

**ARTICLE # 04**  
**AMENDMENT # 3**

**Hampton Zoning Ordinance Amendment**

Article II – Districts, Section 2.3 – Wetlands Conservation District (2.3.4, 2.3.5, & 2.3.7)

~~Strikethrough~~ = Proposed Deletion

Underline = Proposed Addition

**Highlighting** = All Proposed Changes

**2.3.3 PERMITTED USES.** Uses permitted in the Wetlands Conservation District are those which do not result in the alteration of the land surface configuration by a) dredging, b) adding fill, or c) increasing the amount of impervious surface or the erection of any structure. (Amended March 2012; March 2015, March 2020)

- A.** The following uses are permitted in the WCD as defined in subsection 2.3.2 A 1-10. Additional exceptions or permitted uses for freshwater wetlands, very poorly and poorly drained soils, and 1<sup>st</sup> through 4<sup>th</sup> order streams are set forth in Sections 2.3.3 B and 2.3.3D.
1. Forestry and tree farming may be performed provided that best management practices, including leaving all stumps intact, are used to minimize siltation and protect wildlife habitat. (Amended March 2012; March 2015)
  2. The cutting of live trees with a diameter of four and one-half (4-1/2) inches or less, measured four and one-half (4-1/2) feet above ground level, however this does not apply to the first 25 feet from the edge of a 1<sup>st</sup> through 4<sup>th</sup> order stream (see Section 2.3.3 C-1 for vegetation removal). Removal of dead, diseased or unsafe trees is permitted. Stumps and their root systems shall be left intact in the ground. (Amended March 2015)
  3. Agriculture, such as harvesting marsh hay and gathering cast-up for fertilizer, provided that heavy equipment shall not be used in the WCD.
  4. Wildlife refuge, conservation areas and nature trails.
  5. Educational and passive recreational uses compatible with the purposes forth in Section 2.3.1.
  6. By Wetlands Permit only, seawalls (including access structures), fences, footbridges, catwalks, and wharves may be constructed on tidal wetlands and must be constructed on posts and pilings (except seawalls) such as to permit the unobstructed flow of the tide and preserve the natural vegetation and contour of the tidal wetlands. (Amended March 1998, March 2012, March 2015)
  7. By Wetlands Permit only, drainage ways as paths for normal runoff provided that they are constructed according to drainage plans, consistent with the purposes of the WCD Ordinance. (Amended 1998, March 2012, March 2015)

8. By Wetlands Permit only, roads, driveways, access ways, utilities, and power lines may be constructed in the WCD provided that the following conditions exist: (Amended March 2015)
    - a. - Proposed construction is essential to the productive use of uplands outside the WCD;
    - b. - Design and construction methods will be such as to minimize any impact in the WCD, and will include restoration of the site as nearly as possible to its original grade and vegetative condition;
    - c. - An alternative with less impact, which does not cross a wetland or buffer, is not feasible;
    - d. - The crossing will be at the point of least impact to the WCD; (Amended 2001)
    - e. - Applications for all necessary local and state wetlands permits shall be made concurrently. (Amended March, 1998, March 2012)
  9. Landscaping: Provided that the Building Inspector determines that:
    - a. - The area to be landscaped has been previously disturbed or cleared or is maintained as a lawn or beach;
    - b. - The disturbed or cleared area is not being expanded;
    - c. - The proposed landscaping will not be contrary to the spirit or intent of the WCD Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the WCD Ordinance, the proposed activity shall only be permitted if the landowner obtains an approved Town Wetlands Permit.
  10. Replacement or Repair of an existing fence, shed, or deck; provided that the Building Inspector determines that:
    - a. - The fence, shed, or deck has a previously approved Town Wetlands and/or Building Permit;
    - b. - The fence length or the shed or deck square footage is not increasing or encroaching further into the WCD;
    - c. - The proposed work will not be contrary to the spirit or intent of the WCD Ordinance. (If the Building Inspector determines that the proposal is not consistent with the purposes of the WCD Ordinance, the proposed activity shall only be permitted if the landowner obtains an approved Town Wetlands Permit).
- B.** The following additional uses are permitted in freshwater wetlands and areas of poorly and very poorly drained soils and their buffers. (Amended March 2016)
1. Construction of wells for water supply and water impoundments constructed pursuant to plan approved by the Rockingham County Conservation District.
- C.** The following uses are permitted in the one hundred foot (100 ft.) buffer for 1<sup>st</sup> through 4<sup>th</sup> order streams or rivers as defined in Section 2.3.2: (Amended March 2016)
1. In the first twenty-five feet (25 ft.) from the nearest edge of the stream or river (known as the Vegetated Buffer Strip):
    - a) the cutting of invasive species only with hand tools, and
    - b) the application of limestone
  2. Between twenty-five feet (25 ft.) and seventy-five feet (75 ft.) from the nearest edge of the stream or river (known as the Limited Cut Area):
    - a) the cutting of invasive species, and

- b) the application of limestone
- 3. Between seventy-five feet (75 ft.) and one hundred feet (100 ft.) from the nearest edge of the stream or river:
  - a) the application of low phosphate, slow release nitrogen fertilizers, and
  - b) the cutting of invasive species
- 4. Construction of wells for water supply and water impoundments constructed pursuant to a plan approved by the Rockingham County Conservation District.

