

Chapter 138: Zoning

Article XA: Watershed Protection Overlay District

[Added 2-3-2009 by L.L. No. 3-2009]

§ 138-27.1 Introduction; purpose.

- A. The Town of Ballston finds that special protection of Ballston Lake and its nearby lands within the Watershed Protection Overlay District where surface and groundwaters flow into Ballston Lake is necessary to minimize the ecological degradation of the Town's waterways, to preserve the lake's scenic character, to provide active and passive recreational opportunities in a clean environment, and to reduce the risk of harm to property and life from flooding. The purpose of the Ballston Lake Overlay District is to provide additional requirements and standards for protection of the quality of the water in this particular area of the Town that is identified on the Town Zoning Map.^[1]

[1] *Editor's Note: The official version of the Zoning Map is on file in the office of the Town Clerk or is available through eCode360. A copy of the map may be included in a pocket at the end of this volume.*

- B. The Watershed Protection Overlay District will meet the goals of protection of Ballston Lake, its nearby lands and the waters that flow from these lands, as outlined in the preceding paragraph. Chapters 91 and 92 of the Town of Ballston Code have provisions that apply to the Watershed Protection Overlay District. Within the Overlay District, as shown on the Town of Ballston Zoning Map,^[2] the underlying zoning shall remain in effect, except as modified below in this article. Modifications to the underlying zoning within the Watershed Protection Overlay District are related to density bonuses for residential development with water and sewer.

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§ 138-27.2 Findings of fact.

It is hereby determined that:

- A. Land development activities, loss of native vegetation, and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, pollution rates, and sediment transport and deposition;
- B. Clearing and grading during construction and other land development activities increases soil erosion and adds to the loss of native vegetation necessary for viable land and water habitats;
- C. Land development activities and associated increases in site impervious cover reduce water percolation into the soil, thereby decreasing groundwater recharge and increasing runoff;
- D. Preserving vegetative cover can improve runoff and erosion rates. Typical examples include:
- (1) Tree canopies and ground covers protect soil surfaces from the erosive impacts of rainfall;
 - (2) The surface cover provided by roots, leaves, and other plant matter slows the velocity of water, thereby reducing its sediment-carrying capability; and
 - (3) Suitable plant matter cover can increase water percolation into the soil, thereby reducing runoff and increasing groundwater recharge.
- E. Pollutants of concern having a negative impact on water quality are known to originate from construction activities, land development, from other land alteration activities, poorly performing or failing septic systems, and from the use of substances necessary for domestic, commercial, agricultural and industrial activities. These pollutants of concern are regulated by provisions in this article:

- (1) Silt;
 - (2) Human pathogens and sewage-based nutrients;
 - (3) Herbicides, pesticides, fungicides, and fertilizers;
 - (4) Petroleum products and automobile fluids;
 - (5) Garbage and yard waste.
- F. Increased runoff negatively impacts receiving waters by changing the physical, biological and chemical composition of water resulting in unhealthy environments for aquatic life, other desirable species, and humans.
- G. The adverse impacts on the waters of the Town can result in substantial economic losses and can harm public health and safety. These negative impacts are to be controlled and minimized through the appropriate regulation of land development and other activities within the Watershed Protection Overlay District.

§ 138-27.3 Definitions.

As used in this article, the following terms shall have the following meanings:

HAZARDOUS MATERIAL

Includes, but is not limited to:

- A. Paints, varnishes and solvents;
- B. Oil and other automobile fluids;
- C. Dissolved and particulate metals;
- D. Radioactive materials.

ILLEGAL DISCHARGE

Any direct or indirect nonstormwater discharge to the storm drain system, except as exempted in § 138-27.5 of this article.

