

Resize:

Town of New Castle, NY
Friday, September 19, 2014

Chapter 64. ENVIRONMENTAL PROTECTION OVERLAY REGULATIONS

[HISTORY: Adopted by the Town Board of the Town of New Castle 7-23-2002 by L.L. No. 5-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 60.

Steep slope protection — See Ch. 108.

Subdivision of land — See Ch. 113.

Tree preservation — See Ch. 121.

Wetlands — See Ch. 137.

§ 64-1. Title.

This chapter shall be known and may be cited as the "Environmental Protection Overlay Regulations Local Law of the Town of New Castle."

§ 64-2. Background and findings.

- A. The rural character of the Town of New Castle is most evident in both the eastern and western ends of the Town, where much of the land remains undeveloped and forested. Many of the undeveloped tracts of land have physical characteristics such as wetlands, steep slopes, and poor drainage, that make the areas both difficult to develop and environmentally sensitive. The scenic roadways and ridgeline views within these areas offer immeasurable visual enjoyment. A trail network plan is being developed to promote recreational opportunities by linking many of these open space parcels with other existing public open spaces. The unique environmental attributes present at both ends of the Town contribute greatly to the community character that helps define New Castle.
- B. One of the Town's primary goals is to provide greater protection for the region's water resources. The overlay district to be established for the eastern end of Town is entirely located in the Croton and Kensico Watersheds, part of the New York City water supply system. The overlay district to be established for the western end of the Town contains the majority of watershed lands that surround the Indian Brook Reservoir - the principal drinking water source for the Village and Town of Ossining. In addition, the western end of the Town drains into the Hudson River watershed, a major recreational and important fisheries resource for the region.
- C. The eastern and western ends of the Town contain a significant amount of wetland resources. Nine of the 18 New York State Department of Environmental Conservation designated

wetlands within New Castle are located within the Environmental Protection Overlay Districts to be established for the eastern and western ends of the Town. Of particular significance is that the state wetlands at both ends of the Town form extensive linear corridors that are connected hydrologically via watercourses and often are flanked by steep slopes. A substantial percentage of the properties in both the eastern and western ends of the Town contain state and locally designated wetlands, as well as slopes in the 15 – 25% range. The unique combination of steep slopes and adjacent wetland systems contribute greatly to the environmental sensitivity of both ends of the Town. The Town Board finds that preservation, protection and conservation of these resources is a public policy of the Town.

§ 64-3. Purpose.

- A. In order to protect, maintain and enhance both the immediate and long-term health, safety and general welfare of the citizens of the Town of New Castle, the Environmental Protection Overlay Regulations impose special controls over land development located in areas that have been determined to be environmentally sensitive within the Town of New Castle. These regulations are designed to enhance the preservation and protection of wetlands located within the Town as invaluable natural resources that provide for flood protection, wildlife habitat, recreation and open space, erosion and pollution control, and recharging of ground water supplies by:
- (1) Increasing the size of protected wetland buffers, which play a critical role in maintaining water quality functions, providing important transitional habitat for wildlife, and filtering out non-point pollution sources. The proximity of wetlands to steep slopes makes protection of the buffer area even more critical due to the underlying soils that may exhibit severe soil erosion characteristics, increased runoff potential, and the need for greater undisturbed distances up-slope to support resident endemic wildlife populations.
 - (2) Regulating small wetland areas below 1/10th of an acre that may play a critical role in providing the only available habitat for environmentally sensitive species that depend upon wetlands for part of their life cycle, especially vernal areas that tend to be very small, often isolated, and seasonal, wetland habitats.
 - (3) Adopting a specific wetlands assessment model for performing wetlands functional analyses for all development projects that involve wetland impacts in order to protect and safeguard the values and functions of the wetland systems and provide consistency in review methods and analysis. The eastern and western ends of the Town consist of extensive linear wetland complexes that are connected hydrologically. Impacts from development of specific areas within these wetlands systems can create a cumulative impact on wetland functions. Applying a specific model will allow consistency of review and enable cross-referencing of cumulative impacts to wetland functions.
 - (4) Restricting the number of wetland crossings to reduce the amount of disturbance directly within a wetland and/or watercourse, preserve the linear corridors and riparian habitat for wildlife movement, eliminate the creation of additional impervious surfaces, reduce the amount of fragmentation of riparian habitat, and reduce the amount of non-point pollution from entering into the wetland system.

