

Appendix 9

EXCERPTS FROM TOWN CODE

§ 163-19. Lots.

- A. Arrangement. The arrangement of lots shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in locating a building on each lot and in providing access to buildings on such lots from an approved street.
- B. Access across a watercourse. Where a watercourse separates the buildable area of a lot from the access street, provision shall be made for the installation of a culvert or other structure of a design approved by the Town Engineer.
- C. Zoning requirements. Proposed lots shall meet all applicable requirements of the Zoning Law. *Editor's Note: See Ch. 194, Zoning.* The number of lots in a proposed subdivision shall not exceed the number of lots permitted under the provisions of § 194-14.1 of the Zoning Law. All lots must comply with the following two standards: **[Amended 11-14-2002 by L.L. No. 2-2002]**

- (1) Standards for lot count. For all subdivision applications, the maximum number of lots or dwelling units (N) which the Planning Board may approve for land to be subdivided shall be the whole number (all fractions excluded) which results from the following calculation: **[Amended 9-27-2007 by L.L. No. 7-2007** *Editor's Note: This local law provided that it will not apply to any application which has received preliminary approval upon the effective date of this law nor will this local law apply to any application for which a determination of significance has been adopted as of the effective date of this law and, in addition, for which a DEIS has heretofore been submitted to the lead agency conducting environmental review or for which a DEIS will be submitted within nine months from the effective date of this law.]*

Gross parcel area (GPA), minus areas of wetlands, water bodies and watercourses (WWW) as defined in the Town Code Wetlands Ordinance, *Editor's Note: See Ch. 110, Freshwater Wetlands, Water Bodies and Watercourses.* minus areas of freshwater wetlands (FW), as defined in Article 24 of the NYS Environmental Conservation Law, minus areas within the one-hundred-year flood boundaries (FB) as defined on the Flood Boundary and Floodway Map issued by the Federal Emergency Management Agency, minus 50% of steep slopes (SS) over 20% minus 10% of the gross parcel area (GPA) (the ten-percent GPA deduction is to be made only when streets, shared driveways or private roads are included within the subdivision); all divided by the minimum lot size (MLS) required in the zoning district in which the parcel is located.

Lot count formula is:

$$N = \frac{\text{GPA} - \text{WWW} - \text{FW} - \text{FB} - 50\% \text{ SS} - 10\% \text{ GPA}}{\text{MLS}}$$

- (a) Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.
- (b) From the acreage remaining after the deduction, the applicant shall further deduct the area of land necessary to provide roads, drainage facilities, and other infrastructure to serve the subdivision. The acreage remaining shall then be divided by the minimum lot size shown in the bulk schedule for conventional lots in the district in question. The number of lots to be created in the subdivision shall in no case be higher than the number derived in this calculation, subject to the incentive provisions of the Affordable Housing Law.
Editor's Note: See Ch. 194, Zoning, Art. XXIII, Affordable Housing.

(2) Minimum buildable area:

- (a) Each detached single-family lot shall provide a minimum buildable area as follows. The minimums provided herein are not subject to decrease under the Affordable Housing Law provisions.

Type of Subdivision	Minimum Buildable Area
With individual wells and individual sewage disposal systems	3/4 acre
With central water and individual sewage disposal systems, or vice versa	1/2 acre
With central water and central sewers	10,000 square feet average, with no lot smaller than 7,500 square feet

- (b) Where lots are more than double the minimum required area for the district, such lots shall be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots.

- (3) Lots in the CRD Zoning District are subject to exclusions of environmentally sensitive lands in that chapter. Accordingly, the requirements of Subsection C(1) and (2) above shall not apply to lots in CRD Zoning Districts.

D. Side lot lines. Side lot lines shall be at right angles to street lines unless variation from this rule will give a better street or lot plan.

E. Access from arterial or collector streets. Lots shall not, in general, derive access exclusively from an arterial or collector street. Where driveway access from an arterial or collector street may be necessary for several adjoining lots, the Planning Board may require that such lots be served by a combined access drive in order to limit possible traffic hazards on such street.

