

TOWN OF NEW BOSTON
New Boston Planning Board

Proposed Amendments
to the
Town of New Boston Zoning Ordinance
for Consideration
at the
Ballot Vote of March 12, 2013

AMENDMENTS TO THE ZONING ORDINANCE

Proposed Amendment #1.

ARTICLE II ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS

Section 204.6 Wetlands Conservation and Stream Corridor District

Delete existing Section 204.6, E, Conditional Uses, and replace with the following:

E. Conditional Uses

1. A Conditional Use Permit issued by the Planning Board (RSA 674:21,II) shall be required for the construction of roads and other access ways, and for utility pipelines, powerlines, and other transmission ways provided that all of the following conditions are found to exist:
 - a. The proposed activity minimizes the degradation to, or loss of, wetlands and wetland buffers, and compensates for any adverse impact to the functions and values of wetlands and wetland buffers. Items to be considered include the capacity of the wetland to: support fish and wildlife; prevent flooding; supply and protect surface and ground waters; control sediment; control pollution; support wetland vegetation; promote public health and safety; and, moderate fluctuations in surface water levels.
 - b. The proposed activity will have no substantive negative environmental impact to abutting or downstream property and/or hydrologically connected water and/or wetland resources. Items to be considered include: erosion; siltation; turbidity; loss of fish and wildlife; loss of unique habitat having demonstrable natural, scientific, or educational value; loss or decrease of beneficial aquatic organisms and wetland plants; dangers of flooding and pollution; destruction of the economic aesthetic, recreational and other public and private uses and values of the wetlands to the community.

- c. The proposed activity or use cannot practicably be located elsewhere on the site to eliminate or reduce the impact to the wetland or its buffer.
 - d. The proposed activity utilizes applicable best management practices.
 - e. The burden of proof relative to the criteria listed above is upon the applicant and may be submitted as part of the required site plan or in a separate narrative report.
2. Completed Conditional Use Permit Application
- a. A completed application must include sufficient information to allow the Board to proceed with consideration and to make an informed decision.
 - b. The following shall be required for, and constitute, a completed Conditional Use Permit Application:
 - i. An application for Conditional Use Permit and Checklist to be provided by the Planning Board and properly filled out and executed by the applicant. In the event that the applicant is not the owner of record, the owner of record must also sign the application form in the space provided. The application form and checklist shall be filed with the Office of the Planning Board/Planning Department in accordance with Section ~~II~~ **204.6.E.4**.
 - ii. An ~~abutters~~ list ~~providing the~~ **of** names and mailing addresses ~~of~~ **which shall include** the applicant; ~~the~~ owner, (if different from ~~the~~ applicant); all abutters as indicated in town records, ~~(a cross-check with~~ the Hillsborough County Registry of Deeds, ~~etc.~~ **is advisable**); holders of conservation, preservation or agricultural preservation restrictions **as defined in RSA 477:45**, compiled not more than five (5) days before the date of delivery of the application; and the name and **business** address of every licensed professional whose seal appears on the plan.
 - iii. A check payable to the Town of New Boston to cover filing fees, mailing, advertising, and other reasonable costs as provided in Section ~~VII~~ **204.6.E.10**.
 - iv. Four (4) paper print copies and eight (8) legible 11" x 17" copies of the site plan prepared by a surveyor licensed in the State of New Hampshire or

a professional engineer, and including, but not limited to the requirements in Section 204.6.E.3.

Note: Plans or other documents that include a copyright notation shall expressly exempt the Town of New Boston from such copyright restrictions and shall allow copying of said plans or other documents as needed by the Town to perform the functions set forth in ~~these Subdivision Regulations~~ this ordinance.

- c. ~~Although~~ The following items are not required for a completed application, but are required for final approval. The Board may grant final conditional approval contingent upon receipt of the following additional items are if required for ~~final approval~~ the subject application :
- a. Construction estimates, including the proposed form and amount of the performance security to be submitted to the Town of New Boston.
 - b. Driveway Permit(s) if required by any other rule, statute or regulation.
 - c. Any and all other approvals and/or permits from local or state agencies, as required, including, but not limited to, State of New Hampshire Wetland Bureau Dredge & Fill Permit, and, State of New Hampshire Alteration of Terrain (AoT) Permit as governed by RSA 485-A:17, submission of such approval to the Board to include a set of the plans approved by the State under that permitting process.
 - d. If the Planning Board requires the review of material by an outside consultant, or the creation and submission of special studies, the cost of same shall be borne by the applicant.
 - e. The Planning Board may require additional submission items as it deems necessary to review the application.
 - f. The Applicant bears the burden of persuasion, through submission of sufficient evidence and testimony that the proposed work will satisfy the specific requirements and conditions established in this ordinance.

