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Sandown Planning Board
Wetland Regulation Amendments
Public Hearing
Proposed Amendments 12/19/2023

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Note that these proposed amendments to Zoning Ordinance Article I, Part B would seek to **repeal** the existing Article 1, Part B language and **replace** Article 1, Part B with the following language. Several provisions within the existing language have been incorporated into the new language, however for clarity, the full new ordinance language is proposed as the amendment. The existing ordinance language is provided in Appendix A for reference.

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PROPOSED LANGUAGE
ARTICLE I PART B
WETLAND CONSERVATION DISTRICT

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(Adopted: 1984, Amended 2024)

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Section 1: AUTHORITY: Pursuant to RSA 674:16, the Town of Sandown adopts a Wetlands Conservation District. As authorized in RSA 674:21, a Conditional Use Permit [“CUP”] shall be required for uses listed in Section 5.D of this Article. All conditions specified for applicable CUPs shall be met. Any person aggrieved by a Planning Board decision on a CUP application may appeal to the Superior Court as provided in RSA 677:15. These Planning Board decisions cannot be appealed to the Zoning Board of Adjustment (RSA 676:5.III). Conditional Use Permits approved under this ordinance shall meet general criteria and applicable criteria for specific conditions that are provided in Section 5.C of this Article.

Section 2: PURPOSE: The purpose of this Article and accompanying regulations is to protect the water resources and adjacent lands. The community’s priority and purpose for protecting Sandown’s surface waters is expressed within the Sandown Master Plan, the Natural Resource Inventory, and the designation of the Exeter-Squamscott Rivers under NH Rivers Management and Protection Program (RSA 483) to provide multiple benefits to the community, including but not limited to:

- Prevent the destruction of or significant environmental changes to water sources, surface water resources, and wetlands.
 - Protect the continuation of natural flow patterns and hydrology of surface waters, streams and other water courses and wetlands including maintenance of groundwater recharge and stream flow during dry periods.
 - Provide for nutrient attenuation and prevention of nonpoint source pollution from stormwater runoff.
 - Prevent erosion and excess sedimentation from entering surface water resources and their associated wetlands.
 - Preserve, protect, and maintain ecological services that protect water quality.
 - Protect and preserve wildlife corridors and natural habitats for aquatic and terrestrial species.
 - Prevent the destruction of or significant changes to wetland and surface waters and

- 46 adjoining land which provides flood protection.
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- Mitigate the effects of structures and associated land uses which have the potential to compromise surface and groundwater supplies through the introduction of wastewater, stormwater, nutrients, hazardous substances, and siltation.
 - Protection the habitat of threatened and endangered species.

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52 **Section 3: DEFINITIONS:**

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- 54 A. Critical Wetlands: “Critical Wetlands” are defined as wetland identifies as providing significant
- 55 environmental services and ecological value as evaluated in the report “*Critical Wetland*
- 56 *Complexes in Sandown, NH*” by Mark West 2023, or as amended.
- 57
- 58 B. Disturbance: Land excavation, grading or removal of soils and subsurface material or removal of
- 59 trees, or other vegetation. The removal of dead or dying trees that pose a safety hazard, and the
- 60 removal of invasive species are not considered disturbance for the purposes of this Article.
- 61
- 62 C. Vernal Pool: For the purposes of this Article a vernal pool is defined as “a temporary body of
- 63 water, at least 1,500 square feet in contiguous area, that provides essential breeding habitat for
- 64 certain amphibians and invertebrates, but does not support fish, as defined in Identification and
- 65 Documentation of Vernal Pools in New Hampshire; published by the New Hampshire Fish and
- 66 Game Department (2016), as amended.”
- 67
- 68 D. Wetlands: A wetland as defined by RSA 482:A as “Wetlands” means an area that is inundated or
- 69 saturated by surface water or groundwater at a frequency and duration sufficient to support, and
- 70 that under normal conditions does support, a prevalence of vegetation typically adapted for life in
- 71 saturated soil conditions.” , or as amended.
- 72
- 73 E. Wetland Conservation District: All wetland areas and adjacent buffer zones defined by the District
- 74 Boundaries within Section 4 of this Article.
- 75