**D.** Other low density uses in WCD as defined in this Ordinance may be undertaken only by Wetlands Permit as provided in Section 2.3.5 of this Ordinance. (March 2020)

**2.3.4 USE RESTRICTIONS RESTRICTED USES, AND PROHIBITED USES, AND OTHER STANDARDS** (Amended March 2012 & March 2019)

**A. Restricted Uses** – The following criteria shall be evaluated, and the associated uses may only be undertaken following approval of a Wetlands Permit by the Planning Board. Prior to the approval of any restricted use, the Planning Board shall determine that the activity is necessary to maintain the legal pre-existing use of the property and/or is consistent with the spirit and intent of the Wetlands Conservation District Ordinance.

1. In the event of failure of an existing septic system, leach field or other on-site waste disposal facility located within seventy-five (75) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils, the property must be tied into the town sewer system if available. If sewer is not available, an existing system may be replaced or repaired as necessary according to a design approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services. In the event the seventy-five (75) foot setback cannot be maintained, the replacement system shall meet the setback to the degree possible.

2. An existing structure located within the buffer zone may be repaired and/or replaced. However, the new or repaired structure, including any impervious surface, shall not extend further into the buffer area than the footprint that legally exists at the time of application, nor shall it increase the amount of square footage of impervious surface in the buffer area.

3. Where a variance is granted that enables building on a pre-existing lot of record, the setback shall be in line with the setback of existing buildings within one hundred (100) feet on either side. The furthest setback amongst buildings shall apply where buildings are set back at varying distances but closer than:

- 1- a. fifty (50) feet from the boundary of any tidal wetlands, inland wetlands, areas of very poorly drained soils and poorly drained soils, or vernal pools; or
- 2- b. one hundred (100) feet from any 1<sup>st</sup> through 4<sup>th</sup> order streams (as identified in Section 2.3.2 E).

4. A new fence, shed, or deck may be located within the buffer zone, in consultation with the Conservation Commission and at the discretion of the Planning Board to ensure that the integrity and health of the Wetlands Conservation District is not compromised by additional impervious surface or other activities of environmental concern, and that the increase in impervious surface is offset by an approved type and amount of mitigation.

**B. Prohibited Uses** – The following uses are prohibited in the Wetlands Conservation District. In the event that a variance is granted by the Zoning Board of Adjustment to allow a prohibited use, the approval of a Wetlands Permit by the Planning Board may also be required.

1. A new septic system, leach field or other on-site waste disposal facility located within seventy-five (75) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils.

2. Except as provided in Sections 2.3.4 A 2 through 4 above, no structure, impervious surface, parking space or building activity including dredging, filling or regrading shall be permitted within fifty (50) feet of any tidal or inland wetlands, or any area of very poorly drained soils and poorly drained soils or vernal pool, or within seventy-five (75) feet of the 1<sup>st</sup> through 4<sup>th</sup> order streams (as identified in Section 2.3.2 E).

3. The extension of any repaired and/or replaced structure, including any impervious surface, further into the buffer area than the original footprint where any portion of such structure is already located within the buffer zone and/or the addition of any square feet of impervious surface in the buffer area.

4. The application of fertilizers, pesticides, insecticides, or herbicides in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, the 1<sup>st</sup> through 4<sup>th</sup> order streams as identified in Section 2.3.2 E, or their buffers.

5. The storage of yard waste, wood, or snow in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, or their buffers.

**C. Standards for Protection from Erosion and Siltation** - Any construction, forestry and agriculture activities within one hundred (100) feet of any wetland, or any area of very poorly drained soils and poorly drained soils, shall be undertaken with special care to avoid erosion and siltation into the wetlands, or any area of very poorly drained soils and poorly drained soils. The Building Department or the Planning Board, pursuant to its Site Plan Review and/or Subdivision authority, Section 1.5 of the Town of Hampton Zoning Ordinance, may require an erosion control plan using Best Management Practices (see Appendix Number 4).

**D. Construction Standards for the Tidal Wetland Conservation District – New**

Construction or substantial improvement of any structure including manufactured homes to be placed or substantially improved within the Tidal Wetland Conservation District shall comply with FEMA's Guidelines that the Town has adopted for the VE Special Flood Hazard Area (Section 2.4.11-C Coastal High Hazard Areas (Zone VE) –Construction Standards). The construction work shall have no adverse impacts on adjacent properties. (Adopted March 2019)

*Note: The following language from Section 2.3.4 is deleted under this amendment and reorganized/replaced with the above Subsections A through D.*

