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Title: City of Dover Overriding Districts Ordinance
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Abstract

“Overriding districts”—more commonly known as overlay districts—are superimposed on existing zoning districts. Their regulations supplement existing zoning regulations, and in this ordinance are adopted to protect watercourses and wetlands as well as steep slope areas. The ordinance is intended to preserve the flora and fauna of the community and to maintain high water quality. This ordinance is adopted under the authority of New Hampshire’s Planning and Zoning enabling act, § 674:16, and the state’s Comprehensive Shorelands Protection Act § 483-B:8, which delegates authority to municipalities to protect watercourses.

Resource

DOVER, NEW HAMPSHIRE

OVERRIDING DISTRICTS ORDINANCE

Abstract: *This ordinance is adopted under the authority of New Hampshire’s Planning and Zoning enabling act, § 674:16, and the state’s Comprehensive Shorelands Protection Act § 483-B:8, which delegates authority to municipalities to protect watercourses. “Overriding districts”—more commonly known as overlay districts—are superimposed on existing zoning districts. Their regulations supplement existing zoning regulations, and in this ordinance are adopted to protect watercourses and wetlands as well as steep slope areas. The ordinance is intended to preserve the flora and fauna of the community and to maintain high water quality. A conservation district requires a 100-foot buffer from the mean high water mark of most waterways in the town and 50 feet from smaller freshwater streams. In addition, the conservation district protects steep slopes over 20% in grade. No development is permitted in these areas and permanent tree cover must be maintained.*

The full text of the Dover Code is available at:
<http://www.ci.dover.nh.us/Archives/newArchives.htm>
City of Dover, New Hampshire
Dover Zoning Code Article VII Overriding Districts

Article VII Overriding Districts

170-26. Additional regulations.

All overriding districts shall be superimposed upon other zoning districts established in this chapter. The regulations stipulated by the overriding districts shall be in addition to the regulations of the underlying zoning districts and other applicable city ordinances.

170-27. Conservation District.

A. Purpose. In the interest of environmental quality, public health, resource conservation and the general welfare of the public, the regulations of this district are designed to guide development activities in areas with extended periods of high water table, with susceptibility to flooding and with unique or fragile geologic, ecological or nature features as follows:

- (1)** To prevent the development of structures and land uses on naturally occurring wetlands and flood-prone areas which would contribute to pollution of surface and ground water by sewage or other contaminants.
- (2)** To prevent the destruction of natural wetlands or aquifer areas which provide flood protection, recharge of groundwater supply and augmentation of stream flow during dry periods.
- (3)** To prevent unnecessary or excessive expenses to the city to provide and maintain essential services and utilities which arise because of inharmonious use of wetlands and other environmentally sensitive areas.
- (4)** To encourage those uses that can be most appropriately and safely located in wetland and other environmentally sensitive areas.
- (5)** To preserve existing natural drainage systems and the vegetation and wildlife habitats therein.
- (6)** To preserve wetlands and other environmentally sensitive areas for other ecological reasons inter alia, those cited in RSA 483B.
- (7)** To preserve and enhance those aesthetic values associated with waterways and the natural shoreline.

B. Location. The Conservation District is hereby determined to consist of the following:

(1)*Those areas within a minimum of one hundred (100) feet of the mean high water of any water body, river, stream, swamp or marsh subject to tidal action and those areas within a minimum of one hundred (100) feet of the mean high water of any freshwater river or natural pond.

(2) Those areas within a minimum of fifty (50) feet of the mean high water of any stream, brook or other freshwater body.

(3) Those areas owned by and situated in the City of Dover and known as lots: [*Omitted*].

(4) Those areas with slopes in excess of twenty percent (20%).

C. Conditional Use Permits. Conditional Use Permits may be granted by the Planning Board for the following uses within the Conservation District:

(1) Streets, roads and other access ways and utility rights-of-way, communications equipment, easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the wetlands or other environmentally sensitive areas, where it is physically impossible to locate such ways over land not so zoned. Economic advantage alone shall not be deemed a sufficient reason for such a routing.

(2) The undertaking of a use not otherwise permitted in the Conservation District, which may include the erection of a structure, dredging, filling, draining or otherwise altering the surface configuration of the land, provided that:

(a) A soil erosion and sedimentation control plan is submitted to verify the planned avoidance of erosion along bodies of water.

(b) Necessary state and federal approvals have been received.

(c) A written review by the Conservation Commission of the environmental effects of the proposed use upon the area in question has been submitted.

D. Procedures for subdivision. No subdivision of land shall be permitted which would create a lot or parcel or leave as a remainder a lot or parcel which does not have, outside the Conservation Zoning District, an area equal to the minimum lot size or one (1) acre, whichever is less. The Zoning Board of Adjustment may grant an exception to this rule if such a lot or parcel is to be permanently dedicated to open space or natural uses and is to be dedicated to a public or private agency having as a purpose the holding of such land in a natural state in perpetuity.