F. Lands subject to flooding. Land subject to flooding or periodic inundation as delineated by the United States Department of Housing and Urban Development Flood Hazard Maps and land deemed by the Board to be uninhabitable shall not be platted for residential occupancy nor for such other uses as may increase danger to health, life or property or aggravate the flood hazard. Such uses as shall not be endangered by periodic or occasional inundation or as shall not procure unsatisfactory living conditions may, at the discretion of the Planning Board, be permitted. **[Amended 6-10-1976]**

G. (Reserved)

H. Requirements for approval of flag lots. **[Added 11-14-2002 by L.L. No. 9-2002; amended 10-28-2010 by L.L. No. 6-2010]**

- (1) Each proposed flag lot shall meet the applicable standards of § **194-92.1** of the Zoning and must be created in accordance with all ordinances of the zoning district in which they are located. The buildable portion of the flag lot shall be at least 50% greater than the minimum lot area in the underlying zoning district, but in no event less than one acre.
- (2) It must be shown to the satisfaction of the Planning Board that the parcel has an environmental or topographical hardship, which prevents a non-flag-configured division of the property.
- (3) It must be shown to the satisfaction of the Planning Board that the proposed flag lot will not, for reason of flooding, inadequate drainage, adverse soil or rock formation, unfavorable topography, or for any other reason be harmful to the health, safety or welfare of the property owner, adjacent landowners, or the community.
- (4) No more than one flag lot may be created through the division of a single parcel.
- (5) The Planning Board shall designate the property line from which the depth of the yard on a flag lot will be measured after considering the optimum orientation of the principal dwelling to minimize negative impacts on surrounding properties. The designated property line shall serve as the abutting street right-of-way for building setback purposes.
- (6) In addition to the foregoing requirements, the subdivider shall demonstrate to the satisfaction of the Planning Board that:
 - (a) There are no visual obstructions at the intersection of the access point and the street.
 - (b) The relative locations of the flag lot driveway and adjoining driveways are appropriate.
 - (c) Adequate access for emergency vehicles to the house is provided.
 - (d) Appropriate privacy is provided to both the flag lot and surrounding lots. Landscaping is particularly important to visually separate the shared lot line where the front line of the flag lot adjoins the rear line of the lot in front of it. Where existing landscaping is

insufficient, the Planning Board may require the placement of additional landscape screening to provide a ten-foot-deep buffer along shared property lines. In appropriate cases, the Planning Board may also require buffering along the access strip to provide appropriate privacy between adjoining lots.

I. Lot line adjustment. [**Added 6-26-2008 by L.L. No. 2-2008**]

- (1) Upon receipt of a proper application and fee for subdivision approval and a survey illustrating existing and proposed lot lines, a lot line adjustment between two lots may be exempted by resolution of the Planning Board from all other procedures and standards otherwise required by this chapter if such adjustment neither creates any additional lot, results in any lot's becoming substandard nor increases or decreases any lot area by more than 20% or 20,000 square feet of its original lot area.
- (2) Upon approval the property owners must, within 60 days, submit for approval and file deeds for each lot reflecting the lot line adjustment. If said deeds are not approved and filed within said 60 days, the approval expires.

§ 194-14.1. Environmentally sensitive lands. [Added 11-14-2002 by L.L. No. 2-2002]

A. Designation. For the purpose of these regulations, "environmentally sensitive lands" shall include lands defined as "floodways," "water bodies," "wetlands," "one-hundred-year floodplains," and "steep slopes" as defined in § 194-3.

B. Proposed lots in conventional subdivisions must comply with the following two standards:

- (1) Standards for lot count. For all subdivision applications, the maximum number of lots or dwelling units (N) which the Planning Board may approve for land to be subdivided shall be the whole number (all fractions excluded) which results from the following calculation:
[Amended 9-27-2007 by L.L. No. 7-2007 *Editor's Note: This local law provided that it will not apply to any application which has received preliminary approval upon the effective date of this law nor will this local law apply to any application for which a determination of significance has been adopted as of the effective date of this law and, in addition, for which a DEIS has heretofore been submitted to the lead agency conducting environmental review or for which a DEIS will be submitted within nine months from the effective date of this law.]*

Gross parcel area (GPA), minus areas of wetlands, water bodies and watercourses (WWW) as defined in the Town Code Wetlands Ordinance, *Editor's Note: See Ch. 110, Freshwater Wetlands, Water Bodies and Watercourses.* minus areas of freshwater wetlands (FW), as defined in Article 24 of the NYS Environmental Conservation Law, minus areas within the one-hundred-year flood boundaries (FB) as defined on the Flood Boundary and Floodway Map issued by the Federal Emergency Management Agency, minus 50% of steep slopes (SS) over 20% minus 10% of the gross parcel area (GPA) (the ten-percent GPA deduction is to be made only when streets, shared driveways or private roads are included within the subdivision); all divided by the minimum lot size (MLS) required in the zoning district in which the parcel is located.

