

Barrington Conservation Commission
August 26, 2014
Chez Grossman

SPECIAL MEETING TO ADDRESS PROPOSED ZONING CHANGES

MEETING MINUTES

PRESENT: Ken Grossman
John Wallace, Chair
Pam Failing, Vice-Chair
Marika Wilde

GUEST: Stephen Jeffery

CALL TO ORDER Over excellent pizza and beer, the discussion began at 6:45.

Stephen, a former Planning Board member, informed us of many of the historical problems with zoning section 9.6, Special Permit for Construction in a Wetland Buffer. He is of the opinion that such permits should not legally be the responsibility of the Planning Board but rather should be reviewed by the Zoning Board of Adjustment.

There was a lengthy discussion of perceived ambiguities within the language of zoning section 9 overall, e.g. the meaning of “prohibited” vs. “not otherwise permitted,” and what constitutes a “reasonable alternative.”

Ken and John had each put together documents suggesting changes to the wording of section 9, which are attached to these minutes. Based on the evening’s discussion and these documents, Ken will attempt to put together a few specific suggestions for consideration at the next regular Conservation Commission meeting on Sept. 5.

The meeting adjourned at 8:50.

Respectfully submitted,

John Wallace

KEN'S SUGGESTIONS

ARTICLE 9 WETLANDS PROTECTION DISTRICT OVERLAP (WDO)

9.1Purpose and Intent

The general purpose of this District is to preserve and protect the many wetland areas and their immediate surroundings (Wetland Buffers) in Barrington for the benefit of public health, safety and welfare. The intent of this section is to restrict the use of wetland areas and their buffers to promote the following goals:

9.1(1).....Prevent the pollution of surface waters and groundwater;

9.1(2).....Prevent the dewatering of wetlands;

9.1(3).....Prevent adverse impact to wetlands ~~that provide flood protection, recharge of groundwater supply, augmentation of stream flow during dry periods, habitat for plants, fish or wildlife, or commerce, recreation or aesthetic enjoyment~~ to protect the roles the wetland serves that are of value to the public or the environment including, but not limited to, flood water storage, flood water conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

[This makes it consistent with 9.5(2)]

9.1(3)b Prevent adverse impacts to wetland buffers as defined below that have value to the public of their own, including but not limited to scenic and aesthetic use, food chain support and wildlife habitat.; and

9.1(4).....Permit those uses that can be appropriately and safely located in wetlands and their buffers.

9.2 Wetlands Defined

9.2.1.....For the purposes of this Ordinance, “wetlands” means an area that is inundated or saturated by surface water 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.

9.2.2.....Wetlands generally include, but are not limited to, swamps, marshes, bogs, and similar areas. In accordance with New Hampshire Department of Environmental Services and United States Army Corps of Engineers requirements, jurisdictional wetlands are to be identified and delineated using the 1987 Corps of Engineers Wetlands Delineation Manual. Jurisdictional wetlands are to be delineated by a New Hampshire

certified wetland scientist or a New Hampshire certified soil scientist.

9.3Prime Wetlands and other High Value Wetlands.

9.3(1).....In conjunction with the definition of wetlands in Section 9.2, the Town of Barrington has also delineated a special classification of wetlands referred to as Prime Wetlands, in accordance with state statutes authorizing such designation.

9.3(2).....The approximate boundaries of Prime Wetlands located in Barrington are illustrated on tax maps dated January 1991, along with an accompanying report entitled Prime Wetlands Report, Town of Barrington, New Hampshire, January 1991, which identifies the important values and critical functions that are provided by these wetlands.

9.3(3).....The Prime Wetland maps and report are on file at the Barrington Town Offices as well as the offices of the New Hampshire Department of Environmental Services (NHDES).

