

## **Article 205: SHORELAND PROTECTION ORDINANCE**

(Adopted 03/12/1991; Amended 03/10/1992; 04/8/1997, 03/11/14)

### **205.1 AUTHORITY AND PURPOSE**

Pursuant to RSA 674:16-21 the Town of Kingston hereby adopts the Shoreland Protection District and accompanying regulations in order to protect and promote public health, resource conservation and the general welfare and to:

- A.** Protect, maintain and enhance the water quality of the Great Ponds, the Little River and its tributaries, and the Pow Wow River and its tributaries in the Town of Kingston, and to ensure their continued availability as public water supplies.
- B.** Conserve and protect aquatic and terrestrial habitat associated with shoreland areas;
- C.** Preserve and enhance those recreational and aesthetic values associated with the natural shoreline and river environment,
- D.** Encourage those uses that can be appropriately located adjacent to shorelines.

### **205.2 DEFINITIONS**

- A. Bulk Storage:** Storage of materials intended for wholesale distribution or used in a manufacturing facility.
- B. Great Ponds:** All natural inland bodies of water with a surface area of 10 acres or more.
- C. Hazardous and toxic materials:** Includes but is not limited to volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalies, pesticides, herbicides, solvents and thinners, and such other substances as defined in N.H. Water Supply and Pollution Control Rules, Section Ws 410.04(1), in N.H. Solid Waste Rules He-P 1901.03(v), and in the code of Federal Regulations 40 CFR 261.
- D. Perennial brooks and streams:** Brooks and streams that appear on U.S. Geological Survey quadrangle map (7.5", scale 1":24,000") covering the Town of Kingston.

**E. Residential accessory building:** A subordinate building located on the same lot as the main building, the use of which is incidental to the main building, and discharges no sewage or other wastes.

**F. Seasonal High Water Level:** The average annual high water elevation of a pond, stream, brook or river, including floodplains and associated wetlands that include submerged or emergent vegetation. If the wetland has saturated soils part or all of the year, but does not have surface water over the soils then the reference line should be at the limit of the surface water.

**G. Shoreline:** The water's edge at seasonal high water level.

### 205.3 DISTRICT BOUNDARIES

The Shoreland Protection District in the Town of Kingston is defined as:

**A.** The areas of land within 300 feet horizontal distance of the seasonal high water level of the Great Ponds of Kingston, the Exeter River and its major tributaries, and of the Pow Wow River and its major tributaries within the Town of Kingston are defined to be the following: Little River (in the north side of Town), and the Pow Wow River (in the central and the south side of Town). The Great Ponds are Great Pond (also known as Kingston Lake), Country Pond, Pow Wow Pond, Greenwood Pond, Mill Pond, Bayberry Pond, Cedar Swamp Pond, Half Moon Pond and Long Pond. *(Amended 03/11/14)*

**B.** In addition, the areas of land within 150 feet horizontal distance of the seasonal high water level of all perennial brooks and streams within the Exeter River Watershed and the Pow Wow River Watershed which appear on the U.S.G.S. quadrangle maps (7.5" scale 1":24,000") covering the Town of Kingston, as revised.

### 205.4 USE REGULATIONS

**A. Minimum Lot Size:** The minimum lot size within the Shoreland Protection District shall be the same as required in the underlying Zoning District and by applicable subdivision regulations for the Town.

**B. Maximum Lot Coverage:** Structures, including pavement, shall not cover more than 20% of any lot or portion thereof within the Shoreland Protection District.

**C. Building Setbacks:** No building, (except any accessory building

permitted as a Conditional Use), septic system or septic system leaching field shall be constructed on or moved to a site within 150 feet from the shoreline of the Great Ponds, the Little River, or the Pow Wow River, or their major tributaries as herein defined; or within 100 feet from the shoreline of perennial brooks and streams located within the Shoreland Protection District. In the case where a failed septic system located on an existing non-conforming lot of record must be replaced within the Shoreland Protection District, the Kingston Health Inspector shall be responsible for final approval of the location of the installation of the replacement system.

**D. Surface Alterations:** Alteration of the surface configuration of land by the addition of fill or by dredging shall be permitted within 150 feet of the shoreline of the Great Ponds, the Little River, and the Pow Wow River, and their major tributaries only to the extent necessitated by a permitted or conditionally permitted use, or for the construction of transmission lines and access ways, including driveways.

**E. Vegetative Buffer:** Alteration of natural vegetation or managed woodland within 75 feet of the shoreline of the Great Ponds, of the Little River and of the Pow Wow River and their major tributaries shall be permitted only to the extent necessitated by a permitted or conditionally permitted use, or by the construction of transmission lines and access ways, including driveways.

#### **205.5 PROHIBITED USES:**

The following uses shall not be permitted within the Shoreland Protection District:

- A.** Disposal of solid waste (as defined by the N.H. RSA 149-M) other than brush.
- B.** On site handling, disposal, bulk storage, processing or recycling of hazardous or toxic materials.
- C.** Disposal of liquid or leachable wastes, except from residential subsurface disposal systems, and approved commercial or industrial systems that are otherwise permitted by this section.
- D.** Buried storage of petroleum fuel and other refined petroleum products except as regulated by the NH Water Supply and Pollution Control Division (Ws 411 Control of Non-residential Underground Storage and Handling of Oil and Petroleum Liquids). Storage tanks

for petroleum products, if contained within basements, are permitted.

