

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

NOVEMBER 29, 2023

7:00

Aldermanic Chamber

PUBLIC HEARINGS

O-23-059

AMENDING THE LAND USE CODE NOTICE PROVISIONS TABLE AND THE HISTORIC DISTRICT COMMISSION REVIEW PROCEDURE

O-23-062

AMENDING THE LAND USE CODE REGARDING THE WETLANDS BUFFER FOR VERNAL POOLS

AND

O-23-065

AMENDING THE LAND USE CODE REGARDING FENCE CONSTRUCTION ADJACENT TO THE FREDERICK E. EVERETT TURNPIKE

ROLL CALL

TESTIMONY

REGULAR MEETING

ROLL CALL

PUBLIC COMMENT

DISCUSSION

COMMUNICATIONS

From: Sam Durfee, Planning Manager

Re: Referral from the Board of Aldermen on proposed Ordinance O-23-062, amending the Land Use Code regarding the wetlands buffer for vernal pools

From: Sam Durfee, Planning Manager

Re: Referral from the Board of Aldermen on proposed Ordinance O-23-065, amending the Land Use Code regarding fence construction adjacent to the Frederick E. Everett Turnpike

UNFINISHED BUSINESS

O-23-059

Endorsers: Mayor Jim Donchess

Alderman-at-Large Michael B. O'Brien, Sr.

Alderman John Sullivan

Alderman Patricia Klee

Alderman Derek Thibeault

AMENDING THE LAND USE CODE NOTICE PROVISIONS TABLE AND THE HISTORIC DISTRICT COMMISSION REVIEW PROCEDURE

NEW BUSINESS – RESOLUTIONS

R-23-168

Endorsers: Mayor Jim Donchess
Alderman Alex Comeau
Alderman John Sullivan
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Tyler Gouveia

AUTHORIZING THE BUSINESS AND INDUSTRIAL DEVELOPMENT AUTHORITY TO ENTER AGREEMENTS FOR THE TRANSFER AND REDEVELOPMENT OF CERTAIN PARCELS OF LAND OWNED BY THE CITY OF NASHUA

NEW BUSINESS – ORDINANCES

O-23-062

Endorsers: Alderman Ernest A. Jette
Alderman Richard A. Dowd
Alderman Alex Comeau
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman-at-Large Melbourne Moran, Jr.
Alderman Tyler Gouveia

AMENDING THE LAND USE CODE REGARDING THE WETLANDS BUFFER FOR VERNAL POOLS

O-23-065

Endorsers: Alderman-at-Large Ben Clemons
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Patricia Klee
Alderman Thomas Lopez
Alderman Richard A. Dowd
Alderman Derek Thibeault
Alderman-at-Large Gloria Timmons
Alderman-at-Large Lori Wilshire

AMENDING THE LAND USE CODE REGARDING FENCE CONSTRUCTION ADJACENT TO THE FREDERICK E. EVERETT TURNPIKE

TABLED IN COMMITTEE

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

ADJOURNMENT



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 603 589-3090
WEB www.nashuanh.gov

MEMORANDUM

Date: October 19, 2023

To: Ald. Lori Wilshire, President, Board of Aldermen
Ald. Melbourne Moran, Jr., Chair, Planning & Economic Development
Committee

From: Sam Durfee, Planning Manager

RE: Referral from the Board of Aldermen on proposed Ordinance O-23-062, amending
the Land Use Code regarding the wetlands buffer for vernal pools.

At the Nashua City Planning Board's regularly scheduled meeting of October 19, 2023 the
Planning Board voted 5-1 to make a **favorable** recommendation on O-23-062.

If you have any questions concerning this notification, please contact me at 589-3112
or via durfees@nashuanh.gov.

cc: Mayor Jim Donchess
Donna Graham, Legislative Assistant
Dan Healey, City Clerk
Scott LeClair, Chair, NPCB



City of Nashua
Planning Department
229 Main Street
Nashua, New Hampshire 03061-2019

Planning & Zoning 603 589-3090
WEB www.nashuanh.gov

MEMORANDUM

Date: November 2, 2023

To: Ald. Lori Wilshire, President, Board of Aldermen
Ald. Melbourne Moran, Jr., Chair, Planning & Economic Development Committee

From: Sam Durfee, Planning Manager

RE: Referral from the Board of Aldermen on proposed Ordinance O-23-065, amending the Land Use Code regarding fence construction adjacent to the Fredrick E. Everett Turnpike.