76 **Section 4: BOUNDARIES:**

77 The Sandown Wetland Conservation District is hereby determined to be those areas that contain

78 ponds, lakes, freshwater marshes, alluvial soils, and perennial streams as and their adjacent lands

79 defined by the following:

80

- 81 A. Any wetlands as defined under this Article and RSA 482:A.
- 82
- 83 B. Any wetland delineated by a NH Certified Wetland Scientist (as defined by RSA 310-A:76) on a
- 84 site-specific basis by an applicant or their consultant as part of a proposal that requires a
- 85 building permit, Planning Board Site Plan Review application, Planning Board Subdivision
- 86 Application, or application for zoning relief by the Zoning Board of Adjustment.
- 87
- 88 C. The Wetlands Protection District also includes a buffer zone of upland area immediately adjacent
- 89 to the wetlands as defined by this Article. The total buffer width shall be measured as a

90 perpendicular line on the land surface from the edge of the wetland. The buffer zone
91 requirement are:

- 92
- 93 1. A buffer zone of 100 feet from any wetland identified as a “Critical Wetland”. “Critical
94 Wetlands” are defined in Section 3 of this Article as wetland identified as providing
95 significant environmental services and ecological value as evaluated in the report “*Critical*
96 *Wetland Complexes in Sandown, NH*” by Mark West 2023, or as amended.
 - 97
 - 98 2. A buffer zone of 75 feet from any wetland not identified as a “Critical Wetland” or vernal
99 pool.
 - 100
 - 101 3. A buffer zone of 25 feet from any vernal pool as defined within this Article.
 - 102
 - 103 4. All buffer zones also have a 25-foot no disturbance vegetative buffer requirement located
104 within the 25 feet closest to the wetland boundary. The vegetative buffer requirement does
105 not apply to sites disturbed prior to March 12, 2024.
 - 106

- 107 D. Boundary Disputes. When any boundary of the Wetland Conservation District is disputed by
108 either the Town of Sandown or by an applicant when applying for a land use application or
109 building permit, under RSA 673:13 the applicable land use board or appointed official, may
110 engage an independent qualified wetland scientist, at the applicant’s expense, to determine the
111 location of the Wetland Conservation District. Qualified wetland scientist shall mean a person
112 who is qualified in soil classification and wetlands delineation and who is recommended or
113 approved by the State of New Hampshire. The independent qualified wetland scientist shall
114 transmit their findings to the applicable land use board and applicant. The applicant’s project
115 engineer/surveyor shall add said findings to the project plan. This revised plan, showing both
116 wetland delineation boundaries, shall be presented to the applicable land use board who shall
117 make the final determination regarding District boundaries. The land use board or its designee
118 shall convey said findings to the applicant.

119

120 **Section 5: USE REGULATIONS:**

121

- 122 A. **Prohibited Uses** - The following are prohibited within the District except where permitted to
123 continue as a non-conforming use:
- 124 1. No disturbance is allowed within the 25-foot vegetative buffer (the 25 feet closest to the
125 wetland boundary). The vegetative buffer requirement does not apply to sites disturbed
126 prior to March 12, 2024.
 - 127 2. No impervious surfaces, permanent structures or additions to existing structures erected
128 after March 12, 2024 shall be built within the Wetlands Protection District, unless
129 granted a Conditional Use Permit under Section 5.C of this Article. Permanent structures
130 existing prior to March 12, 2024 may be expanded as long as the expansion does not
131 intrude further into the District than the principle existing structure,
 - 132 3. No outside storage or disposal of solid or hazardous waste.