Lot count formula is:

GPA-WWW-FW-FB-50% SS-10% GPA

N.= -----

MLS

- (a) Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.
- (b) From the acreage remaining after the deduction, the applicant shall further deduct the area of land necessary to provide roads, drainage facilities, and other infrastructure to serve the subdivision. The acreage remaining shall then be divided by the minimum lot size

shown in the bulk schedule for conventional lots in the district in question. The number of lots to be created in the subdivision shall in no case be higher than the number derived in this calculation, subject to the incentive provisions of the Affordable Housing Laws.

Editor's Note: See Art. XXIII.

- (2) Minimum buildable area. Each detached single-family lot shall provide a minimum buildable area as follows. The minimums provided herein are not subject to decrease under the Affordable Housing Law provisions.

Type of Subdivision	Minimum Buildable Area
With individual wells and individual sewage disposal systems	3/4 acre
With central water and individual sewage disposal systems, or vice versa	1/2 acre
With central water and central sewers	10,000 square feet average, with no lot smaller than 7,500 square feet

- (3) Lots in the CRD Zoning District are subject to the exclusions of environmentally sensitive lands in that chapter. Accordingly, the requirements of Subsection **B(1)** and **(2)** above do not apply to lots in the CRD Zone.

C. Proposed site plans for nonresidential development. Environmentally sensitive lands shall be counted at the following percentages of their gross land area in meeting the requirements of minimum lot area or floor area ratio under the bulk regulations of the Zoning Law.

Type of Land	Percentage to be Discounted
Floodway	100%
Floodplain	50%
Steep slopes (greater than 20%)	50%
Water bodies	100%
Wetlands	50%

- (1) Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.

D. Applicability. This provision shall apply to all lots created after December 5, 2002 (the effective date of this section), including subdivisions and resubdivisions, and shall apply to all

site plans approved after the effective date, including site plan amendments or expansions, except that this section shall not apply to lots on a subdivision map which has received preliminary subdivision approval by the East Fishkill Planning Board on or before December 5, 2002 (the effective date of this section), provided that a legally sufficient application for final subdivision approval is submitted to the Planning Board within six months after the effective date of this section.

NEW YORK STATE DEPARTMENT OF STATE

Local Law Filing

41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~
~~City~~ of EAST FISHKILL
~~Town~~
~~Village~~

Local Law No. 2 of the year 2002

A local law Amending the Zoning and Subdivision Chapters of The
(Insert Title)
Code of The Town of East Fishkill To Protect Environmentally
Sensitive Lands

Be it enacted by the TOWN BOARD of the

~~County~~
~~City~~ of EAST FISHKILL as follows:
~~Town~~
~~Village~~

SECTION I. TITLE

This law shall be entitled: "A Local Law amending the Zoning and Subdivision Chapters of the Code of the Town of East Fishkill to protect Environmentally Sensitive Lands."

SECTION II. PURPOSE AND INTENT

The Town Board of the Town of East Fishkill hereby renders the following findings and declares the following purposes for this Local Law:

- A. Conservation is one of the three major watchwords of both the 1982 Comprehensive Plan and the 2002 Draft Comprehensive Plan for the Town of East Fishkill. Indeed, the 2002

Draft Plan states, "[f]urther growth should be channeled into the land that can best accommodate it so as to minimize the adverse environmental impacts to the Town."

- B. A major goal of the 2002 Draft Comprehensive Plan is to adjust allowable densities within the Town, to be more congruent with land characteristics. The Draft Plan states that regulations shall recognize the suitability of the land for development, as well as the underlying zoning.
- C. Land development which inappropriately treats natural resources has the potential of encroaching on, despoiling, polluting or eliminating many of the wetlands, ponds, streams and water retention areas in the Town and other natural resources and the processes associated with them, which are important physical, economic, social, aesthetic, ecological and recreational assets to the Town and its present and future residents.
- D. Much of the undeveloped land in the Town contains wetlands and steep slopes that constrain development and make it more difficult to build roads and houses. Other wetlands, floodplain, and steep sloped areas also form a part of East Fishkill's open space network.
- E. The way in which undeveloped acreage in the town will be developed is of critical importance. It is the purpose of this Local Law to ensure the public health, safety and welfare of present and future residents of the Town of East Fishkill by maintaining and protecting environmentally sensitive lands by reducing the potential amount of development in areas with steep slopes, wetlands and floodplains and by controlling encroachments and activities which could harm these sensitive resources.
- F. This local law is also being enacted for the purpose of preventing erosion, minimizing stormwater runoff and flooding, providing safe building sites, preventing landslides and soil instability, protecting the quantity and quality of the Town's surface and ground water resources, preserving areas of wildlife habitat, minimizing the area of land disturbance related to site development and protecting the Town's character and property values.