ILLICIT CONNECTIONS

Either of the following:

- A. Any drain or conveyance, on or under the ground's surface, which allows an illegal discharge to enter the storm drain system, regardless of whether the drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

INDUSTRIAL ACTIVITY

Per New York State SPDES General Permit for Stormwater Discharges Associated with Industrial Activity GP-O-06-002, any facility used for manufacturing, processing or raw materials storage at an industrial plant, including, but not limited to:

- A. Industrial plant yards;
- B. Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility;
- C. Material-handling sites where materials are stored, loaded, unloaded, transported, and conveyed of any raw material, intermediate product, final product, by-product or waste product;

- D. Refuse sites;
- E. Sites used for the application or disposal of process wastewaters (as designated by 40 CFR Part 401 of GP-O-06-002);
- F. Sites used for the storage and maintenance of material-handling equipment;
- G. Sites used for residual treatment, storage, or disposal;
- H. Shipping and receiving areas;
- I. Manufacturing buildings;
- J. Storage areas, including tank farms or raw materials, and intermediate and final products;
- K. Areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

MINING

The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use, exclusive of manufacturing processes, at the mine location; the removal of such material through sale or exchange, or for commercial industrial or municipal use; and the disposition of overburden; tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

MS4

Municipal separate storm sewer system. (See Chapter 91 definitions.)

MUNICIPAL SEPARATE STORM SEWER SYSTEM

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Town of Ballston;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONPOINT SOURCE POLLUTION

Pollution affecting a water body from diffuse sources rather than a point source which discharges to a water body at a single location. Nonpoint source pollution may derive from different sources such as agriculture, silvicultural practices and land development and generally contains sediment, pathogens, bacteria, nitrogen and phosphorus.

NONSTORMWATER DISCHARGE

Any discharge to the storm drain system that is not composed entirely of stormwater.

POLLUTANT

Includes, but is not limited to, the following:

- A. Paints, varnishes, and solvents;
- B. Oil and other automotive fluids;
- C. Solid wastes and yard wastes;

- D. Refuse, rubbish, garbage, litter, or other discarded or abandoned objects;
- E. Sewage, fecal coliform and pathogens from human waste;
- F. Dissolved and particulate metals;
- G. Wastes and residues that result from constructing a building or structure;
- H. Sediments and aqueous suspended particulates originating from disturbed soil surfaces, often associated with construction and other land improvement activities.

SEPTAGE OR SEPTIC SLUDGE

Partially treated sanitary waste.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT FACILITIES OR PRACTICES

Systems designed to treat, detain, infiltrate and/or convey stormwater runoff. Such systems include detention basins, infiltration basins, treatment basins or units, storm sewer pipes, catch basins and swales.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee, the Municipal Engineer or other public official(s) designated by the Town of Ballston to enforce this article. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

§ 138-27.4 Applicability.

- A. The Watershed Protection Overlay District is superimposed over the basic zoning districts as set forth on the Zoning Map of the Town of Ballston, which is on file in the office of the Town Clerk.^[1] Proposed land uses in the Ballston Lake Overlay District are subject to the requirements set forth in this section, in addition to those requirements and standards ordinarily applicable to the underlying districts. In case of conflict, the more restrictive regulation requirements shall apply.
 - [1] *Editor's Note: The official version of the Zoning Map is on file in the office of the Town Clerk or is available through eCode360. A copy of the map may be included in a pocket at the end of this volume.*
- B. Within the Watershed Protection Overlay District, the minimum lot size for residential development in the underlying zoning districts as set forth in this chapter is amended for projects with water and sewer. The density bonus given for water or sewer in the underlying zoning districts does not apply in the Watershed Protection Overlay District. Density bonuses are only given for development with water and sewer in the Watershed Protection Overlay District. Refer to the zoning tables in Chapter 138 for the following zoning districts:^[2]
 - (1) Rural.
 - (2) Hamlet Residential.
 - (3) Ballston Lake Residential.
 - (4) Ballston Lake Waterfront.
 - (5) Mixed Use Center Ballston Lake.
 - (6) Mixed Use South.
 - (7) Business Highway 1.

(8) Business Highway 2.

