

Town of Beekman, NY
Tuesday, November 15, 2022

Chapter 155. Zoning

Article VI. Supplementary Regulations: Resource Protection

§ 155-52. Wetland, water body and watercourse protection.

A. Purpose and intent.

- (1) The purpose of this section is to protect the ecological system of wetlands, water bodies and watercourses within the Town of Beekman by implementing a system of regulations to control certain activities and by establishing buffer zones adjacent to these wetlands, water bodies and watercourses. This includes but is not limited to such activities as the dredging, filling, depositing or removing of material, including vegetation; the diversion or obstruction of water flow, the placement of structures in; or other uses of wetlands, water bodies, and watercourses that may adversely affect the natural, economic, social, agricultural and aesthetic benefits derived from these aquatic resources.
- (2) It is the intent of the Town of Beekman to control and regulate those activities, as defined herein, which may impact wetlands, water bodies and watercourses and their associated buffers within the Town thus insuring that the benefits found to be provided by them will not be lost or impaired.
- (3) It is the intent of the Town of Beekman to allow reasonable use of land consistent with responsible land management, and to conserve and protect wetlands, water bodies, and watercourses and their buffer zones to the extent reasonably practicable consistent with this objective.
- (4) It is the intent to be consistent with the legitimate interests of landowners to make reasonable use of water resources, harvest natural products of wetlands, selectively cut timber and fuel wood and otherwise engage in the use of land for agricultural production.
- (5) It is the intent that consideration should be given to the functional significance of a wetland involved in any particular application or proceeding under review for any purpose by the Planning Board, Town Board and/or Zoning Board of Appeals. Wetlands vary in their importance and value. The decisions made by the Planning Board pertaining to the permitted activity under this section should consider and reflect the relative significance or importance of any particular wetland and the potential impact of a proposed project on those values and functions.
- (6) The Town of Beekman shall adopt the Town of Beekman Comprehensive Plan Water Resources Map, as augmented by the mapping resources identified below in § 155-52C(1), as the official wetland, water body, and watercourse map to assist in the initial identification of wetlands, water bodies, and watercourses, as defined herein. The Town Engineer, Town Planner and Conservation Advisory Council may update these maps as permits required herein are processed and wetlands, water bodies, and watercourses are delineated. These maps shall be used for reference purposes only. Final determination of wetland, water body, and watercourse presence and their boundaries shall be determined in the field by qualified personnel.

- (a) The boundaries of a wetland ordinarily shall be determined by field investigation, flagging and may require a subsequent survey by a licensed land surveyor. Current technology and/or other accepted procedures, including but not limited to Geographic Positioning Systems (GPS), may be approved at the discretion of the Planning Board. The Planning Board may consult with, and/or may require the applicant to consult with biologists, hydrologists, soil scientists, ecologists, wetland delineators, botanists, landscape architect or other experts, at the applicant's expense, necessary to make this determination.
 - (b) The wetland boundary shall be delineated by the methodology set forth in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. This methodology utilizes three parameters: vegetation, soils and hydrology.
- (3) Buffer zones. Areas adjacent to wetlands, water bodies or watercourses shall comprise regulated lands as prescribed below. Where such adjacent areas are more strictly regulated by the New York State Environmental Conservation Law, these regulatory provisions shall take precedence:
- (a) For all other wetlands, water bodies and quality vernal pools, the regulated adjacent area shall extend 75 feet from the edge of the wetland boundary or mean high water mark.
 - (b) The regulated adjacent area associated with a regulated watercourse shall encompass adjacent lands extending 50 feet as measured from the top of bank of the watercourse or level of bankfill discharge on each side of the watercourse.
- D. Regulated activity. Any application submitted to the Planning Board, Town Board and/or Zoning Board of Appeals shall be subject to concurrent review and issuance of a water resources permit by the Planning Board. Nothing contained herein shall be deemed to preempt, supersede, alter or alleviate the applicable requirements of New York State Environmental Conservation Law or United States Clean Water Act. Activities for which a permit is required shall include any of the following:
- (1) Any form of draining or dredging, excavating or removing of soil, mud, sand, gravel or other aggregate from a wetland, watercourse, water body or buffer zone.
 - (2) Any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind in any wetland, watercourse, water body, or buffer zone.
 - (3) Clear cutting of any trees, or harvesting of any timber for financial profit, within a wetland, watercourse, water body or buffer zone.
 - (4) Erecting any structure, constructing roads, walls, driving of pilings or placing any other obstructions in a wetland, water body or watercourse or buffer zone.
 - (5) Installing septic tanks, running a sewage outfall or discharging sewage treatment effluent or any other wastes directly into or so as to drain into a wetland, watercourse, water body or buffer zone.
 - (6) Installing of any pipes, conduits, service lines or wells within a wetland, watercourse, water body or buffer zone.
 - (7) Intensive and repetitive use of all terrain vehicles and motorcycles, within a wetland.
 - (8) Any activity regulated by Article 24 of the New York State Environmental Conservation Law and/or Section 404 of the United States Clean Water Act, except where wetlands of less than 11,000 square feet may require a permit under the United States Clean Water Act.
- E. Nonconforming activities in a wetland, water body, watercourse or buffer. Except as otherwise regulated, restricted or prohibited by state or federal regulations, the lawful use of any structure, use, activity or lot existing at the time of the enactment of this section may be continued although such use does not conform to the provisions of this section and may be continued subject to Article X, Nonconforming Buildings, Lots and Uses, of this chapter.