3. Conditional Use Permit Plan Layout

The Conditional Use Permit site plan shall be submitted in the number of copies specified in Section 204.6.E.2.iv.

The plan should show, or be accompanied by such forms of, the following information as the Board may deem applicable:

3.1 Existing Data and Information

- a. Location of site (Locus Map) showing main traffic arteries and north arrow.
- b. The boundary lines of the lot, including bearings and distances, and the area of the lot in acres.
- c. Tax Map and Lot Number, names and addresses of owners of record, abutting land owners indicated in the New Boston town records and (a cross-check with the Hillsborough County Registry of Deeds *is advisable*) not more than five days before the day of filing, and all holders of conservation, preservation or agricultural preservation restrictions as defined in RSA 477:45, and the New Hampshire Department of Environmental Services Dam Bureau, as necessary (see RSA 676:4,I,(d),(2)).
- d. Name and address of every engineer, land surveyor, wetland scientist, soil scientist, or other professional, licensed in the State of New Hampshire whose professional seal appears on the plan.
- e. The graphic and written scale of the plans; date of plan preparation and revision; north point.
- f. The size, shape, height and location of existing structures located on the site.
- g. Driveways within 200 feet.
- h. The existing grades, drainage systems, structures and topographic contours at intervals not exceeding five feet.
- i. Existing public and private utilities and infrastructure (including septic systems and wells) and all existing landscaping. This shall included the location and size of existing public utilities and infrastructure that are located off-site, with which connection is planned, or located within 100 feet of the site.
- j. Natural features such as, but not limited to, steep slopes, streams, marshes, lakes or ponds, ledge outcroppings and vegetation. Manmade features such

as, but not limited to, existing roads and structures, culverts, and road crossing culverts.

- k. One hundred year flood elevation line shall be included, where applicable.
- l. Soils information for design purposes from a National Cooperative Soil Survey (NCSS) soil series map, or a Site Specific Soils Map prepared in accordance with Section V-T of the Subdivision Regulations.

3.2 Proposed Plan and Information

- a. Proposed grades, drainage systems, and topographic contours at intervals not exceeding five feet.
- b. Proposed structures such as culverts and headwalls, their size, shape, height and location.
- c. The size and location of proposed public and private utilities and infrastructure.
- d. A stormwater management plan as specified in Section V-U of the Subdivision Regulations, including plans for retention and slow release of stormwater where necessary.
- e. Area of encroachment into the wetlands in acres and square feet.
- f. If the Conditional Use Permit application is related to a road or driveway, profiles and cross sections at every 50 feet.
- g. Construction details, as well as a construction sequence, including, but not limited to temporary and/or permanent erosion control measures.
- h. A plan note regarding the required Conditional Use Permit ~~Adherence~~ **Compliance** Statement as noted in Section 204.6.E.6, ~~h~~ **9**.
- i. Sign off block for Board approval. Endorsement statement shall read: "Conditional Use Permit Site Plan approved by the New Boston Planning Board on _____, Certified by, _____, Chairman, and by _____, Secretary."

4. Filing and Submission of Completed Conditional Use Permit Application

- a. The completed application shall be filed with the Office of the Planning Board/Planning Department at least 15 days prior to a scheduled public meeting of the Board, as provided for in this Section.
 - b. The completed application shall be formally submitted to and accepted by the Board only at a regularly scheduled public meeting after due notification to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and, every licensed professional whose seal appears on the plans, and the general public of the date the completed application will be submitted to and heard by the Board.
 - c. The Board shall reject all applications not properly completed and shall render a written decision pursuant to RSA 676:3 describing the information, procedure or other requirement necessary for the application to be complete. In addition to notifying the applicant, the decision shall be placed on file in the Office of the Planning Board/Planning Dept. and made available for public inspection within 5 business days after the decision is made.
 - d. An application shall not be considered incomplete solely because it is dependent upon the issuance of permits or approvals from other governmental bodies; however, the Planning Board may condition approval upon the receipt of such permits or approvals in accordance with Section ~~IV,2,~~ below **204.6.E.2.c.**
 - e. Applications may be disapproved by the Board without a public hearing on grounds of failure of the applicant to supply any information, pay fees, or meet any reasonable deadlines required by these regulations or the Board. A Notice of Denial ~~as addressed in Part 3 of this Section~~ shall be provided indicating the reason(s) for disapproval **and said Notice shall be placed on file in the Office of the Planning Board/Planning Dept. and made available for public inspection within 5 business days after the decision is made.**
5. Board Action on Completed Conditional Use Permit Application
- a. The Board shall, at the next regular meeting or within 30 days of its delivery to the Office of the Planning

Board/Planning Department for which notice can be given in accordance with Section ~~V~~ 204.6.E.7, determine if the submitted application is complete, and shall vote upon its acceptance. The Board shall act to approve, conditionally approve or disapprove the completed application and final plat within 65 days after the determination of the completeness of the application, subject to extension or waiver as provided for in accordance with RSA 676:4, I(f), as amended.

