

1 **AN ORDINANCE TO AMEND ARTICLES IX OF CHAPTER 197,**
2 **ZONING, OF THE MUNICIPAL CODE OF THE CITY OF LEWES,**
3 **DELAWARE, SECTIONS 197-74 RELATING TO WETLANDS AND THE**
4 **CREATION OF A WETLAND BUFFER.**

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6 **WHEREAS**, the Mayor and City Council of the City of Lewes have deemed it desirable
7 to amend zoning provisions relating to the Environmental Protection Regulations regarding
8 wetlands;

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10 **WHEREAS**, at a public meeting on July 15, 2020, the Lewes Planning Commission
11 reviewed and took public comment on the proposed amendments to the City of Lewes Zoning
12 Ordinance and forwarded Recommendations to the Mayor and City Council for consideration;

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14 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
15 the purpose of promoting health, safety, morals or the general welfare of the community, the
16 legislative body of cities and incorporated towns may regulate and restrict the height, number of
17 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
18 of yards, courts and other open spaces, the density of population, and the location and use of
19 buildings, structures and land for trade, industry, residence or other purposes”;

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21 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
22 against fire, promoting health, safety, morals or the general welfare of the community, the City
23 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
24 stores [sic], size of buildings and other structures, the density of population and the location and
25 use of buildings, structures and lands for trade, industry, residence or other purposes”;

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27 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
28 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
29 City of Lewes, Delaware, as amended, by amending provisions related to wetlands;

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31 **WHEREAS**, Article XV, Chapter 197, Section 104 , Text and map amendments, of the
32 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance
33 shall be made after a public hearing following fifteen (15) days’ notice by publication in an
34 official paper or a paper of general circulation in the City;

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36 **WHEREAS**, a public hearing was conducted on [INSERT DATE];

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38 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
39 notice of the time and place of such hearing in an official paper or newspaper of general circulation
40 in the City; and

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42 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
43 of the Lewes community.

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45 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
46 at all times thereto, in the manner following to-wit:

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Section 1. Chapter 197, Section 197-74, of the Municipal Code of the City of Lewes, Delaware, be and the same is hereby further amended by making insertions as shown by underline and deletions as shown by strikethrough to subsection 197-74 as follows:

B. Definition: [Amended 8-12-2019]

(5) WETLAND BUFFER - An area located upland and landward of the delineated wetlands line, at the time of accepted delineation, that is established or will be established with vegetation to protect the wetlands and terrestrial environment from human disturbance, even if the area was previously disturbed by human activity.

D. Identification on development plans and in the field.

(1) Development plans shall include a report delineating the locations of all both state and federal wetlands by legal description with bearings and distances and with each flag point numbered, signed, and dated. **[Amended 8-12-2019]**

(c) The wetlands shall be flagged and the flags shall remain on site for major subdivisions during construction of the development.

G. Wetland buffers

(1) Purpose: provide standards for the establishment of a buffer around all wetlands in major subdivisions as the wetlands boundaries are expected to change over time; to provide standards for protecting wetlands in major subdivisions; to encourage natural drainage; and to encourage best management practices and design standards.

(2) Wetland buffer zones

(a) A 50-ft. wetlands buffer shall be established landward from the boundaries of all wetlands. This buffer shall consists of two zones as defined below.

(i) Wetland buffer zone

- Zone A. – 20 ft. wide on the upland side of the wetland buffer
- Zone B. – 30 ft. wide beyond zone A except as provided in G(4).

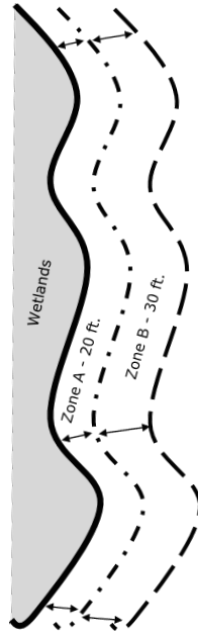


Figure 1- Wetlands Buffer Zones Ex. NTS

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(ii) Permitted Activities

| <u>Activity</u> | <u>Zone A</u> | <u>Zone B</u> |
|---|----------------------|------------------|
| <u>State and federal permitted disturbances such as road crossing and fill with permits</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Other road crossings, such as bridges with permits</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Stormwater management outfalls permitted by Sussex Conservation District (SCD)</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Invasive species control</u> | <u>Required</u> | <u>Required</u> |
| <u>Planting of native vegetation</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Floodplain creation without impacting associated wetlands with permits</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Tax ditch maintenance</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Stormwater management BMP's</u> | <u>Not permitted</u> | <u>Permitted</u> |
| <u>Recreational trails constructed of permeable materials</u> | <u>Not permitted</u> | <u>Permitted</u> |
| <u>Selective cutting for maintenance</u> | <u>Not permitted</u> | <u>Permitted</u> |
| <u>Erosion or stabilization measures</u> | <u>Not permitted</u> | <u>Permitted</u> |
| <u>Boat ramps with permits</u> | <u>Permitted</u> | <u>Permitted</u> |
| <u>Boardwalks</u> | <u>Not permitted</u> | <u>Permitted</u> |
| <u>Docks with permits</u> | <u>Permitted</u> | <u>Permitted</u> |

