Streams Conservation Overlay District
Proposed draft zoning amendment language
Submitted by John Wilson (Version, 2, revised Dec 2, 2016)
For PB discussion Dec 6, 2016.

ARTICLE XXII
STREAMS CONSERVATION OVERLAY DISTRICT (VERSION 2)

A. ~~Authority: Pursuant to the authority granted by RSA 674:16 and RSA 674:21, this Ordinance is adopted by the Town of New London in order to protect the public health, safety, and general welfare.~~

Commented [J1]: This section is covered by the Preamble of the entire zoning ordinance and appears redundant

A. Authority and Purpose: This Ordinance establishes standards for the Use of shorelands adjacent to Streams, as defined herein, for the purpose of minimizing degradation of shorelands and assuring retention of the benefits provided by such shorelands.

Commented [J2]: This section has been changed to follow the same format as the Shoreland Overlay District

The Town of New London of New London hereby adopts this Streams Conservation Overlay District and accompanying regulations in order to:
~~These benefits include: maintenance of safe and healthy conditions of the Streams; prevention and/or control of water pollution; protection of important fish, bird and wildlife habitat; reduction or elimination of Flooding and accelerated erosion; maintenance of water quantity and related Stream flows during low flow periods; protection of shoreland cover as a means of maintaining water quality and cooler water temperatures; and the conservation and protection of the natural beauty and the scenic qualities which are critical attributes of the town, as they are throughout the State.~~

Commented [J3]: Drop "and/or control" since we want to prevent pollution not control it.

Commented [J4]: Delete "accelerated". Not needed or wanted

1. Maintain safe and healthy conditions of the Streams;
2. Prevent water pollution;
3. Protect important fish, bird and wildlife habitat;
4. Reduce or eliminate Flooding and erosion;
5. Maintain water quality and related Stream flows during low flow periods;
6. Protect shoreland cover as a means of maintaining water quality and cooler water temperatures;
7. Conserve and protect the natural beauty and scenic qualities of the Town.

B. Overlay District Boundaries: The Streams Overlay District is an Overlay District which places additional land Use controls ~~to~~ on those existing underlying zone districts. The boundaries of the Streams Conservation Overlay District include all Streams and ~~stream~~ Natural Woodland Buffer areas described as follows:

Commented [J5]: Is this legalese or would it be better to replace "to" with "on"?

Commented [K6]: Woodland Buffers and Stream Buffers are the same thing. Be consistent with the terms and limit it to just Woodland Buffers.

(1) All Streams as defined by the Ordinance and as shown on the most current New London Streams and Wetlands Protection Map. ~~dated March 13, 2001.~~ This map is available for viewing in the Board of Selectmen's Office.

Commented [J7]: Replace date with "most current". Keep dates out of Ordinance since they become outdated.

(2) ~~Stream buffers, as described below in Paragraph C. Natural Woodland Buffer.~~ Natural Woodland Buffers as described below in Paragraph C.

Commented [J8]: This hopefully prevents the introduction of a new term "Stream Buffers"

C. Natural Woodland Buffer:

~~(1) Purpose: The purpose of a Natural Woodland Buffer is to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water~~

~~temperatures, maintaining a healthy Tree canopy and understory, preserving fish, bird and wildlife habitat, and respecting the overall natural condition of the protected shoreland.~~

(1) Width of Buffer: ~~Where existing, a~~ A Natural Woodland Buffer shall be maintained within 100 feet inland from the Ordinary High Water Mark of all Streams as defined by this Ordinance.

(2) Cutting and Removal of Natural Vegetation: ~~The preservation of natural vegetation along the Streams is important for the protection of the water quality and temperature, for preservation of wildlife habitat and corridors, for controlling soil erosion and for the preservation of the aesthetics and rural character.~~

a. A cutting or clearing plan shall be approved by the Planning Board for any cutting of Trees or removal of natural vegetation within 100 feet inland from the Ordinary High Water Mark of all Streams as defined by this Ordinance regardless of permitted use except as provided in subparagraph b. below. The Planning Board shall request the Conservation Commission to review the plan and make recommendations.

b. A Natural Woodland Buffer 100 feet in depth shall be maintained from the Ordinary High Water Mark of all Streams as defined by this Ordinance except that:

~~1. Trees less than 4 inches in caliper measured 4.5 feet above ground may be cut; and~~

2. Normal trimming, pruning, and thinning of branches is permitted to the extent necessary to protect Structures, maintain clearances and provide views. Trimming, pruning, and thinning of branches for the purpose of providing views shall be limited to the bottom half of saplings and trees.

c. Dead ~~or diseased~~ Trees are an important part of the forest ecosystem providing a valuable source of food. Dead or diseased Trees which pose a safety hazard to Structures or to landowners using outdoor spaces such as patios, decks or walkways may be removed if a cutting plan is approved by the Planning Board as per Section a. above.

d. Stumps and their root systems located within 100 feet of the center of all Streams as defined by this Ordinance shall be left intact in the ground unless the vegetation, stumps or root system are determined by a certified arborist to be diseased, in which case the diseased materials shall be removed, including digging the stump out if the ground.

D. Prohibited Uses: Prohibited Uses within the Overlay District include:

(1) Erection or construction of any new Structures;

(2) Altering the natural surface configuration by the addition of fill or by dredging;

(3) Establishment or expansion of:

a. Salt storage sites;

Commented [J9]: This appears to be redundant since it is covered in section A.

Commented [J10]: This pretty much mimics that which is expressed in section A and seems redundant.

Commented [J11]: "Where existing" is inappropriate. We want a 100'on all designated streams. If there is a problem with this, it should be dealt with through Special Exceptions or Non-Conforming Uses.

Commented [J12]: Again, this mimics section A and appears redundant.

Commented [J13]: This has not been clear in previous decisions but should hopefully now be clearer with this added phrase.

Commented [J14]: This needs discussion since trees lost to death, disease and unfortunate cutting need to be replaced by the smaller younger trees growing in. Cutting trees less than 4"caliper would make this difficult.

Commented [J15]: What does this mean? This is pretty wide open. Suggest using the provision in the Shoreland Overlay which is more precise.

Commented [J16]: "or diseased" is removed since the current thinking is that diseased trees should be removed.

Commented [J17]: This is taken directly from the Shoreland Overlay District that addresses the problem of leaving diseased materials in place.

b. Junk yards; and/or

c. Solid or hazardous waste facilities;

(4) Use of fertilizer, except lime and/or wood ash, on lawns or areas with grass;

(5) Bulk storage of chemicals;

(6) Sand and gravel excavations as defined in RSA 155-E;

(7) Processing of excavated materials;

(8) Dumping or disposing of snow and/or ice collected from roadways or parking areas outside the district; and

(9) Use for any component of an on-site subsurface waste disposal system including septic system tank and leach fields;

E. Permitted Uses: Permitted Uses are those which will not require the erection or construction of any Structures or Buildings; will not alter the natural surface configuration by addition of fill or by dredging; and Uses that are otherwise permitted by the Zoning Ordinance. Such Uses include the following:

(1) ~~Forestry-Tree farming using best management practices in order to protect Streams from damage and prevent sedimentation;~~ The planting of saplings and trees;

~~(2) All agricultural activities and operations as defined by RSA 21:34-a and as governed by Title XL provided such activities and operations are in conformance with the most recent best management practices as determined by the U.S. Department of Agriculture Natural Resource Conservation Service.~~

(2) Wildlife refuges;

(3) Parks and recreation Uses consistent with the purpose and intent of this Ordinance;

(4) Conservation areas and nature trails;

(5) Open Spaces as permitted or required by the Subdivision regulations or the Zoning Ordinances.

(6) Dry hydrants or fire ponds which are constructed to permit unobstructed flow of water.

~~(8) Alteration, expansion or improvement of existing Nonconforming Structures and Buildings, consistent with the provisions of Article XX of this Ordinance, and with cutting, clearing and erosion control plans approved by the Planning Board.~~

F. Uses Permitted by Special Exception: The following Uses may be permitted by Special Exception by the Zoning Board of Adjustment:

Commented [J18]: Forestry-Tree Farming seems like a good idea as far as planting new trees but a harvesting operation of timber or even a Christmas tree operation would be incompatible with the Natural Woodland Buffer. Therefore, it seems that this should be limited to the planting of trees and saplings.