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- 133 4. No stormwater drainage structure or outfalls.
134 5. No septic tank, leach field, or any other subsurface wastewater disposal system may be
135 constructed or enlarged within seventy-five (75) horizontal feet of any wetland as defined
136 by this Article.
137

138 **B. Permitted Uses** -The following uses are permitted within the District:

- 139 1. Installation of utilities to service existing lots of record.
140
141 2. Maintenance or repair of any existing structure.
142
143 3. Residential uses that involve a disturbance area of less than 1,000 square feet and do not
144 involve erection of a new structure or cumulative increase impervious surfaces after March
145 12, 2024.
146
147 4. Repair of existing streets and roads as long as there is no expansion.
148
149 5. Farming, gardening, nursery, forestry, harvesting and grazing, provided that fertilizers,
150 herbicides, pesticides, and other leachables applied using Best Management Practices (BMPs),
151 at levels that will not cause groundwater contamination and are stored under shelter. BMPs
152 may include, but are not limited to, those published by the NH Department of Agriculture,
153 Markets & Food or the University of New Hampshire Cooperative Extension.
154
155 6. Forestry and tree farming to include construction of access roads.
156
157 7. Water impoundments and the construction of well-water supplies.
158
159 8. Drainage ways, to include streams, creeks or other paths of normal runoff water and common
160 agricultural land drainage provided such use is otherwise permitted in the District.
161
162 9. Wildlife habitat development and management.
163
164 10. Parks and such recreational uses as are consistent with the purposes and intent of this
165 Ordinance.
166
167 11. Conservation areas and nature trails.
168
169 12. Open space as permitted by subdivision regulations and other sections of this Ordinance.
170

171
172 **C. Conditional Use Permits** – Conditional Use Permit Criteria: The Planning Board may grant a
173 Conditional Use Permit for those uses listed in Section 5.D. in this Article only after written findings of
174 fact are made that all of the following are true:

- 175
176 1. The proposed activity minimizes and prevent pollutant contributions to water resources.
177

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- 178 2. The proposed activity maintains, to the practical extent possible, natural landscape hydrologic
179 functions to sustain water resources, including but not limited to infiltration, overland flow,
180 natural drainage pathways to wetlands, groundwater recharge, and floodplain functions.
181
- 182 3. The proposed activity minimizes or mitigates potential impacts from landscape changes, such
183 as but not limited to impervious cover, removal of forest canopy and groundcover, erosion,
184 and nonpoint source pollution.
185
- 186 4. All stormwater is managed and treated to prevent water quality impacts.
187
- 188 5. The proposed use complies with all other applicable sections of this article.
189
- 190 6. Prior to rendering a decision regarding the possible approval of any Conditional Use Permit
191 application, the Planning Board shall afford the Conservation Commission an opportunity to
192 provide written comment. After consideration and review of an application for a Conditional
193 Use Permit, the Conservation Commission may recommend the Planning Board to deny the
194 application or to impose conditions of approval, if deemed necessary, to mitigate the
195 potential for adverse effects caused by the proposed activity or use. If the Planning Board
196 decides to grant a conditional use permit that does not include the Conservation
197 Commission’s recommendations, the Planning Board is encouraged to provide the reason for
198 their conclusion as part of the Notice of Decision.
199
- 200 7. The Planning Board may require that the applicant provide data or reports prepared by a
201 professional engineer or qualified wetland scientist to assess any potential damage to the
202 Wetland District that may result from the proposed use. The Planning Board shall engage such
203 professional assistance as it requires to adequately evaluate such reports and to evaluate, in
204 general, the proposed use in light of the above criteria.
205

206 **D. Uses Requiring a Conditional Use Permit:** The following uses are permitted by Conditional Use Permit:
207