- E. Outdoor unenclosed or uncovered storage of road salt and other de-icing chemicals.
- F. Dumping of snow containing road salt or other de-icing chemicals.
- G. Commercial animal feedlots.
- H. Automotive service and repair shops; junk and salvage yards.
- I. Dry cleaning establishments.
- J. Laundry and car wash establishments not served by a central municipal sewer system.
- K. Earth excavation as defined by RSA 155:E, within 300 feet of the Great Ponds, of the Little River, or of the Pow Wow River or their major tributaries. It is prohibited to conduct any excavation within eight feet of the Seasonal High Water Table.

**205.6 CONDITIONAL USES:**

- A. The following uses, if allowed in the underlying zoning district, are permitted only after a Conditional Use Permit is granted by the Kingston Planning Board.
  - 1. Industrial and commercial uses not otherwise prohibited in Section 205.5 of these regulations.
  - 2. Multi-family residential development.
  - 3. The clearing of natural vegetation for the creation of new agricultural land not closer than 20 feet to a shoreline, provided that all agricultural activities comply with Best Management Practices as prescribed by the Rockingham County Conservation District.
  - 4. Residential accessory buildings or additions, of less than 400 square feet in the first floor area, within 150 feet of the Great Ponds, or of the Little River, or of the Pow Wow River, or their major tributaries, or within 100 feet of perennial brooks and streams located within the Shoreland Protection District.

5. Beach maintenance and creation, subject to Wetlands Board regulations.

**B.** The Planning Board may grant a Conditional Use Permit for those uses listed above only after written findings of fact are made that all of the following are true:

1. The proposed use will not detrimentally affect the surface water quality of the adjacent Great Pond, river or tributary, or otherwise result in unhealthful conditions.
2. The proposed use will discharge no waste water on site other than that normally discharged by domestic waste water disposal systems and will not involve on-site storage or disposal of hazardous or toxic wastes as herein defined.
3. The proposed use will not result in undue damage to spawning grounds and other wildlife habitat.
4. The proposed use complies with the use regulations identified in Section 205.4 and all other applicable sections of this article.
5. The design and construction of the proposed use will be consistent with the intent of the purposes set forth in Section 205.1.

#### **205.7 SPECIAL EXCEPTION FOR LOTS OF RECORD**

A special exception shall be granted by the Board of Adjustment to permit the erection of a structure within the Shoreland Protection District provided that all of the following conditions are found to exist:

- A.** The lot upon which an exception is sought was an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the Town.
- B.** The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Shoreland Protection District.

- C. Due to the provisions of the Shoreland Protection District, no reasonable and economically viable use of the lot can be made without the exception.
- D. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.

#### **205.8 PERMITTED USES:**

The following uses are permitted within the Shoreland Protection District provided they are conducted in accordance with the purpose and intent of this Ordinance.

- A. Agriculture, including grazing, hay production, truck gardening, and silage production, provided that such use will not cause increases in surface or groundwater contamination by pesticides, fertilizers, or other hazardous or toxic substances and that such use will not cause or contribute to substantial soil erosion and stream sedimentation. However, no clearing of natural vegetation within the vegetated buffer (as defined in Section 205.4.E above) shall be permitted for the purpose of establishing new tilled and cultivated farmland without a Conditional Use Permit (205.6). All pesticide applications shall be conducted in strict accordance with the requirements set forth in N.H. RSA 430:28 et seq.
- B. Forest Management, including the construction of access ways for said purpose. The cutting of trees shall be limited to fifty percent (50%) of the basal area of all live trees two (2) inches in diameter (as measured four and one-half feet above the ground) and over, before any trees were removed from specified area, in a 20-year period. The remaining uncut trees shall be left well distributed throughout the harvested area. On slopes greater than fifteen percent (15%), tree cutting as described above shall be limited to 25%.
- C. Uses permitted in the underlying district of the Zoning Ordinance, except for those listed as conditional uses in Section 205.6 and those prohibited in Section 205.5.

#### **205.9 NON-CONFORMING USES:**

- A. Non-conforming uses in existence prior to the enactment of this Ordinance may be continued, maintained, repaired and improved, unless and until such use becomes an imminent hazard to public health and safety. Non-conforming uses may not be expanded or

changed to other non-conforming uses.

- B.** No non-conforming use may be renewed after being discontinued for a period of 12 months or more.

## **205.10 ADMINISTRATION**

### **A. General:**

The provisions of the Shoreland Protection District Ordinance shall be administered by the following:

1. Building Inspector for building permits;
2. Planning Board for subdivision, site plan review, and conditional use approval; and
3. Zoning Board of Adjustment for special exception approval of existing lots.

### **B. Enforcement:**

The Board of Selectmen shall be responsible for the enforcement of the provisions and conditions of the Shoreland Protection District Ordinance.

## **205.11 EFFECTIVE DATE**

This Article shall become effective upon the date of passage.