E. Other provisions.

(1) Reference is hereby made to RSA 483A, as amended, which evidences a state concern over preservation of such lands. It is intended that the provisions of that statute shall apply and that in all cases the more restrictive law should apply.

(2) In all cases where the Conservation District is superimposed over another zoning district in the city, that district whose regulations are the more restrictive shall apply.

(3)*The Conservation District adopted herein is hereby designated as open space under RSA 79-A, and all relevant provisions of RSA 79-A relating to current use assessment of such property shall apply.

(4) In areas herein defined as the "Conservation District," the cutting of trees shall be limited to no more than fifty percent (50%) of the basal area within a ten-year period. A continuous area of tree cover shall be maintained.

(5) Upon the discretion of the Building Inspector, a structure may be erected within the Conservation District as described in Subsection B(1) up to but never closer than seventy-five (75) feet of the mean high water mark, provided that:

(a) The lot existed within the Conservation District, as recorded in the Strafford County Registry of Deeds, prior to the effective date of this subsection.

(b) The structure cannot feasibly be constructed on a portion or portions of the lot which are outside the one-hundred-foot setback of the Conservation District.

(6) Upon the discretion of the Building Inspector, a structure located within the Conservation District, as described in Subsection B(1) and (2) and existing prior to the effective date of this subsection, may be increased up to twenty percent (20%) in area, provided that the enlarged structure at no point falls within seventy-five (75) feet of the mean high water mark.

(7) Customary accessory structures shall be allowed within the Conservation District as described in Subsection B(1) but in no case closer than seventy-five (75) feet to the mean high water.

(8) Projects which have been officially accepted by the Planning Board prior to the October 10, 1986, amendment posting date shall be exempt of all revisions herein.

(9) Land area contained within the Conservation District can be counted in determining the gross land area of a tract, lot or parcel.

F. The provisions of the Conservation District adopted herein shall not be binding on Cocheco waterfront lots located in the B-2, UMUD and CWD Zoning Districts, provided that any proposed development actively integrates and makes use of the Cocheco River waterfront resource.

G. Boat Docks.

(1) A boat dock may be allowed on a residential lot, provided that the following provisions are met:

(a) The dock is for recreational and accessory use only.

(b) One (1) dock is allowed per lot.

(c) The beneficiary of an easement or right-of-way, recorded at the Strafford

County Registry of Deeds prior to the October 10, 1986 amendment posting date for the purpose of providing water access to nonwaterfront lots, shall be entitled to one (1) boat dock within the prescribed easement or right-of-way.

(d) All applicable state and federal approvals have been received.

(e) A dock may be provided a maximum space for two (2) slips. Joint use or private docks by adjoining waterfront residents, not to exceed two (2) slips per lot, shall be encouraged when appropriate.

170-27.1. Wetland Protection district.

A. Authority. By the authority granted under RSA 674:16 and 17, this section is designed to protect the wetland areas and surface waters within the City of Dover from certain activities, the impact of which results in the alteration or destruction of wetland areas.

B. Purpose and intent.

It is intended that this section shall:

(1) Prevent the development of structures and land uses on wetlands which will contribute to pollution of surface and ground water by sewerage, toxic substances or sedimentation.

(2) Prevent the destruction of, or significant changes to, wetlands which provide flood protection, recharge the groundwater supply and augment stream flow during dry periods and filtration of water flowing into ponds and streams.

(3) Protect unique and unusual natural areas and rare and endangered species.

(4) Protect wildlife habitats, maintain ecological balances and enhance ecological values such as those cited in RSA 483-A-1-B.

(5) Protect potential water supplies and existing aquifers (water-bearing stratum) and aquifer recharge areas.

(6) Prevent unnecessary or excessive expense to the city for the purpose of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.

(7) Encourage those low-intensity uses that can be harmoniously, appropriately and safely located in wetlands.

(8) Preserve and enhance the aesthetic values associated with wetlands in the City of Dover.

(9) Avoid the high costs of constructing heavy structures and prevent damage to structures and abutting properties caused by inappropriate development in wetland areas.

C. District boundaries.

(1) The Wetlands Protection District is hereby determined to be:

(a) All areas of very poorly drained soils.

(b) All areas of poorly drained soil which presently support or which will under natural conditions support a predominance of hydrophitic vegetation. These include areas which are naturally occurring or artificially created.

(c) All areas of poorly drained soils, regardless of vegetative types, which are contiguous to surface waters such as ponds, streams (perennial or intermittent) and rivers and within the one-hundred-year flood zone as determined by the Federal Emergency Management Agency.