F. Prohibited activities.

- (2) All permit applications shall comply with § 155-59, Site plan review, and be submitted at least 17 days in advance of the next regular Planning Board meeting. In addition, the following information prepared by a qualified professional shall be provided:
- (a) Natural heritage. The applicant shall contact in writing the Natural Heritage Program at NYSDEC, or the appropriately designated New York State agency, to ascertain the presence or absence of endangered or threatened species. A copy of the Natural Heritage Program's written reply must be submitted with the application.
 - (b) A map, certified by an engineer, architect, land surveyor or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals 50 feet showing the proposed activity and description of the hydrologic features occurring on the project site and within 100 feet of all property boundaries of the project site, including the following:
 - [1] The presence of any wetlands on the project site, as well the entire contiguous or hydrologically connected wetland system, as mapped according to local law, New York State Department of Environmental Conservation, and/or United States Army Corps of Engineers.
 - [2] Any soils classified as hydric or having potential hydric indicators by the Natural Resources Conservation Service.
 - [3] The presence of any streams, drainage channels or watercourses.
 - [4] The presence of a one-hundred-year floodplain.
 - (c) A statement of the anticipated completion date of the project, including any future development proposals for the property.
 - (d) When alternative locations exist for the proposed activity, a detailed analysis explaining why an alternative location was not selected for the project.
 - (e) Groundwater table elevations. Showing depth to water table and direction of flow and hydrologic connections with surface water features.
 - (f) Construction details/deposition of spoil. Where creation or enlargement of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices and of the handling and deposition of the spoil material.
 - (g) Quantity of material. The estimated quantities of material to be deposited or removed.
 - (h) List of affected functions. A description of all functions of the wetland, watercourse, water body and buffer zone which will be affected positively and negatively by the activity.
 - (i) A description of the vegetative cover of the regulated area, including dominant species.
 - (j) Soil profile, including soil color and texture.
 - (k) Impacts upstream and downstream. Applications for projects affecting the water-retention capacity, water flow or other drainage characteristics of any pond, lake, reservoir, natural drainage system or wetland shall include a statement and numerical calculations of the impact of the project on upstream and downstream areas, giving appropriate consideration to other than normal levels of watercourses and amounts of rainfall, specifically the one-hundred- year storm.
 - (l) A full environmental assessment form (EAF) pursuant to the State Environmental Review Act (SEQRA) Implementing Regulations, unless submitted in connection with a pending subdivision approval, site plan review and/or special use permit. This application shall be accompanied by applications for approvals or permits required by any other applicable federal, state or local permits or authorization, including wetlands permits under Articles