[2] *Editor's Note: The Zoning tables are located at the end of this chapter.*

- C. Illicit discharges into, and illicit connections into, the municipal separate storm sewer system ("MS4") shall be governed by Chapter 92 of the Ballston Town Code. This portion of the Code, and any amendments to it, are intended to apply to the Watershed Protection Overlay District and the MS4.
- D. It is recognized that some properties included within the boundary of the Watershed Protection Overlay District as depicted on the official Zoning Map of the Town of Ballston may not contribute to discharges of pollutants into Ballston Lake. Accordingly, any owner of property situate within the Watershed Protection Overlay District who believes that his or her property, or a portion of his or her property, does not contribute to discharges of pollutants into Ballston Lake, may, within one year of the effective date of this Article XA, Watershed Protection Overlay District, apply to the Town Planning Board in writing as follows:
- (1) At least 30 days before a regular meeting of the Town of Ballston Planning Board an applicant shall file with the Town Planning Board an application that sets forth in clear language the basis for the contention that the property identified in the application by street number and Tax Map identification should not be included in the Watershed Protection Overlay District. The burden of proof will be on the applicant.
 - (2) The application shall include actual proof that surface waters drain away from Ballston Lake and not into the Ballston Lake Watershed and that it is unlikely that discharges identified in §138-27.2E of this article and controlled by Chapters 91 and 92 of the Town of Ballston Code are likely to flow towards Ballston Lake.
 - (3) If the application makes reference to surveys of whatever kind and to engineering studies, those studies must be clearly identified in the application. If an engineer has been retained by the landowner to support the application, the engineer's report and supporting documentation must also be made a part of the application filed at least 30 days before the hearing by the Planning Board. Materials not made a part of the application when originally filed will not be considered as outlined below.
 - (4) The Planning Board may schedule the hearing for the next meeting after the application is filed, but shall not be required to hear any applications in less than 30 days' time measured from the filing of the application.
 - (5) If the Planning Board determines that it needs to seek further information from the Town Engineer, it may at any point during its consideration adjourn the hearing and seek the advice and input from the Town Engineer. The cost of such review shall be borne by the applicant. The hearing on the application shall not be adjourned for more than 60 days, except in extraordinary circumstances.
 - (6) Members of the public shall have the right to participate in the hearing if at least seven days before the hearing a notice of intention to participate is filed with the Planning Board. Said notice shall indicate the nature of the participation and shall outline the evidence, if any, to be presented to the Planning Board. If the Planning Board deems it advisable, it may request that the actual evidence be supplied by the members of the public who have requested time to speak about the application in advance of the hearing. In addition, members of the public may comment briefly on the application at the hearing notwithstanding the above if the person is not intending to offer evidence.
 - (7) After consideration of the evidence presented by the applicant and after consideration of comment from the Town Engineer and members of the public, the Planning Board shall make a recommendation to the Town Board to remove the property in whole or in part from the official Watershed Overlay Protection District or that the property not be removed.
 - (8) The Town Board will thereafter hold a public hearing on the Planning Board's recommendation and make whatever change it deems appropriate based on the recommendation of the Planning Board and upon the information received at the public hearing. The applicant will be given at least 30 days' notice of said public hearing. The Town Board shall render its decision not more than 30 days after the hearing and shall vote in an open meeting on whether to accept, reject or modify the recommendation of the Planning Board.

§ 138-27.5

Exemptions.

- A. The following discharges are exempt from the discharge prohibitions established by this article:
- (1) Municipal waterline flushing of other potable water sources;
 - (2) Landscape and agricultural irrigation or lawn watering;
 - (3) Groundwater, including natural artesian springs, pumped water and potable well water;
 - (4) Foundation or footing drains;
 - (5) Crawl space pumps;
 - (6) Air-conditioning condensation;
 - (7) Noncommercial washing of vehicles;
 - (8) Natural riparian habitat or wetland flows;
 - (9) Ornamental or landscaped water basins;
 - (10) Swimming pools (if dechlorinated — typically less than one PPM chlorine);
 - (11) Fire-fighting activities;
 - (12) Any other water source not containing pollutants, as defined herein.
- B. Exempt discharges, as defined above, shall be disposed on site in a manner that minimizes or eliminates soil erosion into surface waters or the MS4. Fire-fighting activities are exempt from the conditions of this clause.

§ 138-27.6 Prohibited practices.

The following practices shall be specifically prohibited within the Ballston Lake Overlay District:

- A. Disposal of hazardous material or solid waste;
- B. Treatment of hazardous material, except rehabilitation programs authorized by a government agency for treating hazardous material;
- C. Dry cleaning, dyeing, printing, photo-processing, and any other business that stores, uses or disposes of hazardous material, unless all facilities and equipment are designed and operated to prevent the release or discharge of hazardous material;
- D. Disposal of septage or septic sludge to include any point source discharge into Ballston Lake or into any waterway flowing into Ballston Lake;
- E. The bulk storage of coal and/or salt, except in Town-approved impervious structures. The impervious structure shall be submitted to the Town of Ballston Building Department for review and approval;
- F. The storage of hazardous material in an environment where weather, human activities, and other disturbances may reasonably be anticipated to cause such substances to spill, leak over time or otherwise be dispersed into the environment in a manner inconsistent with its intended use;
- G. All mining, unless permitted by the New York State Department of Environmental Conservation;
- H. The disposal or discharge of any hazardous or radioactive material onto any lands, waters, stormwater conveyances, or disposal conveyances for subsequent treatment or otherwise within the Watershed Protection Overlay District is prohibited, except as allowed by a valid permit from the New York State Department of Environmental Conservation.

