

## ARTICLE 29 – WETLANDS PROTECTION BYLAW

### Section 1 - Purpose

The purpose of this bylaw is to protect the wetlands, water resources, floodplain areas, and adjoining upland areas in the Town of Shrewsbury by controlling activities likely to have a significant or cumulative effect on these resource areas, deemed important to the community (collectively, the “resource area values protected by this bylaw”) including but not limited to the following:

- public or private water supply,
- storm damage prevention,
- prevention and control of pollution,
- water quality,
- recreation values,
- wildlife habitat, rare species habitat including rare plant and animal species
- flood control,
- agriculture,
- erosion and sedimentation control.

This bylaw is intended to utilize the Home Rule authority of the Town so as to protect the resource areas subject to the Massachusetts Wetlands Protection Act, (M.G.L. Ch.131 §40, as amended, the “Act”), to a greater degree and to impose additional standards and procedures which are stricter than those of the Act and the regulations thereunder (310 CMR 10.00; the “State Regulations”) in the following ways:

- (a) establish a wetland setback, no disturbance area of 15 feet and a 30-foot setback for all permanent structures.
- (b) increase the required replication ratio from 1.5:1 to 2:1.
- (c) implement fines for enforcement and increase fees for after-the-fact filings.

### Section 2 - Jurisdiction

Except as permitted by the Conservation Commission (the “Commission”) no person shall commence to remove fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, certified vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, dunes, and lands under water bodies; intermittent streams, brooks, and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; and lands subject to flooding or inundation by ground-water or surface water.

The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural uses as defined by the State Regulations, found at 310 CMR 10.04.

### Section 3 - Definitions

For terms not defined in this bylaw or local regulations promulgated hereunder, definitions shall be as found in the State Regulations (for terms defined there); or the normal and customary use of the words (for terms not otherwise defined).

**Section 4 - Local Regulations**

After public notice by publication in a local newspaper and posting at Town Hall or on the official Town website, which publication and posting shall occur at least fourteen (14) days prior to the date of the public hearing, the Commission may hold a public hearing to consider adopting local rules and regulations to carry out the purposes of this bylaw (the “Local Regulations”). The Local Regulations shall take effect when approved by vote of the Commission. The Local Regulations and any amendment thereto shall be filed in the office of the Town Clerk as soon as possible and no later than ten (10) days from the date of adoption by the Commission. At a minimum, the Local Regulations shall clarify the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees for filings required pursuant to this bylaw. Failure by the Commission to adopt any Local Regulations shall not act to suspend or invalidate this bylaw.

**Section 5 - Exemptions, Exceptions and Deviations for Hardship**

Other than stated in this bylaw, the exceptions provided in the Act and the State Regulations are also applicable to this bylaw.

The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.

The applications and permits by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

In acting on an application for a permit under this bylaw, the Commission may grant permission for work closer than the minimum distances set forth in this bylaw. The Commission shall only grant deviations that are allowable pursuant to this bylaw, as well as the Act and the State Regulations. In considering a deviation, no deviation from the bylaw shall be allowed except:

- (a) when the Commission finds that denial of the proposed work could constitute a regulatory taking; or
- (b) the structure, improvement or activity is a component of any project to provide public access to and within the resource area after completion of the project.

## **Section 6 - Applications and Fees**

The Commission will accept as the application and plans under this bylaw any application and plans filed under the Act and the State Regulations. The Commission may adopt, as part of the Local Regulations, a separate application form for applications to be filed pursuant to this bylaw.

An application filed pursuant to this bylaw shall be subject to a filing fee as specified in the Local Regulations. In any fee schedule to be included in the Local Regulations, the Commission shall establish an increased fee for applications received for after-the-fact or completed work. The fee under the Local Regulations described above, shall be in addition to any fees required by the Act or the State Regulations.

## **Section 7 – Notice; hearings.**

Any person filing a notice of intention with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) to all direct abutters at their mailing addresses shown on the most recent applicable tax list of the assessors. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. An affidavit of the person providing such notice, a copy of the notice mailed or delivered and return receipts shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the plans, the notice of the hearing and the determination itself shall be sent by the applicant to the owner.

Hearings:

- a) The Commission shall schedule a public hearing on any application or request for determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in the municipality.
- b) The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination unless an extension is authorized, in writing, by the applicant.
- c) The Commission shall issue its permit or determination, in writing, within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized, in writing, by the applicant.
- d) The Commission may combine its hearing under this chapter with the hearing conducted under the Act (MGL c. 131, § 40).
- e) The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

## **Section 8 - Permits and Conditions**

The Commission, in an appropriate case, may combine the decision issued under this bylaw with the permit, Determination of Applicability (DOA), Order of Resource Area Delineation (ORAD), or Certificate of Compliance (COC) issued under the Act and the State Regulations. Amendments to permits, DOAs, or ORADs shall be handled in the manner required by the Act and the State Regulations.

Unless an applicant demonstrates to the satisfaction of the Commission that the area or part of a wetland setback area described below may be disturbed without harm to the values protected by this bylaw, then:

1. No foundation, building, road, sidewalk, or other permanent structure shall be placed within thirty (30) feet of any resource area; and
2. No grading, placement of fill, excavation, planting, removal, or trimming of trees, other vegetation, or other construction activity shall occur within fifteen (15) feet of any resource area.

## **Section 9 - Replication, Replacement, Mitigation**

To prevent the loss of wetland resource areas, the Commission shall require applicants to avoid wetland alteration wherever feasible, seek to minimize wetland alteration and, where wetland alteration is unavoidable and has been minimized, to provide for full mitigation. In light of the likelihood of failure of a replication area, the Commission discourages any plan or project which proposes a required replication area. The Commission may authorize replication of wetlands as a form of mitigation only upon receipt of specific plans, professional design, the providing of proper safeguards, adequate protection, and provisions for professional monitoring and reporting to assure long term success. The amount of replication area shall be calculated at a ratio of no less than 2:1.

## **Section 10 - Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission shall have the authority to enforce this bylaw, the Local Regulations and permits issued hereunder by letters, electronic communication and other informal methods, violation notices, non-criminal citations under Massachusetts General Law, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Any person who violates any provision of this bylaw or Regulations thereunder or permits issued thereunder shall receive a written notice for the first violation. The penalty for each subsequent violation shall be Three Hundred Dollars (\$300.00) per violation. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, Regulation or permit violated shall constitute a separate offense. The Commission may issue citations pursuant to the non-criminal disposition procedure set forth in

Massachusetts General Law Chapter 40 Section 21D and Article 17 of the Town Bylaws.

**Section 11 - Burden of Proof**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have significant or cumulative detrimental effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**Section 12 - Appeals**

An applicant or the owner of the subject property (if not the applicant) aggrieved by a determination or Order of the Commission pursuant to this bylaw may appeal such decision in accordance with the procedures set forth in MGL Chapter 249, Section 4.

**Section 13 - Severability**

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.