- b. No construction, building or improvements shall occur on any lands included in the final plan submission until final or conditional approval of a completed application has been granted.
- c. In the case of disapproval of any plat submitted, the grounds for such disapproval shall be adequately stated in the records of the Planning Board.
- d. In the event that conditions precedent or subsequent are a condition of final approval, no bonds or other security shall be released until all conditions precedent or subsequent have been met, and, a Conditional Use Permit ~~Adherence~~ Compliance Statement has been received, or, if required under Section ~~IV~~ 204.6.E.6, a compliance hearing is held.
- e. Notwithstanding any final approval, no occupancy permits for structures accessed via the access way constructed under the Conditional Use Permit shall be issued until satisfactory completion of all conditions precedent and/or subsequent is confirmed by the Board, except upon such terms as the Planning Board may have authorized as part of its decision approving the plan, and failure to satisfy conditions required may constitute grounds for revocation of approval.
- ~~f. Once granted, a Conditional Use Permit with its terms and conditions, shall be associated with the lot/parcel and shall not be affected by changes in ownership. However, if a parcel with an approved Conditional Use Permit transfers ownership, the new owner shall notify the Planning Board of the change in ownership and provide a schedule or action plan for completing the conditions of the Conditional Use Permit.~~

6. Public Hearings

- a. Before the Conditional Use Permit application is approved or disapproved, a public hearing shall be held

as required by RSA 676:4,I,(e) and notice to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and every licensed professional whose seal appears on the plans, and the general public shall be given in accordance with Section 204.6.E.7. The Conditional Use Permit application hearing may occur simultaneously with a Subdivision or Non-Residential Site Plan Review.

- b. The Planning Board will consider the Applicant's responses to the conditions under 204.6.E.1, above. The Planning Board may also consider the impacts of the application on the public health and safety of the community as well as the adequacy of existing or proposed public utilities. The proposed work shall not necessitate unreasonable public expenditures to provide sufficient public services.
- c. If the Board places a condition precedent on the approval (one to be fulfilled before construction can commence, such as obtaining an easement, posting a bond, etc.) such approval shall become final without further public hearing being required, upon evidence submitted by the applicant of the satisfactory compliance with the conditions imposed. This may occur only when the conditions precedent are:
 - i. Minor plan changes whether or not imposed by the Board as a result of public hearing, compliance with which is administrative and which does not involve discretionary judgment; or,
 - ii. Conditions which are in themselves administrative and which involve no discretionary judgment on the part of the Board; or,
 - iii. Conditions with regard to the applicant's possession of permits and approvals granted by other boards or agencies, including State and federal permits.
- d. Such conditions may include a statement notifying the applicant that an approval is conditional upon the receipt of State or federal permits relating to a project, however, the Planning Board may not refuse to process an application solely for lack of said permits.
- e. All conditions not specified in this section as minor, administrative, or relating to issuance of other approvals shall require a noticed public hearing at which affected parties will have an opportunity to review and comment on the developer's compliance with

the condition(s) precedent. Notice shall be provided as in Section ~~¶~~ 204.6.E.7.

7. Notices

- a. Notice of the submission of a Conditional Use Permit Application shall be given by the Board to the owner, applicant, abutters, holders of conservation, preservation and agricultural preservation restrictions, and every licensed professional whose seal appears on the plans by certified mail at least ten (10) days prior to the submission, and to the general public at the same time by posting in at least 2 public places in the town. The notice shall give the date, time and place of the Board meeting at which the Conditional Use Permit Application will be formally submitted to the Board, and shall include a general description of the proposal which is the subject of the application or of the item to be considered and shall identify the applicant and the location of the proposed subdivision.
- b. For any public hearing on a completed application, the same notices as required for notice of submission of the completed application shall be given. If the notice of public hearing has been included in the notice of submission or any prior notice, additional notice of the public hearing is not required. Additional notice shall not be required of an adjourned session of a hearing if the date, time and place of the adjourned session was made known at the prior hearing.