- 208 1. Any use not in compliance with this Article, including those uses listed as Prohibited in Section
209 5.A of this Article.
210
- 211 2. Residential uses that after March 12, 2024 involve a cumulative disturbance area greater than
212 1,000 square feet or involve the erection of a new structure or increase impervious surfaces.
213
- 214 3. Construction of primary access roads and driveways no closer than 75 feet, and absent any
215 other feasible option.
216
- 217 4. New or replacement accessory structures in the District associated with legally preexisting
218 primary structures if it is demonstrated that no practicable alternative exists elsewhere on the
219 lot and stormwater runoff and erosion controls are installed to protect water quality.
220
- 221 5. The expansion of existing streets, roads, and other existing access ways, including driveways,
222 parking lots, footpaths, bridges, and utility right of way easements including power lines and

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223 pipelines, if essential to the productive use of the land. These uses shall be located and
224 constructed in such a way as to minimize any detrimental impact upon the water source and
225 consistent with state recommended design standards, and only if no viable alternative is
226 available.
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APPENDIX A – EXISTING LANGUGE FOR ARTICLE 1, PART B.

ARTICLE I
PART B
WETLAND CONSERVATION DISTRICT

(Adopted: 1984)

District Boundaries

The Sandown Wetland Conservation District is hereby determined to be those areas that contain ponds, lakes, fresh water marshes, alluvial soils, and perennial streams as shown on the Town of Sandown Wetland Conservation District Map. Areas that contain soils identified and outlined as poorly drained or very poorly drained soils by the National Cooperative Soil Survey through field mapping surveys, completed in August, 1981, and shown on field mapping photographic sheets for the Town of Sandown, New Hampshire, are also included. The Wetlands Conservation District, as herein defined, is shown on a map or maps designated as the Town of Sandown Wetland Conservation Map. For a detailed explanation of soil types, see "Soils and their Interpretations for Various Land Uses, Town of Sandown, Rockingham County, New Hampshire," on file with the Planning Board and the U.S.D.A., Soil Conservation Service office in Exeter.

General

In all cases where the Wetland Conservation District is superimposed over another zoning district in the Town of Sandown, the more restrictive district's regulations shall apply.

In the event an area is incorrectly designated as having poorly drained or very poorly drained soils on the Town of Sandown Wetland Conservation District Map, and evidence to that effect is satisfactorily presented to the Building Inspector (in the case of a request for a building permit) or to the Planning Board (in the case of a subdivision pending approval), the restrictions contained in this Article shall not apply. Such evidence shall be obtained by adequate on-site investigation and analysis conducted by a qualified soil scientist (as interpreted herein). The evidence shall be submitted in writing to the Building Inspector (in the case of a request for a building permit) or to the Planning Board (in the case of a subdivision pending approval) with a copy of the evidence to the Town Clerk. The Town Clerk shall retain the copy for record purposes. All expenses shall be undertaken by the applicant.

Purpose

In the interest of public health, convenience, safety and welfare, the regulations of the District are intended to guide the use of areas of land with standing water or extended periods of high water tables, poorly drained soils or very poorly drained soils.

- A. To encourage those uses that can be appropriately and safely located in wetland area
- B. To prevent the destruction of natural wetland which provides flood protection, recharge of groundwater supply, and augmentation of stream flow during dry periods.
- C. To prevent unnecessary or excessive expenses to the Town to provide and maintain essential services and utilities.

- D. To prevent the development of structures and land uses on natural wetlands which would contribute to pollution of surface and groundwater.

Section 1 Permitted Uses

For poorly drained soil areas:

- A. Any use that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or dredging, except as a common treatment associated with a permitted use.
- B. Agriculture, including grazing, hay production, truck gardening and silage production, provided that such use is shown not to cause significant increases in surface or ground water pollution by heavy metals, pesticides or toxic chemicals and that such use will not cause or contribute to soil erosion.
- C. Forestry and tree farming to include construction of access roads.
- D. Water impoundments and the construction of well-water supplies.
- E. Drainage ways, to include streams, creeks or other paths of normal runoff water and common agricultural land drainage provided such use is otherwise permitted in the District overlain by the Wetland Conservation District.
- F. Wildlife habitat development and management.
- G. Parks and such recreational uses as are consistent with the purposes and intent of this Ordinance.
- H. Conservation areas and nature trails.
- I. Open space as permitted by subdivision regulations and other sections of this Ordinance.