SECTION III. AMENDMENT

- 1. Section 163-19 of the Code of the Town of East Fishkill (Subdivision of Land) entitled "Lots" is hereby amended by changing the title of subdivision "C" from "Lot dimension and area" to "Zoning requirements" and changing the first sentence thereof that requires that new lots meet all applicable provisions of the Zoning Law, and not just dimensional and area requirements, and by incorporating a two-pronged standard that subdivisions must meet relating to environmentally sensitive lands. Section 163-19(C), as amended, will read as follows:

§ 163-19. Lots

C. **Zoning Requirements.** Proposed lots shall meet all applicable requirements of the Zoning Law. The number of lots in a proposed subdivision shall not exceed the number of lots permitted under the provisions of Section 194-14.1 of the Zoning Law. All lots must comply with the following two standards:

1. When a subdivision of land is proposed, the developer shall, at the sketch plan phase, or, if no sketch plan is submitted, at the preliminary stage, submit a map to the planning board delimiting the boundaries of all environmentally sensitive lands, as defined in the zoning law. The areas of the environmentally sensitive lands shall be deducted from the total site acreage according to the following percentages:

Types of Lands	Percentage To Be Discounted
Floodway	100%
Floodplain	50%
Steep Slopes (Greater than 20%)	50%
Water Bodies	100%
Wetlands	50%

Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.

From the acreage remaining after the deduction, the applicant shall further deduct the area of land necessary to provide roads, drainage facilities, and other infrastructure to serve the subdivision. The acreage remaining shall then be divided by the minimum lot size shown in the bulk schedule for conventional lots in the district in question. The number of lots to be created in the subdivision shall in no case be higher than the number derived in this calculation, subject to the incentive provisions of the Affordable Housing Law.

2. **Minimum Buildable Area:** Each detached single family lot shall, provide a minimum buildable area as follows. The minimums provided herein are not subject to decrease under the Affordable Housing Law provisions.
- (a) Subdivision with individual wells and individual sewage disposal systems: Minimum buildable area: $\frac{3}{4}$ acre
 - (b) Subdivision with central water and individual sewage disposal systems, or vice versa: Minimum buildable area: $\frac{1}{2}$ acre
 - (c) Subdivision with central water and central sewers: minimum buildable area: 10,000 square feet average, with no lot smaller than 7,500 square feet.

Where lots are more than double the minimum required area for the district, such lots shall be arranged so as to allow further subdivision and the opening of future streets where they would be necessary to serve such potential lots.

3. Lots in the CRD zoning District are subject to exclusions of environmentally sensitive lands in that chapter. Accordingly, the requirements of section (1) and (2) above shall not apply to lots in CRD zoning districts.

2. Section 194-3 of the Code of the Town of East Fishkill (Zoning) entitled "Definitions" is hereby amended by adding the following definitions, in proper alphabetical order:

BUILDABLE AREA – the contiguous area of a lot, after deducting all ENVIRONMENTALLY SENSITIVE LANDS.

ENVIRONMENTALLY SENSITIVE LANDS– lands wherein defined as ONE HUNDRED YEAR FLOODPLAIN, STEEP SLOPES, or WETLANDS.

FLOODWAY – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in Section 108-5B of the Code of the Town of East Fishkill

ONE HUNDRED YEAR FLOODPLAIN- an area of special flood hazard and as defined on the Flood Insurance Rate Map ("FIRM") issued by the Federal Emergency Management Agency.

STEEP SLOPE (S)- an area of land with an average gradient of twenty (20%) percent or more, extending over any horizontal length of at least one hundred (100') feet and extending over a horizontal width of at least one hundred (100') feet.

WATER BODIES – lakes, ponds, and any other similar natural or artificial collection of water, whether permanent or temporary.

WETLANDS- an area of land, including any water bodies and watercourses, but not including any regulated or unregulated buffer area, which constitute regulated wetlands as defined under New York State or Federal law or regulations.