- (5) Promoting more effective planning of lot layout and design, with consequent benefits to the protection of the Town's wetland resources, by requiring that wetland buffers be deducted in the computation of the required net dry area of a lot.
 - (6) Requiring a 2:1 mitigation replacement ratio for wetland and wetland buffer impacts caused by development in order to maximize the protection and functions provided by the remaining wetland resources.
- B. The regulations contained herein are not intended to be substituted for other general zoning district provisions, but are to be superimposed over such district provisions as additional requirements to be met by the applicant prior to project approval. The intent of the Environmental Protection Overlay Regulations is to provide the Town with an additional level of review and regulation that controls how land development permitted by the Town's primary zoning districts should occur in sensitive or unique environmental areas.

§ 64-4. Definitions.

Words or phrases used in this chapter shall be interpreted as defined below, and where ambiguity exists, words or phrases shall be interpreted so as to carry out the regulatory goals and purposes stated in § 64-2 and § 64-3 hereof. As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT

A person requesting a land use or environmental permit or approval or a person to whom such a permit or approval has been given.

APPROVING AUTHORITY

The board, individual or entity invested with authority to grant or deny a land use or environmental permit or approval under the applicable provisions of the Town Code relating to such land use or environmental permit or approval.

DEVELOPMENT

Any construction or expansion of a building, structure or use, any change in use of a building, structure, driveway, road or any other changes in the use of land that require a land use or environmental permit or approval.

LAND USE OR ENVIRONMENTAL PERMIT OR APPROVAL

A permit or approval issued pursuant to Chapter 60 (Zoning), Chapter 108 (Steep Slope Protection), Chapter 113 (Subdivision of Land), Chapter 121 (Tree Preservation) or Chapter 137(Wetlands) of the Town Code.

MITIGATION PLAN

A plan prepared by an applicant which shall specify mitigation measures that provide for replacement wetlands and wetlands buffers that recreate as nearly as possible the original wetlands and wetlands buffers in terms of type, function, geographic location and setting.

PERSON

Any person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies and municipal corporations.

TOWN

The Town of New Castle, New York.

TOWN BOARD

The Town Board of the Town of New Castle, New York.

WATERCOURSE

Any natural or artificial, permanent or intermittent, public or private surface water body or surface water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks or waterways, that are contained within, flow through or border on the Town of New Castle.

WETLANDS:

- A. All areas that comprise hydric soils and/or are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation 1989; Federal Manual for Identifying and Delineating Jurisdictional Wetlands; United States Army Corp. of Engineers; United States Environmental Protection Agency; United States Fish and Wildlife Service; and U.S.D.A. Soil Conservation Service, Washington, D.C.; Cooperative Technical Publication.
- B. Watercourses as defined in this chapter.

WETLANDS BUFFER

A specified area surrounding a wetlands that is intended to provide protection to the wetlands from human activity and other encroachment associated with development. The wetlands buffer shall be determined to be the area extending 150 feet horizontally away from and paralleling the wetlands boundary.

§ 64-5. Applicability of regulations.