- (c) There is no practicable alternative for the proposed regulated activity on a site which is not a wetland or buffer.
- (3) Duly filed written notice by the state, an agency or subdivision thereof to the Planning Board that the state or any such agency or subdivision is in the process of acquiring the affected area on which a proposed regulated activity would be located by negotiation or condemnation, shall be sufficient basis for denial of a permit for such regulated activity. Such notice shall be in accordance with 6 NYCRR 665.7(i) and may be provided at any time prior to the Planning Board's decision to issue or deny a permit for the regulated activity.
- (4) Conservation Advisory Council review. The Planning Board shall refer each application to the Conservation Advisory Council, and the Conservation Advisory Council shall receive a complete set of application materials for each application and shall file a written report with its recommendations concerning the application within 30 days of the referral. Such report shall evaluate the proposed operation or project in terms of the findings, intent and standards of § 155-52.
- (5) Public hearing. Within 62 days after receipt of a complete application, the Planning Board shall hold a public hearing on the application. Notice of such hearings shall be given in the same manner as prescribed for the approval of plats under § 276 of the Town Law, and, in addition, the applicant shall notify all property owners within 250 feet of the subject property. Such service shall be made by certified mail, return receipt requested. Such mailing shall be made at least five business days before the date set for hearing. All applicants, maps and documents relating thereto shall be open for public inspection at Town Hall. At such hearing any person or persons having an interest may appear and be heard.
- (6) Mitigation plan. The Planning Board shall require preparation of a mitigation plan by the applicant when the applicant has demonstrated that either losses or impacts to the wetland or wetland buffer are necessary and unavoidable and have been minimized to the maximum extent practicable. For the purposes of this § 155-52, wetland impacts are necessary and unavoidable only if all of the following criteria are satisfied:
- (a) The proposed activity does not measurably impinge upon the public health, safety, and welfare; and
- (b) There is no feasible on-site alternative to the proposed activity, including reduction in density, change in use, revision of road and lot layout, relocation, elimination or consolidation of proposed structures, and/or related site planning considerations, that could accomplish the applicant's objectives.
- (7) Conditions for a permit. Every permit issued pursuant to this § 155-52 shall contain the following general conditions:
- (a) Right to inspection. The Building Inspector or designee shall have the right to inspect the project from time to time. Reasonable notice of an inspection should be given to the permit holder, and the permit holder should have the right to accompany the inspector.
- (b) Notification of project initiation. The permit holder shall notify the Building Inspector or designee, in writing, of the date on which project construction is to begin, at least five business days in advance of such date.
- (c) Display of permit. The permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- (d) Demarcation of boundaries and wetlands. The boundaries of the project shall be clearly staked or marked at the site until the regulated activity is concluded and any final inspections have occurred. In addition, any wetlands, water bodies and watercourses contained within boundaries of the project site shall also be staked or marked at the site until the regulated activity is concluded and any final inspections have occurred.

J. Mitigation plan requirements.

- (1) Mitigation plans shall be prepared by a qualified professional and shall specify mitigation measures that provide for replacement wetlands that recreate as nearly as possible the original wetlands in terms of type, function, geographic location and setting, and that are at least as large as the original wetland and preferably larger. For the purposes of mitigation, losses of wetland buffers will be viewed as losses of wetland. Any mitigation plan prepared pursuant to § 155-52 and accepted by the Planning Board shall become part of the permit for application.
- (2) Mitigation monitoring. Projects shall be monitored according to the specifications set forth in the permit, to determine whether the elements of the mitigation plan and permit conditions have been met and whether the wetland acreage created replaces the wetland acreage lost. To this end, the Planning Board may contract with qualified professionals at the expense of the applicant, or may use its own staff expertise. The requirements for monitoring shall be specified in the mitigation plan and shall include, but not be limited to:
 - (a) The time period over which compliance monitoring shall occur;
 - (b) Field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area;
 - (c) The date of completion of the restoration/replacement; and
 - (d) Field verification of the vegetative, hydrologic, and soils criteria as specified in the mitigation plan and permit.

K. Other local laws and regulations. No permit granted pursuant to this section shall remove any person's obligation to comply in all respects with the applicable provisions of any other federal, state, county, local law, or regulation, including but not limited to the acquisition of any other required permit(s) or approval(s).

L. Enforcement, penalties and corrective action.

- (1) Corrective action. If, upon inspection, it is found that any activities have not been undertaken in accordance with the permit, the applicant shall be responsible for completing those activities according to the permit. Failure of the Building Inspector or designee to carry out inspections shall not in any way relieve the applicant or the bonding company of their responsibilities.
 - (a) When any person has been found in violation of any provision of § 155-52, and whose permit has been suspended or upon whom a stop-work order has been issued, corrective action shall be carried out as follows:
 - [1] When the terms or conditions of an approved permit have been violated and a stop-work order has been issued, the Building Inspector or designee may provide a reasonable and specified time within which corrective action shall be completed. The violator may be required to restore the affected wetland, watercourse and/or buffer to its condition prior to the violation to the satisfaction of the Building Inspector or designee. If restoration is not possible, mitigation (See Article XII.) shall be required.
 - [2] When the violation of the terms of the permit is of such a serious nature that the Building Inspector or designee has suspended the permit or recommends the revocation of the permit, the Building Inspector or designee shall refer the matter to the Planning Board for their determination.