3. A new section is added to the Code of the Town of East Fishkill (Zoning), to be numbered 194-14.1, and entitled "Environmentally Sensitive Lands" with text as follows:

§ 194-14.1 Environmentally Sensitive Lands

- A. **Designation.** For the purpose of these regulations, "environmentally sensitive lands" shall include lands defined as "floodways", "water bodies", "wetlands," "one-hundred-year floodplains," and "steep slopes" as defined in Section 194-3.
- B. **Proposed lots in conventional subdivisions must comply with the following two standards:**
 1. When a subdivision of land is proposed, the developer shall, at the sketch plan phase, or, if no sketch plan is submitted, at the preliminary stage, submit a map to the planning board delimiting the boundaries of all environmentally sensitive lands, as defined in the zoning law. The areas of the environmentally sensitive lands shall be deducted from the total site acreage according to the following percentages:

Types of Lands	Percentage To Be Discounted
Floodway	100%
Floodplain	50%
Steep Slopes (Greater than 20%)	50%
Water Bodies	100%
Wetlands	50%

Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.

From the acreage remaining after the deduction, the applicant shall further deduct the area of land necessary to provide roads, drainage facilities, and other infrastructure to serve the subdivision. The acreage remaining shall then be divided by the minimum lot size shown in the bulk schedule for conventional lots in the district in question. The number of lots to be created in the subdivision shall in no case be higher than the number derived in this calculation, subject to the incentive provisions of the Affordable Housing Law.

2. **Minimum Buildable Area:** Each detached single family lot shall provide a minimum buildable area as follows. The minimums provided herein are not subject to decrease under the Affordable Housing Law provisions.
 - (a) Subdivision with individual wells and individual sewage disposal systems: Minimum buildable area: $\frac{3}{4}$ acre
 - (b) Subdivision with central water and individual sewage disposal systems, or vice versa: Minimum buildable area: $\frac{1}{2}$ acre
 - (c) Subdivision with central water and central sewers: minimum buildable area—10,000 square feet average with no lot with a smaller buildable area than 7,500 square feet
3. Lots in the CRD Zoning District are subject to the exclusions of environmentally sensitive lands in that chapter. Accordingly, the requirements of section (1) and (2) above do not apply to lots in the CRD Zone.

- C. Proposed site plans for non-residential development. Environmentally sensitive lands shall be counted at the following percentages of their gross land area in meeting the requirements of minimum lot area or Floor Area Ratio under the bulk regulations of the zoning law.

Types of Lands	Percentage To Be Discounted
Floodway	100%
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Water Bodies	100%
Wetlands	50%

Where any area of land is considered environmentally sensitive for more than one reason, no additional discount from area calculation shall be taken on such basis, although the more restrictive percentage would apply where there is a difference.

- D. Applicability: This provision shall apply to all lots created after _____ (the effective date of the Local Law), including subdivisions and resubdivisions, and shall apply to all site plans approved after the effective date, including site plan amendments or expansions, except that this law shall not apply to lots on a subdivision map which has received preliminary subdivision approval by the East Fishkill Planning Board on or before _____ (the effective date of this Local Law), provided that a legally sufficient application for final subdivision approval is submitted to the Planning Board within 6 months after the effective date of this Local Law.
4. Section 163-7 of the Code of the Town of East Fishkill (Subdivision of Land), entitled "Sketch Plan" is hereby amended by adding a new subdivision to section B, entitled "Required information for sketch plan", to be numbered section (B) (4) with text as follows:
- (4) Map of environmentally sensitive lands.

5. Section 163-8 of the Code of the Town of East Fishkill (Subdivision of Land) entitled "Preliminary Plat" is hereby amended by adding a new clause at the end of section (5) thereof to require review of the applicable standards on environmentally sensitive land. The text of section (5) as amended, shall be as follows:
 - (5) Proposed lot sizes, shape and layout, including the appropriate number of lots in compliance with the Zoning Law provisions and compliance with the minimum buildable area provisions of the zoning law.

6. The Schedule of Bulk Regulations which follows Section 194-17 of the Zoning Law is hereby amended to add a footnote reference for all Zoning Districts that all lots must show compliance with Section 194-14.1 on environmentally sensitive lands. A copy of the Schedule of Bulk Regulations as amended by this Local Law is attached hereto as Exhibit "A."

SECTION IV. EFFECTIVE DATE

This Local Law shall take effect immediately upon its filing with the Secretary of State.

SECTION V. SEVERABILITY

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