Examples of prohibited disposal include, but are not limited to:

- (1) The disposal of hazardous materials by means of discharge to a septic system;
- (2) The use of septic system cleaners which contain hazardous materials;
- (3) Land spreading of septage or septic waste.

§ 138-27.7 Review and approval.

A. For any application for development within the Watershed Protection Overlay District that requires site plan approval or subdivision approval by the Town of Ballston Planning Board, in the underlying zoning district, the applicant shall include the following information, in addition to the site plan or subdivision approval requirements of the underlying district. The applicant shall review Chapter 91, Stormwater Management and Erosion and Sediment Control, for specific design requirements within the Watershed Protection Overlay District.

- (1) Topography and characteristics of the natural runoff on the site.
- (2) Clear indication of steep slopes (15% or greater), surface waters, and shorelines.
- (3) Description of the locations and general characteristics of soil types on the site (with particular reference to the soil's percolation).
- (4) Description of the locations, materials, dimensions, grades and flow directions of finished pavements and other impervious surfaces, including but not limited to streets, curbing, driveways, sidewalks, steps, paths, compacted earth, roofs, and decks.
- (5) The location, proximity to surface waters and steep slopes, and general characteristics of areas of existing vegetation including the identification of all individual trees with a diameter of eight inches or greater, measured at a height of four feet from the ground, as well as stands of trees and wooded areas, within areas of proposed disturbance.
- (6) A description of proposed measures to protect trees during construction, including but not limited to any of the following:
 - (a) Conspicuous marking that avoids damage to the tree bark;
 - (b) Fencing along the dripline.
- (7) A description of existing vegetation buffers within 50 feet of surface waters, which shall remain unaltered by construction activities.
- (8) Proposed vegetation buffers within 50 feet of surface waters, which shall reduce the impacts of stormwater runoff from the proposed site alterations.
- (9) Proposed location, phasing, and type of construction and stormwater control practices to be implemented on site for proposed land disturbances greater than the square footage threshold for the underlying district which are designed to:
 - (a) Ensure no increase in turbidity that will cause a substantial visible contrast to the natural condition of receiving surface waters;
 - (b) Ensure no increase in suspended, colloidal and settleable solids that will cause deposition or impair receiving surface waters for their best usages as defined by New York State Water Quality Classifications;
 - (c) Ensure no residue from oil and floating substances, no visible oil film, nor globules of grease.
- (10) In the case where the applicant seeks to utilize existing or planned off-site stormwater management facilities, the applicant shall provide a written certification that the owner of the off-site facilities will accept the runoff and be

responsible for its adequate treatment to a level acceptable to the Town of Ballston Planning Board.