Section 2

For ponds, lakes, fresh water marshes, alluvial soils, perennial streams and very poorly drained soils. Such uses as specified under Paragraph A, for poorly drained soils shall be permitted except that no alteration of the surface configuration of the land by filling or dredging and no use which results in the erection of a structure will be allowed.

Section 3

A **Conditional Use Permit** may be granted by the Planning Board (RSA 674:21, II) for the following uses within the Wetland Conservation District provided the Planning Board finds in writing after a duly noticed Public Hearing the following conditions have been satisfactorily addressed:

- A. Streets, roads and other access ways and utility right-of-way easements including power lines and pipelines if such location is essential to the productive use of land not so zoned and so constructed as to minimize any detrimental impact upon the Wetland Conservation District.
- B. The construction of wharves, footbridges, catwalks, fences, water impoundments and beaches after review by the Planning Board of adherence to normal construction practices.
- C. The following criteria must be met in order to grant a Conditional Use Permit:

1. Dredging, filling or crossing shall have minimal impact.
2. There is no other logical placement.
3. Application or approval from the State Wetlands Board.
4. Demonstration that this proposal best utilizes the property.
5. Complete set of engineered plans must be submitted along with drainage calculations and written impact statement.
6. Receipt of a favorable report from the Sandown Conservation Commission.
7. Receipt of a favorable report from the Planning Board Engineer.
8. Receipt of a favorable report from the Rockingham County Conservation District.
(Amended April 8, 1997)(Amended March 10, 2015)

D. Prior to the granting of a Conditional Use Permit under this Section, the applicant shall agree to submit a performance security to ensure that all construction is carried out in accordance with the approved design. The security shall be in a form and amount, with surety and conditions satisfactory to:

1. The Planning Board for site plan and subdivision application; and
2. The Board of Selectmen in all other cases.

The security shall be submitted and approved prior to the issuance of any permit authorizing construction.

E. The Planning Board, after consultation with the Conservation Commission, may require the applicant to submit an environmental assessment when necessary to evaluate an application made under this Section. The cost of this assessment shall be borne by the applicant. The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for the review of documents required by particular applications.

F. Any wetlands altered in violation of this Ordinance shall be restored at the expense of the landowner(s). (Amended March 11, 2003)

Section 4 Vernal Pool Protection

A. The purpose of this section is to protect water quality, flood storage capacity, and essential breeding habitat areas for amphibians and invertebrates.

B. For the purposes of this Section, a vernal pool is defined as “a temporary body of water, at least 1,500 square feet in contiguous area, that provides essential breeding habitat for certain amphibians and invertebrates, but does not support fish, as defined in Identification and Documentation of Vernal Pools in New Hampshire; published by the New Hampshire Fish and Game Department (1997), as amended.”

C. A protective buffer having a width of not less than 25-horizontal feet shall be established and maintained around the perimeter of any known vernal pool.

D. No cutting of live vegetation nor the alteration of the natural ground surface within the limits of the designated vernal pool and/or a required vernal pool buffer shall be permitted unless approved in advance by the Conservation Commission in writing.

(Adopted: March 13, 2007)

Special Provisions

Section 1

No septic tank, leach field, or any other subsurface wastewater disposal system may be constructed or enlarged within seventy-five (75) horizontal feet of any wetland area.

Section 2

Poorly drained soils may be used to fulfill no more than twenty-five percent (25%) of any minimum lot area requirements of the Sandown Zoning Ordinance. No ponds, lakes, fresh water marshes, alluvial soils, perennial streams or very poorly drained soils may be used to fulfill any minimum lot size requirements of the Sandown Zoning Ordinance.

A person certified by the New Hampshire Board of Natural Scientist (*Amended 3/12/91*) is interpreted to mean a person qualified in soil classification and field analysis and who is recommended or approved by the Rockingham County Conservation District Board of Supervisors.