- A. This chapter establishes procedures, requirements, standards and criteria that apply to the development of any lot or part thereof which is in whole or in part contained within the boundaries of an Environmental Protection Overlay District. The procedures, requirements, standards and criteria shall apply only to that portion of the subject property within the boundaries of such District.
- B. Compliance with these procedures, requirements, standards and criteria is required in addition to compliance with all zoning, land use and environmental regulations otherwise applicable to development within the underlying zoning districts, including but not limited to Chapter 60 (Zoning), Chapter 108 (Steep Slope Protection), Chapter 113 (Subdivision of Land), Chapter 121 (Tree Preservation), and Chapter 137 (Wetlands).
- C. The uses of land and structures which are allowed in the Environmental Protection Overlay Districts, and the bulk and parking requirements attendant thereto, are as provided by the applicable underlying zoning districts, subject to compliance with the procedures, requirements, standards and criteria contained within this chapter.

§ 64-6. Procedures; approving authority.

- A. Except as otherwise provided in this chapter, applications for any land use or environmental permit or approval for the development of any property wholly or partially within an Environmental Protection Overlay District shall be processed in accordance with the procedures established under the existing provisions of the Town Code governing such permit or approval.
- B. The approving authority for such environmental or land use permit or approval shall continue to be as provided under the existing provisions of the Town Code governing such permit or approval.
- C. In connection with the granting of a land use or environmental permit or approval for development in an Environmental Protection Overlay District, the approving authority may attach such conditions as are deemed necessary to ensure the preservation and protection of environmentally sensitive areas and to ensure compliance with the policies and provisions of this chapter.

§ 64-7. Scope of controls.

- A. Wetlands. Notwithstanding any inconsistent provision of Chapters 60 or 137 of the Town Code, the following regulations shall apply to all proposed development within an Environmental Protection Overlay District:
 - (1) All wetlands, regardless of size, shall be subject to regulation under the provisions of Chapter 137 of the Town Code and this chapter.
 - (2) For purposes of applying the provisions of this chapter and Chapter 137 of the Town Code, the wetlands buffer shall be determined to be the area extending 150 feet horizontally away from and paralleling the wetlands boundary.
 - (3) Development in a wetlands or wetlands buffer is to be avoided except where no reasonable alternative exists or where the applicant would otherwise suffer undue hardship if a permit is not issued. In the event such development is approved, the impacts thereof to the wetlands or wetlands buffer shall be minimized to the greatest extent practicable, and a mitigation plan as described in Subsection A(6) hereof shall be required.
 - (4) All applications for wetland permits shall be accompanied by a wetland functional analysis prepared by a professional wetlands scientist or other qualified wetlands professional using the following wetland assessment model: "A Rapid Procedure for Assessing Wetland Functional Capacity" by D. Magee and G. Hollands, 1998.
 - (5) Except for a single crossing of a watercourse or a wetland area required to provide primary access to a property, crossing of watercourses and/or wetlands is prohibited. Where undue hardship would result from strict compliance with the provisions of this section, the approving authority may permit one or more additional crossings based on the circumstances of a particular case and the relative functions and values of the

affected wetlands. In the event any crossings of a wetland area are approved, the impacts thereof to the wetlands or wetlands buffer shall be minimized to the greatest extent practicable and a mitigation plan as described in Subsection A(6) hereof shall be required.

- (6) As a condition of the granting of any wetlands permit within an Environmental Protection Overlay District, the approving authority shall require that the applicant submit a mitigation plan pursuant to § 137-6 of the Town Code. As part of that mitigation plan, the applicant shall be required to create replacement wetlands or restore, recreate or enhance existing wetlands or wetland buffers equal to twice the area of wetland or wetland buffer directly impacted. However, the approving authority, in its discretion, may modify this 2:1 mitigation replacement ratio based upon special circumstances of a particular case and the relative functions and values of the affected wetland as detailed in the wetlands functional analysis prepared by the applicant for the property, or otherwise where undue hardship would result from strict compliance with the provisions of this subsection.
- (7) For purposes of computing the net dry area for a lot in an Environmental Protection Overlay District pursuant to § 60-420A(6) of the Town Code, no more than 10% of the minimum area requirement of a lot may be fulfilled by land which is under water, subject to flooding, classified as a floodway under Chapter 70 (Flood Damage Prevention) of the Town Code or classified as a wetland or wetland buffer under the provisions of this chapter or Chapter 137 of the Town Code.
[Amended 10-22-2013 by L.L. No. 9-2013]
- (8) In connection with the granting of subdivision, site plan, special permit or steep slope permit approval in an Environmental Protection Overlay District, the approving authority may require as a condition of approval that structures and activities on the property be set back more than 150 feet from the boundary of a wetland where the approving authority determines that such additional setback is required to accomplish the purposes set forth in § 64-3A(1) hereof, notwithstanding the fact that no wetlands permit is required for such structure or activity.