- (11) A certificate acceptable to the Town of Ballston Planning Board or designated official that all materials to be used in construction within the Ballston Lake Overlay District are free of leachable toxic substances. Pressure-treated lumber not containing chromated copper arsenate (CCA) shall be deemed to be free of leachable toxic substances.
 - (12) Waivers to the provisions of this section may be granted at the discretion of the Town of Ballston Planning Board if the Board is reasonably assured that the proposed site development activities and alterations will not result in stormwater runoff impacts on surface or groundwaters within the Watershed Protection Overlay District. If the Board finds that any of the information requirements are not necessary to conduct an informed review, it may waive such information requirements, as it deems appropriate. Waivers may be granted of the Board's own initiative or at the request of an applicant. Waivers shall be made in writing or in approved meeting minutes and shall state reasons why a waiver was granted.
- B. In considering and approving a site plan within the Watershed Protection Overlay District, the Town of Ballston Planning Board shall consider the following matters as they relate to the proper protection of surface waters in the Watershed Protection Overlay District from erosion, increase pollutant load, flooding, and nonpoint sources of pollution. The Town of Ballston Town Board shall consider these matters when considering an application for creation of a planned unit development as they relate to the proper protection of surface waters in the Watershed Protection Overlay District from erosion, increase pollutant load, flooding, and nonpoint sources of pollution:
- (1) Whether the preservation of trees and vegetation on site is likely to reduce the impacts of stormwater runoff into surface waters;
 - (2) Whether travel time to watercourses is sufficient for those pollutants whose potential impact is neutralized by delayed contact with Ballston Lake;
 - (3) Whether development shall be prohibited on steep slopes (greater than or equal to 15%) to minimize erosion and associated impacts to Ballston Lake and its tributaries;
 - (4) The size, appearance, character, suitability, and safety of proposed temporary or permanent stormwater control practices and facilities;
 - (5) The ability of off-site stormwater management facilities to receive, control, or otherwise treat stormwater runoff from the site;
 - (6) The minimization or elimination of potential flood damage to public utilities and facilities;
 - (7) The temporary or permanent use of specific materials on site and their likely contributions of pollutants to surface waters;
 - (8) Where two or more dwelling units share a common sewage disposal system, a perpetual maintenance contract enforceable by the Town shall be required;
 - (9) The Town of Ballston Town Board has the right, as a Board of Health, to grant waivers from New York State Department of Health standards for both new and replacement septic systems. If a waiver is granted, the Board shall consider whether the sewage disposal system shall be monitored, inspected and/or maintained regularly, to ensure proper functioning and protection of the water quality of Ballston Lake and its tributaries. If a septic system design is in conformance with Town and New York State Department of Health standards, monitoring, inspections and maintenance shall not be required as a condition of approval.
- C. Before granting approval of any subdivision, special permit, site plan, variance or zoning amendment that includes property situate within the Watershed Protection Overlay District, the reviewing board may impose appropriate conditions as it deems necessary, and shall make a written finding of fact that the proposed development has been designed in a manner that minimizes damage to water resources consistent with this chapter.
- D. New and replacement septic systems within the Watershed Protection Overlay District must be designed by a licensed professional engineer, or a person licensed or registered in the State of New York and authorized by the State Education

Law to design the systems described in 10 NYCRR Appendix 75-A, as per Town Code Chapter **73**, Health and Sanitation, § **73-2**.

§ 138-27.8 Agricultural uses.

Agricultural uses are valued within the Town of Ballston. All agricultural uses within the Watershed Protection Overlay District shall strive to reduce impacts to water resources by minimizing soil erosion and nonpoint source pollution.

- A. Agricultural uses as defined in § 301 of Article 25-AA of the NYS Agriculture and Markets Law, and farm conservation plans prepared by the Saratoga County Soil and Water Conservation District, the USDA Natural Resources and Conservation Service or a certified conservation planner, are exempt from the provisions of this article.
- B. Agricultural uses exempt from the provisions of this article should strive to follow the recommendations in the Agriculture Management Practices Catalogue for Nonpoint Source Pollution and Prevention and Water Quality Protection in New York (1992) as published and amended by the Bureau of Water, New York Department of Environmental Conservation.

§ 138-27.9 Industrial uses.

Industrial uses shall be permitted in the Watershed Protection Overlay District in conformance with the underlying zoning district. All industrial uses within the Ballston Lake Overlay District shall provide supporting documentation to the Town of Ballston Stormwater Management Officer that the use conforms to the requirements of the New York State Department of Environmental Conservation (NYSDEC) under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-o-06-002, and any subsequent revisions. The applicant shall submit the following documents:

- A. Copy of certificate of no exposure or notice of intent or termination (NOIT) form;
- B. Acknowledgement of permit coverage under GP-o-06-002, and copies of all required sampling results, annual certification reports, the project's stormwater pollution prevention plan (SWPPP) and performance standards established by NYSDEC;
- C. Acknowledgement of permit coverage under an individual SPDES permit by NYSDEC and all supporting documentation required by NYSDEC under that permit.

§ 138-27.10 Severability.

Should any section or provision of this article be declared, adjudged or ordered null, void, voidable, or invalid by a court of competent jurisdiction, such finding of invalidity shall not affect the validity of the remaining portions of this article.

§ 138-27.11 When effective.

This article shall take effect upon filing with the Secretary of State of the State of New York.