8. Issuance of Decision

- a. The Planning Board shall issue a final written decision which either approves, conditionally approves, or disapproves the application. If the application is not approved, the Board shall provide the applicant with written reasons for the disapproval. Decisions regarding incomplete applications shall be made as provided in Section ~~¶~~ 204.6.E.4.
- b. The Planning Board's decision shall be placed on file in the Office of the Planning Board/Planning Department and shall be made available for public inspection within 5 business days after the vote to approve, conditionally approve or disapprove the application is made. A copy of the decision shall be made available to the applicant.

- c. **The applicant shall comply with all conditions, precedent and subsequent, receive final approval, and complete all construction associated with** the Conditional Use Permit ~~shall be valid for~~ **within** two (2) years from the date of approval. The Planning Board may grant extensions for additional years, not to exceed five (5) years from the original approval date, upon request by the Applicant in writing.

9. Inspection and Compliance

- a. In order to receive a certificate of occupancy, a "Conditional Use Permit ~~adherence~~ **compliance** statement" must be filled out and stamped by a professional engineer or Certified Professional in Erosion and Sediment Control (CPESC) who has certified that he or she has the requisite experience and certifications to meet the design requirements, including expertise in site grading, site drainage, erosion control, hydrology, and soils or by a person specified by the board. The form must indicate that the professional has inspected the affected area(s), and that the Conditional Use Permit and plan has been ~~adhered to~~ **complied with**.
- b. In certain situations (where there is minimal structural impact, for example), the use of a professional engineer or licensed land surveyor with a certification in erosion and sediment control may not be required. The applicant may approach the Board in those situations to request a waiver to this requirement and to propose to the Board their alternative suggestion for who will carry out the inspection required below.
- c. In order to release the performance bond, the requirements of Section ~~3~~ **204.6.E.9.a**, above, must be met and the qualified professional must attest that the affected area(s) have been adequately, and verifiably stabilized. The applicant shall forward a copy of the "Conditional Use Permit ~~Adherence~~ **Compliance** Statement" to the Planning Board in order for the Board to release the performance bond. The Planning Board may disagree with the findings of any inspector and require that the board or their designee perform an independent inspection prior to the release of the performance bond. The Planning Board reserves the right to require a compliance hearing to confirm compliance with the Conditional Use Permit plan and

application. The Planning Board also reserves the right to require an As-Built plan to be submitted.

CONDITIONAL USE PERMIT ADHERENCE COMPLIANCE STATEMENT

I hereby certify that I _____ (PRINT NAME), a professional engineer or Certified Professional in Erosion and Sediment Control (CPESC) with more than 2 years of experience in site grading, site drainage, erosion control, hydrology and soils, have inspected the affected areas as shown on the Conditional Use Permit for _____ (PRINT APPLICANT'S NAME) Tax Map/Lot # _____, located on _____ (PRINT ROAD NAME), and hereby certify that the Conditional Use Permit Plan has been ~~adhered to~~ complied with and that the affected areas have been adequately and verifiably stabilized.

10. Fees, Application form and Checklist

- a. A Conditional Use Permit Application shall be accompanied by the appropriate filing fee(s) as listed in the New Boston Planning Board's Rules of Procedure.
- b. All costs of notices, whether mailed or posted, shall be paid in advance by the applicant. Failure to pay costs shall constitute valid grounds for the Board to terminate further consideration and to disapprove the plat without a public hearing.
- c. The Conditional Use Permit Application Form and Checklist can be found in the New Boston Planning Board's Rules of Procedure.

11. Plan Review and Approval

- a. The Planning Board may call for an outside technical review of any Conditional Use Permit Application that is prepared under this Regulation. Such review shall be required for any Conditional Use Permit Application submitted for construction or reconstruction of a street or road. Any such technical review shall be conducted by the Town's Consulting Engineer or other qualified professional consultant, as determined to be appropriate by the Planning Board, at the expense of the applicant.
- b. The Planning Board shall indicate approval of the Conditional Use Permit Application, ~~as filed,~~ if it complies with the requirements ~~and objectives~~ of this

~~Section Ordinance and the Town of New Boston Zoning Ordinance Section 204.6, E. If disapproved, a list of plan deficiencies and the procedure for filing a revised plan will be given to the applicant the reasons for disapproval shall be stated in the Planning Board records and given to the applicant.~~

~~Proposed Amendment #2.~~

~~ARTICLE II ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS~~

~~Section 204.6 Wetlands Conservation and Stream Corridor District~~

~~Amend existing Sections 204.6, C, 4, b., and c. Setback Distances, as follows:~~

~~b. No new structure, as defined in Section 602 of this Ordinance, shall be constructed, nor any logging operation conducted, within 50 feet of any perennial stream, pond, lake or wetland; provided that the Planning Board may, at its discretion, and considering any input from the Conservation Commission, increase this setback to a maximum of 100' based on soil science and the following considerations:...~~

~~e. Where existing, a natural woodland or vegetative buffer shall be maintained within the setback designated in Paragraph C.4.b. above, between the new structure, or logging operation, and any perennial stream, pond, lake or wetland....~~

Proposed Amendment #2.