At the Nashua City Planning Board's regularly scheduled meeting of November 2, 2023 the Planning Board voted unanimously to make a **favorable** recommendation on O-23-065.

If you have any questions concerning this notification, please contact me at 589-3112 or via durfees@nashuanh.gov.

cc: Mayor Jim Donchess
Donna Graham, Legislative Assistant
Dan Healey, City Clerk
Scott LeClair, Chair, NPCB



ORDINANCE

AMENDING THE NOTICE PROVISIONS ORDINANCE AND THE HISTORIC DISTRICT PROCEDURE FOR COMMISSION REVIEW

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, of the Nashua Revised Ordinances, as amended, is hereby further amended as follows:

1. In Part 2 “Zoning Districts and Supplemental Use Regulations”, Article IV “Overlay Districts”, Section 190-22 “Historic Districts”, subsection B (2) (b), delete the struck-through language as follows:

“§ 190-22. Historic Districts.

...

B. Procedure for Commission review.

...

(2) ...

- (b) The Commission shall hold a public hearing on all applications. Notice to the applicant and the date and time of the public hearing shall be given to the applicant and every abutting property owner whose property adjoins or is directly across the street or stream from the land under consideration as determined from the records of the City Assessor. Such notice shall be given by certified mail not less than 14 days before the date of the public hearing. ~~A notice of the public hearing shall also be placed in a newspaper of general circulation in the area not less than five days before the date fixed for the hearing.~~ The abutter notification fee shall be any necessary postal fee plus \$3 per abutter. Any application shall require on-site notice in accordance with § 190-126 of this chapter, with the title of the action to read: “HISTORIC DISTRICT APPLICATION.””

2. In Part 3 “Procedures”, Article XIII “Application Review”, Section 190-126 “Notice Provisions”, Table 126-1 “Notice”, delete the struck-through language and add the underlined language as follows:

Table 126-1

Notice

[Amended 8-10-2010 by Ord. No. O-10-25]

(A) Action	(B) Publication	(C) Posting	(D) Mail	(E) Signage
Regulatory Amendments				
Official Map amendment (RSA 674:11)	10 days	10 days, <u>at least 2 public places</u>	N/A	N/A
Appeal of permit denial pursuant to Official Map (RSA 674:15)	10 days	10 days — at least 2 public places	N/A	N/A
<u>Zoning Ordinance Amendments (RSA 675:7)</u>	<u>N/A</u>	<u>10 days, at least 2 public places</u>	<u>10 days</u>	<u>N/A</u>
Building permit	N/A	N/A	N/A	N/A
Certificate of occupancy	N/A	N/A	N/A	N/A
Rezoning (RSA 675:7 <u>675:2, 674:20</u>)	10 days <u>N/A</u>	10 days, at least 2 public places	N/A <u>10 days</u>	5 <u>10 days</u>
Planning Board Applications				
Site plan (<u>RSA 674:1.VI, 674:43</u>)	N/A	10 days, <u>at least 2 public places</u>	10 days	5 <u>10 days</u>
Subdivision plan (<u>RSA 674:1.VI, 674:35</u>)	N/A	N/A <u>10 days, at least 2 public places</u>	10 days	5 <u>10 days</u>
Conditional use permit (<u>RSA 674:21.II</u>)	10 days <u>N/A</u>	10 days, <u>at least 2 public places</u>	N/A <u>10 days</u>	5 <u>10 days</u>
Plan revocation (RSA 674:11 <u>676:4-a</u>)	10 days <u>N/A</u>	10 days, <u>at least 2 public places</u>	N/A <u>10 days</u>	N/A
Communications towers, regional notification (RSA 12-K:7)	7-21 days	N/A	7-21 days	N/A
Developments of regional impact (RSA 36:57)	N/A	N/A	14 days	N/A
Design review (RSA 676:4.II(db))	N/A	10 days, <u>at least 2 public places</u>	10 days	5 <u>10 days</u>
Zoning Board Applications				
Special exception (RSA 676:7 <u>674:33</u>)	5 days	N/A <u>10 days, at least 2 public places</u>	5 <u>10 days</u>	5 <u>10 days</u>