(2) For the purpose of this section, "poorly drained soils" and "very poorly drained soils" shall be defined by the Soil Survey of Strafford County, New Hampshire, March 1973, as amended. The Wetlands Soils Map, which is on file at the Planning Department and the City Clerk's office at city Hall, illustrates the general location of these soils for informational purposes but does not depict the exact boundaries of Wetland Protection Districts for the purpose of this section.

(3) "Hydrophitic (water-loving) vegetation" is defined as those plants identified in the "1986 Wetland Plant List Northeast Region" of the United States Fish and Wildlife Service. The more common names associated with these vegetative communities are "bogs," "swamps," "marshes," (saltwater and freshwater) and "tidal wetlands."

D. Procedural requirements.

(1) Presence of Wetland Protection District on site.

(a) Where maps or field investigation indicate that a Wetland Protection District is present on a proposed development site, those wetlands shall be delineated by a High Intensity Soil

(HIS) Survey Map prepared by a certified soil scientist. If necessary, a botanist shall be used in conjunction with the soil scientist to identify wetland vegetation where required. The botanist shall have equivalent and practical experience to that of the soil scientist.

(b) Applications for a building permit, subdivision and site plan approval shall locate and depict on the survey/subdivision plat/site plan all Wetland Protection Districts on the subject parcel. Any applicant seeking said approval(s) will be responsible for providing this information before the appropriate approval or permit can be granted.

(c) Where no evidence has been produced, either by the applicant or the city, that a wetland is present on the site, an HIS map shall not be required under this section.

(2) The Planning Department shall notify the Conservation Commission of all projects and construction proposed in wetland districts for the purpose of allowing the Commission to make recommendations prior to approval.

(3) In the event that the accuracy of the boundaries submitted by the applicant is suspect, the Planning Board may call upon the services of a certified soil scientist and/or botanist to reexamine said area and report the findings to the Planning Board for a boundary determination. The cost of said services shall be paid by the applicant.

(4) The Building Inspector shall not issue a building permit for construction and the Planning Board shall not approve a site plan or subdivision plat unless such construction activity or proposal conforms to the provisions of this ordinance.

(5) Standards established herein shall constitute the rules of overlay zones and shall be superimposed over other zoning districts or portions thereof. The provisions herein shall apply in addition to all other applicable ordinances and regulations. In the event of a conflict between any provision herein and any other regulation, the more- restrictive requirement shall control.

(6) The city shall have the power to enforce this section, and violations may be punishable by fines as provided by RSA 676:17.

E. Permitted uses.

(1) Any use otherwise permitted by the City Zoning Ordinance, except on-site sewage disposal systems, may be permitted in a Wetland Protection District on poorly drained soils. Any use permitted under Section E(1) must first receive conditional use approval as provided for in Section F before any building permit or subdivision/site plan can be approved.

(2) The following uses shall be permitted in a Wetland Protection District on very poorly drained soils:

(a) Crossing of a Wetland Protection District as provided for in Section F(1).

(b) The construction or reconstruction of fences, footbridges, catwalks, boat docks and wharves does not require a conditional use permit, provided that:

[1] Said structures are constructed on posts or pilings so as to permit unobstructed flow of water and are designed in compliance with the New Hampshire Wetlands Board Code of Administrative Rules (WT 400 and 600).

[2] The natural contour of the wetland is preserved.

[3] All other applicable provisions of the city's Zoning Ordinance have been met.

F. Conditional use approval.

(1) Conditional use approval may be granted by the Planning Board (RSA 674:21II) after proper public notice and public hearing, for the crossing of the Wetland Protection District by a road or other accessway, utility right-of-way, communication lines, power lines and pipelines, provided that the proposed construction complies with the following standards:

(a) The proposed construction is essential to the productive use of land or water outside the Wetlands Protection District.

(b) Design, construction and maintenance methods will be prepared by a registered engineer to minimize detrimental impacts to the wetlands and will include restoration of the site as nearly as possible to its original grade.

(c) No reasonable alternative to the proposed construction exists which does not cross or alter a wetland or which has less detrimental impact on a wetland.

(2) Conditional use approval also may be granted by the Planning Board for development in the Wetlands Protection District on poorly drained soil. To obtain such an approval, the applicant shall perform or cause to have performed a functional evaluation of the wetlands on which development is proposed. Said functional evaluation shall examine the wetland in terms of the four (4) following criteria: flood control value; ecological integrity; nutrient retention and sediment trapping value; and groundwater use potential. The functional evaluation shall be performed in accordance with the procedures outlined in the "Wetland Evaluation Handbook for the City of Dover" which is on file in the office of the City Clerk and Planning Department in City Hall.