9.3(4) Other wetlands not designated as Prime are sometimes called “high value” or “critical” based on the degree to which they or their buffers have important functions as defined in 9.1(3)

9.3.1.....Delineation of Prime Wetland Boundaries

On any parcel of land where development is proposed, and that also contains a Prime Wetland as identified in the town’s study cited in Section 9.6, or as designated by the town at any time thereafter, the applicant applying for said development approval shall be required to delineate the area of all Prime Wetlands on plans submitted to the town.

9.3.1(1).....Since the Town adopted its Prime Wetland designation prior to January 1, 1992, the edge of the Prime Wetland shall be considered to be the areas where one hundred percent (100%) of the soils are Hydric A, which also have the presence of hydrophytic vegetation and wetlands hydrology.

9.3.1(2).....The procedures and standards for mapping said Prime Wetlands shall be done in, accordance with the methods prescribed in this Ordinance, as well as the town’s Subdivision and/or Site Plan Review Regulations, for mapping any jurisdictional wetlands.

9.3.1(3).....If the boundary of a Prime Wetland is contested, the applicant may present data and evidence to the NHDES and to the Barrington Conservation Commission relative to the correct location of the boundary. In the event of a dispute, the final

delineation shall be determined by the NHDES based on the data and evidence submitted.

9.4Permitted Uses and Structures

The uses and structures listed in Paragraphs (1) through (5) of this Section, and no others, except as provided for in Subsection 9.5.1, are permitted in wetlands and their buffer areas but only if the Planning Board determines that such a use or structure: is consistent with the purposes expressed in Section 9.1; does not involve substantial alteration of the surface configuration of the land; and will not result in a significant net loss of values associated with the functions of the wetland.

9.4(1).....Forestry/tree farming; and

9.4(2).....Agriculture, including grazing, farming, truck gardening and harvesting of crops; but not including the stockpiling of manure or other activities or practices that could contaminate surface water or groundwater; and

9.4(3).....Drainage ways: streams, creeks or other paths or normal runoff water; and

9.4(4).....Open space, wildlife refuges, conservation areas, nature trails and passive recreational uses; and

9.4(5).....Culverts, footbridges, catwalks and wharves only, provided that:

9.4(5)(a)The structures are constructed on posts or pilings so as to permit the unobstructed flow of water; and

9.4(5)(b)The natural contours of the wetland shall be preserved.

9.5 Wetland Buffer Areas Required

9.5(1).....A buffer area of fifty (50) feet is required from the edge of any wetland. If a vernal pool or other high-value features are determined to be located on a site a greater buffer may be required by the Planning Board. **This provision of the Ordinance was adopted on March 13, 2001 and is effective from that date.**

9.5(2).....In the case of a Prime Wetland a minimum buffer of one hundred (100) feet shall be required from the edge of the wetland. The Planning Board may require a larger buffer around a Prime Wetland if an assessment of its functions indicates that such an increase is warranted to protect the roles the wetland serves that are of value to the public or the environment including, but not limited to, flood water storage, flood water conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat.

9.5(3).....Within any required wetland buffer, including by way of example and not by way of limitation, no structures, impermeable surfaces, parking spaces, or construction-related activities, including dredging, filling, and re-grading, shall be permitted, except as noted in Subsection 9.5.1 below.

9.5(4).....The following features shall not be construed as wetlands with regard to designating buffer areas under the provisions of this Ordinance:

9.5(4)(a)Manmade ditches and swales

9.5(4)(b)Sedimentation/detention basins or ponds

9.5(4)(c)Manmade agricultural/irrigation ponds and swales

9.5(4)(d)Fire ponds and cisterns

9.5(4)(e)A septage or manure lagoon

9.5(4)(f).....Silage pits

9.5(4)(g)An isolated wetland or surface water of 3,000 square feet or less that does not meet the definition of a swamp, marsh, bog or vernal pool

9.5.1.....Exceptions for Construction in Wetland Buffers

9.5.1(1).....On all lots created after March 11, 1997 and before March 13, 2001, no structure shall be built or located closer than thirty-five (35) feet to a wetland area.