Zoning variances or appeals (RSA 676:7 674:33)	10 5 days	N/A 10 days, at least <u>2 public places</u>	5 10 days	5 10 days
Equitable waiver (RSA 674:33-a)	5 days	N/A 10 days, at least <u>2 public places</u>	5 10 days	5 10 days
<u>Appeals to the Zoning Board of Adjustment (RSA 674:13, 674:15, 676:5)</u>	<u>5 days</u>	<u>10 days, at least 2 public places</u>	<u>10 days</u>	<u>10 days</u>
Historic District Commission Applications				
Historic District Commission	5 days <u>N/A</u>	10 days, at least <u>2 public places</u>	14 days	5 10 days
Conceptual plan (RSA 674:4.II(a))	N/A	N/A	N/A	N/A
Conditional approval of a plan	N/A	N/A	N/A	N/A
Construction plans	N/A	N/A	N/A	N/A
Conceptual plan	N/A	N/A	N/A	N/A
Minor site plan	N/A	N/A	N/A	N/A

3. In Part 3 “Procedures”, Article XIII “Application Review”, Section 190-126 “Notice Provisions”, Subsection C “Contents of notice”, delete the struck-through language and add the underlined language as follows:

“Contents of notice. [References: RSA ~~674:4 I(d)~~ 676:4 I(d)] Other than applications for subdivision or site plan approval (See §§ 190-138 and 190-146), the notice shall state the time, date and place of hearing and a description of the property subject to the application which includes, at a minimum, the following:...”

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This legislation shall become effective immediately upon passage.



RESOLUTION

AUTHORIZING THE BUSINESS AND INDUSTRIAL DEVELOPMENT AUTHORITY TO ENTER AGREEMENTS FOR THE TRANSFER AND REDEVELOPMENT OF CERTAIN PARCELS OF LAND OWNED BY THE CITY OF NASHUA

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

WHEREAS, Amended R-14-059, passed by the Board of Aldermen on September 10, 2014, authorized the sale of some surplus Broad Street Parkway (now known as the Veterans Memorial Parkway) properties.

WHEREAS, included within the properties Amended R-14-059 authorized for sale were the following:

7 Pine Street Extension, Assessor Map 77, Lot 3, approximately 1.8 acres; and
82 Pine Street Extension, Assessor Map 77, Lot 8, approximately 1.25 acres (together, the "Properties").

WHEREAS, while Amended R-14-059 stated "the properties were obtained using federal funds and thus the revenue realized must be used on the Broad Street Parkway project," in July 2015, the Federal Highway Administration (FHWA) made its final determination of surplus property eligibility and the Properties were determined to be "ineligible." "Ineligible" means that the City does not have to use any revenue realized on the Broad Street Parkway project (which is closed) nor reimburse FHWA upon any sale or lease of the Properties.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Business and Industrial Development Authority created by Nashua Revised Ordinances (NRO) Section 190-250 ("BIDA") is hereby authorized to negotiate and enter into an agreement or agreements for the transfer and redevelopment of the Properties.

RESOLUTION

R-23-168

BIDA may, but is not required, to complete any studies, title work, or any other due diligence to prepare the Properties for transfer and redevelopment (the “Pre-redevelopment Expenses”).

Any Pre-Redevelopment Expenses will be paid by BIDA unless payment is otherwise authorized by the Board of Alderman. Maintenance, parking operations, and ongoing operational expenses for the Properties will continue to be paid for and supported by City Departments as they are currently until such time that the Properties are transferred.

At the time of transfer by the City of the Properties, net proceeds will be divided evenly between BIDA for use on future development or redevelopment projects and the City’s general fund.

The Mayor is hereby authorized to execute, submit, and seek approval of land use and other permitting applications for the Properties as may be necessary or advisable.

The redevelopment of the Properties shall include provisions for public parking.

If any agreement entered into under this resolution requires the expenditure of City general funds, the Board of Aldermen must approve that expenditure.

BE IT FURTHER RESOLVED, that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents to effectuate this resolution.

LEGISLATIVE YEAR 2023

RESOLUTION: R-23-168

PURPOSE: Authorizing the Business and Industrial Development Authority to Enter Agreements for the Transfer and Redevelopment of Certain Parcels of Land Owned by the City of Nashua

SPONSOR(S): Mayor Jim Donchess
Alderman Alex Comeau
Alderman John Sullivan

COMMITTEE ASSIGNMENT: Planning and Economic Development Committee

FISCAL NOTE: None.