§ 64-8. Exemptions.

- A. The provisions of this chapter shall not apply to activities and structures lawfully undertaken or constructed on lots within an Environmental Protection Overlay District prior to the effective date of this chapter.
- B. The provisions of this chapter shall not apply to any development, alteration or improvement of property located within an Environmental Protection Overlay District for which final approval has been obtained and not expired and for which the approved work has not been completed prior to the effective date of this chapter.
- C. As used in this section, the term "final approval" shall mean:
 - (1) In the case of an application for the subdivision of land not requiring further site plan approval, adoption by the approving authority of a resolution granting approval or conditional approval of a final plat.

- (2) In the case of an application for a site plan approval, adoption by the approving authority of a resolution granting approval or conditional approval.
- (3) In the case of an application for special permit approval, adoption by the approving authority of a resolution granting approval or conditional approval.
- (4) In those cases not covered by Subsections A or B above, the prior issuance of a building permit, driveway permit or other authorization for the commencement of the development, alteration or improvement of property; or for those developments, alterations or improvements for which the Town of New Castle does not require such permits, the actual commencement of the development, alteration or improvement of property.

§ 64-9. Penalties for offenses.

- A. Any person who undertakes any regulated activity in violation of this chapter or who otherwise violates, disobeys or disregards any provision of this chapter shall be liable for a civil penalty not to exceed \$3,000 for each such violation. Each consecutive day of the violation shall be considered a separate offense. Before assessment of the civil penalty, the alleged violator shall be afforded a hearing or opportunity to be heard before the Town Board upon due notice, and with right to specification of the charges and representation by counsel. Such civil penalty may be recovered in an action brought by the Town in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Town and any action commenced to recover the same may be settled and discontinued by the Town.
- B. The Town Board shall also have the power, following a hearing, to issue orders directing the cessation of any violation of this chapter and the satisfactory restoration under the Board's supervision of the affected area to its condition prior to the violation, insofar as possible, within a reasonable period of time as determined by the Town Board. The exercise of such power may be with or without the imposition of a civil penalty under Subsection A hereof.
- C. Any civil penalty, or order issued by the Town Board, shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules. Review of the determination shall be within a period of 30 days of the filing of said determination in the office of the Town Clerk.
- D. In addition to the above civil penalty, any person who violates any provision of this chapter will be guilty of a violation punishable by a fine not less than \$500 nor more than \$1,000 for the first offense. For a second and each subsequent offense, the violator shall be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment not more than 15 days or both. Each action which constitutes a violation shall be a separate and distinct offense. Notwithstanding the imposition of any other sanction, any court having jurisdiction may order the restoration of any area that has been affected by a violation of this chapter, on such conditions as the court deems appropriate.
- E. The Town shall have the right to seek equitable relief to restrain any violation or threatened violation of any provision of this chapter and to compel the restoration of the area affected to its condition prior to the violation of the provisions of this chapter.

§ 64-10. Conflicts.

Where the provisions of this chapter are inconsistent or in conflict with the provisions of any other law of the Town of New Castle, the provisions of this chapter shall supersede those other requirements to the extent of such inconsistency or conflict.

§ 64-11. Severability.

If any provision of this chapter is held for any reason to be invalid, such determination shall not invalidate any other provision hereof.