9.5.1(2).....An existing building within a buffer area may be repaired and/or replaced provided that the new or repaired structure, including any impermeable surfaces, shall not extend further into the buffer area than the footprint of the original foundation.

9.5.1(3).....Wetland crossings that would fall under the New Hampshire Department of Environmental Services Administrative Rule – 303.04, as amended, that expedites certain types of wetland crossings may be permitted.

9.5.1(4).....Wells / Well Lines

9.5.1(5).....This ordinance shall not prohibit the construction of principal and accessory structures within the buffer zone or unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 13, 2001.

9.6:1Special Permit for Construction in a Wetland Buffer

A use not otherwise permitted in the wetlands buffer may be undertaken if the Planning

Board approves an applicant's request for a Special Use Permit, provided such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the base zoning district and meets the standards listed below. In its consideration of such an application the planning board shall attend closely to the potential loss of functionality of the wetland or its buffer as noted in Section 9.1(3) and repeated in Section 9.5 (2). The Planning board shall endeavor to make its stringency in granting a Special Use permit proportional to such a loss of wetland or wetland buffer functionality (Reference – RSA 674:21 II)

9.6:2 As 9.5(1) and 9.5 (2) empower the Planning Board to extend wetland buffers, the Planning board shall not reduce wetland buffers in the situations described in those sections.

9.6(1).....After a review of all reasonable alternatives it is determined to be infeasible to place the structure outside of the buffer zone.

9.6(1)(a)The structure must be set back as far as possible from the delineated edge of the wetland or surface water; and

9.6(1)(b)Appropriate erosion control measures must be in place prior to and during construction; and

9.6(1)(c)Any disturbance to the surrounding buffer zone must be repaired and restored upon completion of construction; and

9.6(1)(d)All available mitigation measures to address changes including but not limited to water quality and quantity be implemented, along with design and construction methods to minimize adverse impacts, if required by the Planning Board.

9.6(1)(e) The Planning Board may require that all issues regarding loss of function be addressed such that the applicant will enhance the remaining buffer zone so as to improve its functionality with as close to a minimal loss of function as is practical.

9.6(1)(f) A Special Use permit shall only be available for existing lots of record, and not for lots created by further subdivision of existing lots.

JOHN'S SUGGESTIONS

Subdivision Regs: how prevent/minimize need for 9.6?

9.5 Wetland Buffer Areas Required (3/9/2010)

A buffer area of fifty (50) feet is required from the edge of any wetland. If a vernal pool is determined to be located on a site a greater buffer may be required by the Planning Board. In the case of a Prime Wetland a minimum buffer of one hundred (100) feet shall be required from the edge of the wetland. The Planning Board may require a larger buffer around any Wetland if an assessment of its functions indicates that such an increase is warranted to protect the roles the wetland serves that are of value to the public or the environment including, but not limited to, flood water storage, flood water conveyance, groundwater recharge and discharge, erosion control, wave attenuation, water quality protection, scenic and aesthetic use, food chain support, fisheries, wetland plant habitat, aquatic habitat and wildlife habitat. Such assessment may be required by the Planning Board.

Within any required wetland buffer, including by way of example and not by way of limitation, no structures, impermeable surfaces, parking spaces, or construction-related activities, including dredging, filling, and re-grading, shall be permitted, except as noted in Subsection 9.5.1 below.

The following features shall not be construed as wetlands with regard to designating buffer areas under the provisions of this Ordinance.

- (d) Fire ponds and cisterns
- (e) A septage or manure lagoon
- (f) Silage pits
- (g) An isolated wetland or surface water of 3,000 square feet or less that does not meet the definition of a swamp, marsh, bog or vernal pool

9.6 Special Permit for Construction in a Wetland Buffer

A use not otherwise permitted in the wetlands buffer may be undertaken if the Planning Board approves an applicant's request for a Special Use Permit, provided such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the base zoning district and meets the standards listed below. (Reference – RSA 674:21 II)

- 1) After a review of all reasonable (define?) alternatives it is determined to be infeasible to place the structure outside of the buffer zone;