Commented [J19]: This also speaks to activities which are not compatible with the health of the Woodland Buffer and would make life easier for the PB if it were not permitted.

Commented [J20]: This provision should be moved to Article XX which is consistent with the desires of the Planning Board – as they did with Shoreland Overlay last year.

(1) Any crossing of a Stream with an access way, driveway or Street, regardless of width, and/or utility lines. In addition to the usual criteria used by the Zoning Board of Adjustment in evaluating an application for a Special Exception, the applicant must demonstrate to the Zoning Board of Adjustment that there is not a layout of the access way, driveway, Street or utility line which conforms to the Town of New London's regulations, which does not cross a ~~Wetland~~ Stream, and that the proposed crossing would create the least impact on the ~~Wetland~~ Stream compared with other possible ~~Wetland~~ Stream crossing locations. A New Hampshire Department of Environmental Services Wetlands Permit may also be required.

Commented [J21]: This overlay is about streams. Wetlands are covered in another Article. Therefore, change Wetland to Stream.

Commented [J22]: There is a strong possibility that this would be required.

(2) Proposals to alter or relocate a watercourse shall comply with the following:

a. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Department of Environmental Services and submit copies of such notification to the Zoning Board of Adjustment, in addition to the copies required by the RSA 482-A:3. ~~RSA 483-A:1-b.~~ Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Zoning Board of Adjustment, including notice of all scheduled hearings before the Wetlands Board and the Zoning Board of Adjustment.

Commented [J23]: RSA 483-A:1-b does not exist. RSA 482-A:3, which concerns Dredge and Fill permits in wetlands. This is the reference that appears in other towns.

b. The applicant shall submit to the Zoning Board of Adjustment certification provided by a registered professional engineer assuring that the Flood carrying capacity of an altered or relocated watercourse can and will be maintained.

c. The Zoning Board of Adjustment 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 Flood Zones A and AE 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."

Commented [J24]: Quotation marks probably not required – who does this quote?

d. Along watercourses that have not had a Regulatory Floodway designated or determined by a federal, state or other source: no new construction, Substantial Improvements, or other Development (including fill) shall be permitted within Flood Zones A and AE on the Federal Insurance Rate Map (FIRM), unless it can be demonstrated by the applicant that the cumulative effect of the proposed Development, when combined with all existing and anticipated Development, will not increase the Water Surface Elevation of the Base Flood more than one foot at any point within the community.

Commented [J25]: These zones are FEMA flood zones and FIRM is the FEMA Federal Insurance Rate Map. Flood Zones A and AE are both based on the 100 year flood and deserve similar consideration.

(3) A reduction of the depth of the Stream buffer described above in Paragraph D. Natural Woodland Buffer.

~~H. Overlapping Regulations: In all cases where the Streams Conservation 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.~~

Commented [J26]: This just needs to be moved to the end of the Article similar to where it appears in the Shoreland Overlay.

G. Erosion and Sedimentation Control Plan:

a. Erosion and sedimentation control plans shall be required for all construction, filling, grading, dredging, and other activities requiring land disturbance within the first 100 feet inland from the Ordinary High Water Mark of all Streams as defined by this Ordinance. 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. For minor land disturbances such as utility line or stairway construction, the Board of Selectmen may reduce the amount of detail needed in an erosion and sedimentation control plan.

b. Erosion and sedimentation control plans shall be developed in conformity with guidelines of the ~~U.S.D.A. Soil~~ Natural Resources Conservation Service (NRCS) and with guidelines of the ~~N.H. Water Supply and Pollution Control Division of the~~ New Hampshire Department of Environmental Services under RSA 485-A:17.

Commented [J27]: This just updates the U.S.D.A. Soil Conservation Service to its new title "Natural Resources Conservation Service (NRCS). Also, the Water Supply and Pollution Control Division ceased to exist in 1987. It is all under the umbrella of DES as referred to in the included RSA.

c. The Board of Selectmen shall review and decide to approve or deny all plans before issuing a Building permit. The Board of Selectmen shall request the Conservation Commission to review the plan and make recommendations.

d. The Board of Selectmen 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.

e. Erosion control measures shall be installed before construction and grading.

H. Overlapping Regulations: In all cases where the Streams Conservation 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.

Commented [J28]: Just a new location for this provision.