ANALYSIS

This resolution authorizes the Business and Industrial Development Authority created by Nashua Revised Ordinances (NRO) Section 190-250 to transfer and redevelop 7 Pine Street Extension, Assessor Map 77, Lot 3 and 82 Pine Street Extension, Assessor Map 77, Lot 8 upon the conditions stated therein.

Approved as to form: Office of Corporation Counsel

By: /s/Celia K. Leonard

Date: October 18, 2023



ORDINANCE

AMENDING THE LAND USE CODE REGARDING THE WETLANDS BUFFER FOR VERNAL POOLS

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article XI “Wetlands”, Section 190-112 “Wetlands buffer” of the Nashua Revised Ordinances, as amended, be hereby further amended by adding the new underlined language and deleting the struck-through language as follows:

“§ 190-112. Wetlands buffer.

- A. Special exceptions shall be reviewed for any use, building, structure, or development within the wetland areas or buffers defined in Table 112-1 below.
- B. For purposes of Table 112-1, Column C, the buffer shall be measured horizontally outward and perpendicular to the edge of the delineated wetland.

Table 112-1

Wetland Classifications and Buffers

(A) Wetland Category	(B) Definitions	(C) Buffer (feet)
Primary wetland	Areas designated as "prime wetlands" in accordance with RSA 483-A:7 and areas that have been documented as satisfying the criteria for designation as prime wetlands in accordance with RSA 483-A:7. "Primary wetlands" are defined by Resolution R-90-84, and generally depicted on maps entitled "Prime Wetlands, Nashua, New Hampshire" prepared for the Nashua Conservation Commission. R-90-84 defines primary wetlands as:	75

(A) Wetland Category	(B) Definitions	(C) Buffer (feet)																		
	<p>The Merrimack River and its wetlands The Nashua River and its wetlands Salmon Brook and its wetlands Pennichuck Brook, Bowers Pond, Harris Pond, Holts Pond, Pennichuck Pond, Supply Pond and its wetlands Lovewell's Pond and its wetlands Horse Pond and its wetlands Old Ridge Road wetland Nashua Canal Nashua Cove</p>																			
<p>Critical wetlands</p>	<p>Critical wetlands are the following water bodies and watercourses and their wetlands. Critical wetlands also include any perennial streams that are tributaries to prime wetlands.</p> <table border="0"> <tr> <td>Boire Brook</td> <td>Mill Pond</td> </tr> <tr> <td>Coburn Pond</td> <td>Muddy Brook</td> </tr> <tr> <td>Cold Brook</td> <td>Old Maid's Brook</td> </tr> <tr> <td>Colerain Brook</td> <td>Round Pond</td> </tr> <tr> <td>Hales Brook</td> <td>Spectacle Brook</td> </tr> <tr> <td>Harris Brook</td> <td>Spit Brook</td> </tr> <tr> <td>Hassells Brook</td> <td>Trout Brook</td> </tr> <tr> <td>Lincoln Brook</td> <td>Sandy Pond</td> </tr> <tr> <td>Lyle Reed Brook</td> <td></td> </tr> </table>	Boire Brook	Mill Pond	Coburn Pond	Muddy Brook	Cold Brook	Old Maid's Brook	Colerain Brook	Round Pond	Hales Brook	Spectacle Brook	Harris Brook	Spit Brook	Hassells Brook	Trout Brook	Lincoln Brook	Sandy Pond	Lyle Reed Brook		<p>40</p>
Boire Brook	Mill Pond																			
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Cold Brook	Old Maid's Brook																			
Colerain Brook	Round Pond																			
Hales Brook	Spectacle Brook																			
Harris Brook	Spit Brook																			
Hassells Brook	Trout Brook																			
Lincoln Brook	Sandy Pond																			
Lyle Reed Brook																				
<p>Other wetlands over 9,000 square feet</p>	<p>Any wetland other than a primary or a critical wetland over 9,000 square feet in area</p>	<p>40</p>																		

(A) Wetland Category	(B) Definitions	(C) Buffer (feet)
Other wetlands from 3,000 to 9,000 square feet and intermittent streams	Any wetland other than a primary or critical wetland between 3,000 and 9,000 square feet in area. Intermittent streams require a twenty-foot buffer from both banks, measured from top of bank. Intermittent streams are streams with a defined channel but that may not flow the entire year. Isolated man-made drainage ditches are not included.	20
Vernal pools	Buffer to be determined from recommendations in a protection plan submitted by a professional biologist. The buffer will be measured from the edge of the average annual high-water mark. <u>TwentyOne hundred-foot minimum buffer. Vernal pool boundaries to be determined by a Certified Wetlands Scientist. Buffer boundary to be determined by a Certified Wetlands Scientist or other Licensed Land Surveyor.</u>	<u>20100</u>

All other ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall become effective immediately upon passage.