**A.** No septic system, leach field or other on-site waste disposal facility shall be installed within 75' (seventy five) feet of the edge of any wetland, or any area of very poorly drained soils and poorly drained soils. In the event of failure of an existing system, the property must be tied into the town sewer system if available. If sewer is not available, an existing system may be replaced or repaired as necessary according to a design approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services. In the event the seventy-five foot (75') setback cannot be maintained, the replacement system shall meet the setback to the degree possible. (Amended 2005)

**B.** Except as provided in Subsections C & D below, no structure, impervious surface, parking space or building activity including dredging, filling or regrading shall be permitted within fifty feet (50') of any tidal or inland wetlands, or any area of very poorly drained soils and poorly drained soils or vernal pool, or within seventy five feet (75 ft.) of the 1<sup>st</sup> through 4<sup>th</sup>-order streams (as identified in Section 2.3.2 E). Any construction, forestry and agriculture activities within one hundred feet (100 ft.) of any wetland, or any area of very poorly drained soils and poorly drained soils, shall be undertaken with special care to avoid erosion and siltation into the wetlands, or any area of very poorly drained soils and poorly drained soils. The Building Department or the Planning Board, pursuant to its Site Plan Review and/or Subdivision authority, Section 1.5 of the Town of Hampton Zoning Ordinance, may require an erosion control plan using Best Management Practices (see Appendix Number 4). (Amended 2005, March 2015, March 2016)

**C.** An existing building within the buffer zone may be repaired and/or replaced provided that the new or repaired structure, including any impervious surface, shall not extend further into the buffer area than the original foundation. (Amended 1998, March 2015)

**D.** Where a variance is granted that enables building on a pre-existing lot of record, the setback shall be in line with the setback of existing buildings within 100' (one hundred feet) on either side. Where such buildings are set back varying distances, but closer than:

5. fifty feet (50 ft.) from the boundary of any tidal wetlands, inland wetlands, areas of very poorly drained soils and poorly drained soils, or vernal pools; or

6. one hundred feet (100 ft.) from any 1<sup>st</sup> through 4<sup>th</sup>-order streams (as identified in Section 2.3.2 E);

The furthest setback among such buildings shall apply. (Amended 2005, March 2016)

**E.** (Deleted 1994)

**F.** No application of fertilizers, pesticides, insecticides, or herbicides shall occur in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pool, the 1<sup>st</sup> through 4<sup>th</sup>-order streams as identified in Section 2.3.2 E, or their buffers, except as set forth in Section 2.3.3 D. (Amended March 2012, March 2015, March 2016)

**G.** No storage of yard waste, wood, or snow shall occur in any tidal or inland wetlands, areas of poorly or very poorly drained soils, vernal pools, or their buffers. (Amended March 2012, March 2015)

**H. Construction Standards for the Tidal Wetland Conservation District**—New Construction or substantial improvement of any structure including manufactured homes to be placed or substantially improved within the Tidal Wetland Conservation District shall comply with FEMA's Guidelines that the Town has adopted for the VE Special Flood Hazard Area (Section 2.4.11 C Coastal High Hazard Areas (Zone VE) Construction Standards). The construction work shall have no adverse impacts on adjacent properties. (Adopted March 2019)

**2.3.5 WETLANDS PERMITS:** A More intensive uses not otherwise permitted that are permitted in the Wetlands Conservation District in accordance with the terms of Section 2.3.3, or any uses that are restricted in accordance with the terms of Section 2.3.4, may shall only be undertaken by Wetlands Permit by application to the Planning Board ~~P~~, provided that such use is in keeping with the intent and purposes set forth in this Ordinance as permitted in the underlying use district. In the event that a variance is granted by the Zoning Board of Adjustment to allow a prohibited use, the approval of a Wetlands Permit by the Planning Board may also be required. (Amended March 1998, March 2015)

**A.** An application for wetlands permit for activities in the Wetlands Conservation District shall be filed with the Town Planner who shall forward one copy to the Hampton Conservation Commission for review and recommendation. The Commission may make field inspections and consult with experts and the applicant may be required to bear the cost of such consultation. The Conservation Commission shall report its recommendations to the Planning Board within 40 days of the date on which the application is mailed or otherwise conveyed to the Chairman. Said report shall be submitted in writing at a regular meeting. (Amended 1999 & 2002, March 2012, March 2015)

**B.** No wetlands permit shall be granted unless it is found to be consistent with the purposes set forth in Section 2.3.1 and the spirit of this Ordinance. The Planning Board as part of this application shall hold a Public Hearing and notify abutters as required under RSA 676:4. (Amended 1998, March 2015)

**C.** Any Wetlands Permit granted by the Board shall expire two years from the date of said grant. If the work approved by the issuance of a Wetlands Permit is not initiated during that time, the Wetlands Permit becomes null and void. If the work approved is initiated but not completed during that time, the owners may apply for a two-year extension. A request for such extension must be filed at least one month prior to the Wetlands Permit's expiration date. No more than two such extensions may be granted. (Amended March 2012, March 2015)

### **2.3.7 SPECIAL PROVISIONS**

I. Any variance requests must be submitted to the Zoning Board of Adjustment in accordance with Section 1.4 of the Hampton Zoning Ordinance.