If three (3) or more of the criteria being evaluated for a particular wetland have a functional value index (FVI) below five-tenths (0.5), the proposed use may be permitted by the Planning Board, provided that all other provisions of this section have been satisfied. If the wetland has an FVI of five-tenths (0.5) or greater for two (2) or more of the criteria, the proposed use shall not be permitted.

(3) The burden of proof that the conditions specified in Subsection F(1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the conditional use

approval, except as herein provided. Regarding a development proposed for a parcel of land smaller than ten (10) acres, the applicant shall provide the High Intensity Soil Map, and the City of Dover shall conduct the evaluation in accordance with the Wetland Evaluation Handbook.

(4) The conditional use approval shall apply only to the project specified at the time of approval and shall not be transferable to a different project.

(5) For the purposes of evaluating wetlands and granting conditional use permits, the Planning Board may divide a Wetland Protection District into smaller study areas, allowing different evaluations to be assigned to the various study areas and allowing a conditional use permit to be approved for certain study areas and not for others.

(6) If deemed necessary by the Planning Board, prior to the granting of a conditional use approval, the applicant shall agree to submit a performance security to ensure that all operations are carried out in accordance with an approved design. This security shall be submitted in an amount sufficient to complete all specified work and repair damage to any wetland area in which

no work has been authorized. The security shall be submitted in an amount, with surety and conditions satisfactory to the Planning Board. The security shall be submitted and approved prior to issuance of any permit authorizing construction.

(7) The Planning Board may assess the applicant reasonable fees to cover the costs of special investigative studies and for the review of documents required by applications.

G. Specific provisions.

(1) Any construction altering the surface configuration of the land, shall be set back at least seventy- five (75) feet from a very poorly drained Wetland Protection District.

(2) No septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any Wetland Protection District. In new subdivisions approved subsequent to adoption of this section, there must be sufficient lot size to place a house, a state-approved septic system, where applicable, and a state-approved well, where applicable, without locating them in a wetland. This provision can be waived if a conditional use approval is obtained from the Planning Board.

(3) A state dredge and fill application shall be submitted for any proposed change to a wetland (RSA 483-A).

H. Filled lands and preexisting uses.

(1) Lands which may have been wetlands but were filled under properly issued federal, state and local permits granted prior to the adoption of this section will be judged

according to the soils and flora existing at the time the application for building permit or subdivision is made.

(2) Structures and uses existing at the time of the adoption of this section that do not comply with the rules stated herein shall be regulated in accordance with 170-40 and 170-41 of this chapter.

I. Exemption for one- and two-family residential structures, existing lots, impoundments and maintenance dredging.

(1) Notwithstanding other provisions of this chapter, the construction of additions and/or extensions to one- and two-family dwellings shall be permitted within the Wetlands Protection District, provided that:

(a) The dwelling(s) lawfully existed prior to the effective date of this section;

(b) The proposed construction conforms to all other applicable ordinances and regulations of the City of Dover; and

(c) The design and construction of the proposed use will be done in a manner which minimizes the impacts on the affected wetland, including storage of excavation and construction material outside the wetland and installation of siltation fence and/or hay bales to contain erosion of the construction site.

(2) Notwithstanding other provisions of the ordinance, a new one- or two-family dwelling shall be permitted in the Wetlands Protection District on an existing lot, provided that all of the following conditions are found to exist:

(a) The lot for which an approval/permit is sought was an official lot of record, as recorded in the Strafford County Registry of Deeds, prior to the date on which this amendment was posted and published in the city.

(b) The structure for which the approval/permit is sought cannot be feasibly built on a portion or portions of the lot which are outside the Wetlands Protection District.

(c) Due to the provisions of the Wetlands Protection District, no reasonable and economically viable use of the lot can be made without the exemption.

(d) The design and construction of the proposed structure will, to the extent practical, be consistent with the purpose and intent of this ordinance.

(e) The proposed structure will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater or other reason.

(f) The design and construction of the proposed structure will be done in a manner which minimizes the impacts on the affected wetland, including storage of excavation and

construction material outside the wetland and installation of siltation fence and/or hay bales to contain erosion of the construction site.

(3) Water impoundments with related structures and maintenance dredging for navigational purposes (where a dredge spoil site has been approved by the Planning Board) are exempt from the regulations stated herein.

Notwithstanding, copies of permits where required by the New Hampshire Wetlands Board, New Hampshire Water Supply and Pollution Control Division and the United States Army Corp. of Engineers shall be submitted to the Planning Board prior to construction.

(4) The burden of proof that the conditions specified in Subsection I(1) and/or (2) above have been met shall be the responsibility of the person(s) requesting the approval/permit.

J. Separability. *[Omitted.]*