Amend various existing Sections to refer to the correct names of the Small Scale Planned Commercial District and the Wetlands Conservation and Stream Corridor District, as follows:

ARTICLE II ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS

Section 201 Establishment of Districts

The Town of New Boston hereby is divided into the following districts as shown on the official zoning maps:

IND	Industrial	
COM	<u>Small Scale Planned</u> Commercial	
R-1	Residential One	
R-A	Residential & Agricultural	
MHP	Manufactured Housing Park	
F-C	Forestry and Conservation	(Amended March 13, 2001.)

Within these districts there are also established, as overlays, a Wetlands Conservation and Stream Corridor District, a Groundwater Resource Conservation District, a Floodplain District and a Steep Slopes Conservation District. The underlying permitted uses are allowed provided they meet the additional requirements of Sections 204.6 and the Floodplain Development Ordinance.

Section 202 Zoning Maps

The districts as established in Section 201 are shown on the map on file in the offices of the Town of New Boston, which map is a part of this ordinance. This map is titled "New Boston, N.H. Zoning Map". The Wetlands Conservation and Stream Corridor District, Groundwater Resource Conservation District and Floodplain District overlay maps, which are considered to be part of the Zoning Map, are also on file in the Town Offices.

Section 204.2 Small Scale Planned Commercial District

Objective and Characteristics

The Small Scale Planned Commercial district shall provide area for shopping facilities, offices, banking facilities and other commercial operations. The area shall provide access, parking, adequate lighting, good design, and similar related items for convenience and safety.

Section 204.3 "R-1" Residential One

Amend existing Section 204.3 to refer to the correct name of the Wetlands Conservation and Stream Corridor District, as follows:

When related to Multi-family dwellings, no structure, unit, septic tank, leach field or connecting piping or associated appurtenances shall be constructed within one hundred fifty feet (150') of a body of water, or a wetland as defined in the Wetlands Conservation and Stream Corridor District to be poorly and very poorly drained soils associated with marshes, ponds, bogs, lakes, streams and rivers.

Section 204.5 "MHP" Manufactured Housing Parks

Amend existing Section 204.5 to refer to the correct name of the Wetlands Conservation and Stream Corridor District, as follows:

- I. Each manufactured housing space shall have an attachment for sewage disposal. The method of sewage disposal must be in compliance with all local and state regulations. However, it shall not be located on the manufactured housing space or on

any adjacent manufactured housing space. Lots containing sewage disposal systems shall not be considered as part of the open space requirement. No structure, manufactured housing unit, septic tank, leach field or connecting piping or associated appurtenances shall be constructed within one hundred fifty feet (150') of a body of water, or wetland as defined in the Wetlands Conservation and Stream Corridor District to be poorly or very poorly drained soils associated with marshes, ponds, bogs, lakes, streams and rivers.

ARTICLE VI DEFINITIONS

Section 602 Term Definitions

Lot: A lot is a parcel of land occupied or to be occupied by only one main building and use and the accessory buildings or uses customarily incidental to it, except in the Small Scale Planned Commercial District under the provisions of Section 204.2. A lot shall be of sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required.

Proposed Amendment #3.

ARTICLE VI DEFINITIONS

Section 602 Term Definitions

Add a definition of Yard Sale, as follows:

Yard Sale: The display and sale of excess items originating from a family at a residence. ~~The sale is conducted infrequently and shall not include items purchased from other locations specifically for resale.~~ More than four such sales within any consecutive 12 month period or such sales that include items purchased specifically for such a sale, shall be considered a Home Business and must comply with Section 319 of this Ordinance. Other terms to describe such sales are garage, lawn, barn, tag, and attic sales which shall have the same meaning.

~~Proposed Amendment #5.~~

~~ARTICLE VI DEFINITIONS~~

~~Section 602 Term Definitions~~

~~Add a definition of Vehicle Sales from Residential Agricultural lots, as follows:~~

~~Vehicle Sales from Residential Agricultural Lots: Vehicle sales, on residential lots, are restricted to two privately owned vehicles in any calendar year.~~

NS/

12/21/12