LEGISLATIVE YEAR 2023

RESOLUTION:

O-23-062

PURPOSE:

Amending the Land Use Code regarding the wetland buffer for vernal pools

ENDORSERS:

Alderman Ernest A. Jette
Alderman Richard A. Dowd
Alderman Alex Comeau

**COMMITTEE
ASSIGNMENT:**

Planning and Economic Development Committee
Planning Board

FISCAL NOTE:

None.

ANALYSIS

This legislation amends the City's Land Use Code Wetlands Ordinance by increasing the wetland buffer for vernal pools from 20' to 100'.

State statute (RSA 675:2) and NRO Section 190-132 require a public hearing and referral to the city planning board. The public hearing is conducted by the aldermanic planning and economic development committee with notice published in a newspaper of general circulation and posted in two public places at least 10 calendar days prior to the date of the hearing. The notice period does not include the day notice is posted or the day of the public hearing. (RSA 675:7, I) Under RSA 676:12 and NRO Section 105-3, no building permit may be issued after the legal notice has been posted if the proposed changes would, if adopted, justify refusal of the permit. This limitation applies for a period of 120 days.

Approved as to form:

Office of Corporation Counsel

By: Downing Clarke

Date: 3 October 2023



ORDINANCE

AMENDING THE LAND USE CODE REGARDING FENCE CONSTRUCTION ADJACENT TO THE FREDERICK E. EVERETT TURNPIKE

CITY OF NASHUA

In the Year Two Thousand and Twenty-Three

The City of Nashua ordains that Part II “General Legislation”, Chapter 190 “Land Use”, Part 2 “Zoning Districts and Supplemental Use Regulations”, Article VI “Supplemental Use Regulations”, Section 190-44 “Fences” of the Nashua Revised Ordinances, as amended, be hereby further amended by adding the new underlined language and deleting the struck-through language as follows:

“§ 190-44 Fences.

Wall, fence or similar enclosures shall conform to the following:

- A. In residential zoning districts, shall not exceed ~~six~~ seven (7) feet in height or interfere with traffic circulation.
- B. In nonresidential zoning districts, shall not interfere with traffic circulation (no height restriction).
- C. Parcels directly adjacent to the Frederick E. Everett Turnpike, including exits and entrances, upon which there are residential uses may construct boundary fences up to fourteen (14) feet in height on the lot line or lot lines, or portion(s) thereof, which directly adjoin the Turnpike. Such Turnpike boundary fences exceeding seven (7) feet in height shall seek a building permit through the Department of Building Safety and can only be constructed upon issuance of said building permit and subject to its conditions, if any.”

All other ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This ordinance shall become effective immediately upon passage.

LEGISLATIVE YEAR 2023

RESOLUTION: O-23-065

PURPOSE: Amending the Land Use Code regarding fence construction adjacent to the Frederick E. Everett Turnpike

ENDORSERS: Alderman-at-Large Ben Clemons

COMMITTEE Planning and Economic Development Committee
ASSIGNMENT: Planning Board

FISCAL NOTE: Permit fees as required.

ANALYSIS

This legislation amends the City's Land Use Code Supplemental Use Regulations, Fences, to allow for the construction of 14 foot high boundary line fences on lot lines of properties with residential uses that directly abut the Frederick E. Everett Turnpike, subject to building permit approval for fences over seven feet.

State statute (RSA 675:2) and NRO Section 190-132 require a public hearing and referral to the city planning board. The public hearing is conducted by the aldermanic planning and economic development committee with notice published in a newspaper of general circulation and posted in two public places at least 10 calendar days prior to the date of the hearing. The notice period does not include the day notice is posted or the day of the public hearing. (RSA 675:7, I) Under RSA 676:12 and NRO Section 105-3, no building permit may be issued after the legal notice has been posted if the proposed changes would, if adopted, justify refusal of the permit. This limitation applies for a period of 120 days.

Approved as to form: Office of Corporation Counsel

By: /s/Celia K. Leonard

Date: October 19, 2023