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(iii) Additional regulations

No buffers are required for wetlands to be filled with a valid USACE

92 and/or DNREC permit.

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94 (iv) The wetlands wetland buffer shall not traverse any lot intended to be
95 developed with one or more dwelling units.

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97 (3) Authorized Impacts

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99 (a) Development activities shall not be authorized in Waters of the US, Waters of the
100 State, delineated wetlands, or wetland buffers without approval from the United
101 States Army Corp of Engineers and/or DNREC. Such allowable activities permitted
102 may include bridge crossings, utility crossings, boat ramps, docks, or stormwater
103 outfalls, only with proper approval and permitting.

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105 (b) Major subdivision activities such as permanent or temporary structures shall not be
106 authorized in wetlands or wetland buffers except when the following criteria are
107 met:

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109 (i) The applicant has taken every reasonable step to avoid adverse impact to
110 the wetland and buffer; and

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112 (ii) The applicant has provided appropriate mitigation for adverse impacts to
113 the wetland and buffer.

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115 (4) Wetlands Buffer-Width Averaging:

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117 (a) Wetlands buffer width averaging can be utilized to allow flexibility in site design
118 and buffer width due to non-conformities in shorelines/wetlands lines.

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120 (b) Wetlands buffer width averaging will require the overall total area to be provided,
121 and no area reduction will be allowed implementing averaging.

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123 (c) Buffer width averaging may be utilized to adjust the width of the buffer along the
124 length, allowing a reduction of the width for short runs while meeting the overall
125 area of buffer to be provided as to not reduce the wetlands function or values

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127 (d) The overall square footage of Zone B Wetland Buffer must be achieved within
128 the boundaries of the property to be developed

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130 (e) Wetland buffer width averaging is not available for Zone A.

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132 (f) Wetland buffer width averaging may be used on all of the Zone B wetland buffers

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134 (g) Zone B Wetland buffer averaging shall not be expanded more than double the
135 width of Zone B wetland Buffer as reference in attached table.

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137 (5) Buffer Maintenance and Management:

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139 (a). Maintenance Standards
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141 (i) All buffers that are composed of native species should be preserved to the
142 maximum extent practicable with no disturbance of native species
143 allowed in Zone A and only selective cutting of native species allowed in
144 Zone B.
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146 (ii) All buffers that are composed of native species shall be maintained with
147 no mowing allowed in Zone A. Planting of native woody species is
148 encouraged in these buffers. Grass in Zone B shall be mowed a maximum
149 of four times per year.
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151 (iii) All buffers that are composed of nonnative species should be maintained
152 to minimize nonnative species and to encourage colonization from native
153 noninvasive species. Planting of native woody species is encouraged in
154 these buffers. Planting of nonnative and invasive species is prohibited.
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156 (b) Buffer Management Plan. All major subdivisions that contain buffers shall be
157 required to submit a buffer management plan and inventory of trees and plants,
158 prepared by a qualified professional that describes measures for maintaining and
159 if applicable, improving buffer on the site. The community's homeowners'
160 association shall be responsible for maintaining the buffer.
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162 (i) The Buffer Management Plan shall include that all maintenance of the
163 buffer shall comply with City of Lewes codes and/or policies regarding
164 invasive species.
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166 **Section 2.** If any provision of this Ordinance shall be deemed or held to be invalid or
167 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
168 any other provision of this Ordinance which may be given effect without such invalid or
169 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
170 be severable.
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172 **Section 3.** This Ordinance shall take effect immediately upon its adoption by the Mayor
173 and City Council of the City of Lewes.
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175 Adopted by the Mayor and City Council
176 of the City of Lewes
177 _____, 2020
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180 I, [INSERT NAME], Secretary of the City Council of the City of Lewes, do hereby certify that
181 the foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council
182 at its regular meeting on _____, at which a quorum was present and voting throughout
183 and the same is still in full force and effect.

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Secretary

SYNOPSIS: This Ordinance makes a variety of amendments to the residential zoning regulations relating to the official zoning map, zoning district purpose statements, permitted uses, dimensional regulations, lot standards, and lot averaging.