings and Non-conforming Lots, Paragraph B. Nonconforming Buildings, Section 1.

The provisions of Article XX Legal Nonconforming Uses, Nonconforming Buildings and Structures and Nonconforming Lots, Paragraph B. Nonconforming Buildings and Structures, Sub-paragraph 3. Pertaining to Substantial Improvement, Restoration, Reconstruction and/or Replacement apply to Article XVI Shore Land Overlay District.

Commented [J25]: The State uses this instead of "beyond" and it seems more precise.

Deleted: beyond

Commented [J26]: Beyond must be incorrect as used here. It has to be the space above the footprint

Deleted: beyond

Commented [J27]: Again, similar verbiage as the State

Deleted: beyond

Commented [J28]: This first sentence is interesting since it supersedes a part of the Ordinance, Art. XX.B.1 which incorrectly refers back to Art XVIH, but it should be H. There is no effect on this article, but the inaccuracy remains.

Deleted: 3.

Deleted: The provisions of Article XX Legal Nonconforming Uses, Nonconforming Buildings and Structures and Non-conforming Lots, Paragraph B. Nonconforming Buildings and Structures, Sub-paragraph 3. pertaining to Substantial Improvement, restoration, reconstruction and/or replacement apply to Article XVI Shore Land Overlay District.

K. Building Height: Nonconforming Structures located within the Waterfront Buffer in the Shore Land Overlay District shall not exceed 25 feet in Height above Grade.

L. Overlapping Regulations: In all cases where the Shore Land Overlay District is superimposed over another Zone District in the Town of New London, that district whose regulations are more restrictive shall apply. Furthermore, where any provision of this district differs from those of other ordinances or regulations of the Town or State, then that provision or ruling which imposes the greater restriction or higher standard shall govern.