

From: [Audrey Cline](#)
To: [Michael Behrendt](#)
Cc: [Tracey Cutler](#)
Subject: RE: ZBA - changes to wetlands ordinance *
Date: Thursday, February 22, 2024 8:46:08 AM

We can add it and see to what extent they want to delve into it

From: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Sent: Wednesday, February 21, 2024 4:49 PM
To: Audrey Cline <acline@ci.durham.nh.us>
Subject: ZBA - changes to wetlands ordinance *

Audrey,

The Conservation Commission appointed a committee to rewrite the Wetlands Conservation Overlay District (WCOD) and the Shoreland Protection Overlay District (SPOD). The committee is close to finishing its draft and will present it soon to the Conservation Commission. They are proposing some new language which would affect the Zoning Board of Adjustment. They asked that this language be shared with the ZBA now to see if the board has any concerns or comments. Do you think that the ZBA could add this item on their next available agenda for discussion? Note that the present two overlay districts would be combined into one new Wetlands and Shorelands Overlay District (WSOD). Thank you.

Proposed new language in WSOD:

175-69. Zoning Board of Adjustment.

When a variance application pertinent to the WSOD is submitted to the Zoning Board of Adjustment, copies of the application shall be forwarded to the Conservation Commission as soon as possible. The commission may offer comments to the ZBA at its option. However, action on any ZBA application may not be delayed to provide time for the commission to prepare its comments.

175-70. Local Resources and Authority.

The Planning Board has final authority under this article independent of the status of any state or federal permitting related to the proposed project. The Planning Board may use any appropriate resources in reviewing applications, including those in the Appendix.

Current language to be changed to above:

175-68. Local Authority and Variances.

No approval or waiver of permits by state or federal agencies shall preempt the ability of

the Planning Board or the Zoning Board of Adjustment to seek additional information or to make an independent judgment as to the acceptability of a lot or alteration of land.

Proposed new language, to be relocated to the WSOD with some slight changes from existing:

175-65. Special Exception for Single-Family Residences in the WSOD.

The construction of a single-family residence, including a septic system serving a single-family residence, on an existing vacant lot within the Wetland and Shoreland Overlay District may be permitted by special exception if the Zoning Board of Adjustment finds that the proposal meets the general special exception criteria and the criteria below. Applicants shall submit all necessary materials to facilitate the review, including a site plan and landscaping plan, as appropriate.

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to January 1, 1976 (just after the first adoption of the Wetland and Shoreland Overlay Districts).
2. The single-family use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District without undue hardship.
3. Due to the provisions of the Wetland and Shoreland Overlay District no reasonable and economically viable use of the lot can be made without the exception.
4. The location and design of the single-family use shall provide for the maximum setback from the reference line consistent with reasonable use of the property considering the size, shape, slope, and natural conditions of the lot including, but not limited to, soils, flood hazard areas, and wetlands.
5. The design and construction of the proposed septic system will not cause any adverse impact to public health, ground or surface water, or other environmental resources.
6. There is a reasonable building envelope on the lot to accommodate a single family home and septic system without requiring extraordinary measures (i.e., the lot is considered a buildable lot in the judgment of the ZBA).

Any application under this section shall first be presented to the Conservation Commission to allow for an opportunity for the commission to discuss the proposal with the applicant and to provide comments to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall not take action on an application until the application has been presented to the commission. The commission may continue its review to one additional meeting after the first presentation if more time is needed for its review.

Current language located under Article IX. Nonconformance to be relocated to the

WSOD with some slight changes:

175-29. Nonconforming Lots.

B. ***Requirements for Individual Nonconforming Vacant Lots in the WCOD and SPOD.*** The erection of a structure or septic system on an existing vacant lot within the Wetland Conservation Overlay District or Shoreland Protection Overlay District may be permitted by special exception if the Zoning Board of Adjustment, after due public notice and public hearing, finds that such exception complies with all other applicable requirements set forth in this Article and with each of the following:

1. The lot upon which the exception is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this Article was posted and published in the town.
2. The use for which the exception is sought cannot be carried out on a portion or portions of the lot which are outside the Wetland Conservation Overlay District or Shoreland Protection Overlay District without undue hardship.
3. Due to the provisions of the Wetland Conservation Overlay District or Shoreland Protection Overlay District, no reasonable and economically viable use of the lot can be made without the exception.
4. The location and design of the building(s) and all structures shall provide for the maximum setback from the reference line consistent with reasonable use of the property considering the size, shape, slope, and natural conditions of the lot including, but not limited to, soils, flood hazard areas, and wetlands.
5. The design and construction of the proposed septic system will, to the extent practical, be consistent with the purpose and intent of this Article.
6. The proposed septic system will not create a threat to individual or public health, safety and welfare, such as the degradation of ground or surface water, or damage to surrounding properties.
7. Where site review is required, prior approval shall be obtained from the Planning Board.

At the time of submission of the special exception application to the Zoning Board of Adjustment, the Conservation Commission, the Health Officer, and the Planning Board shall be informed of the application for special exception.

Michael Behrendt

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