



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

December 12, 2024

TOWN OF BARRINGTON
PO BOX 660
BARRINGTON NH 03825

Re: Denied Non-Compliant Wetlands Permit-by-Notification Application (RSA 482-A)
NHDES File Number: 2024-01526
Subject Property: Daniel Carter Road, Barrington, Tax Map # , Lot #

Dear Applicant:

On December 11, 2024, the New Hampshire Department of Environmental Services (NHDES) Wetlands Bureau completed its review of the above-referenced Wetlands Permit-by-Notification Application (Application). Pursuant to RSA 482-A and Env-Wt 309.08, the NHDES Wetlands Bureau determined to reject the project to impact 1,070 square feet in order to make improvements to a boat ramp and install a seasonal pier along Ayers Pond in Barrington. The project did not comply with applicable requirements, therefore, the Application is denied. This decision is based on the following findings:

Standards for Approval

1. In accordance with Env-Wt 104.05 "Repair" when applied to any structure except a stream crossing that is subject to Env-Wt 900 means to fix or replace only those components of an existing legal structure that are worn, broken, or unsound so as to restore the structure to its original purpose.
2. In accordance with Env-Wt 104.06 "Replacement structure" when applied to any structure except a stream crossing that is subject to Env-Wt 900 means a new structure that takes the place of an existing legal structure, that is the same kind of structure in the same location, having the same or smaller surface area and, if a docking structure, the same number or fewer boatslips, such that in all material aspects, the new structure is no more impacting to the environment or abutting properties than the original structure. For the replacement of poles or piles, the new pole or pile may be placed immediately adjacent to the pole or pile being replaced.
3. In accordance with Env-Wt 309.06(a)(5), Availability of Permit-by-Notification (PBN), any person intending to undertake activities in a jurisdictional area may do so under a PBN as authorized by RSA 482-A:11, VI if the project is the construction, installation, or modification of docking structures that complies with Env-Wt 513.24(a).
4. In accordance with Env-Wt 309.06(a)(8), Availability of Permit-by-Notification (PBN), any person intending to undertake activities in a jurisdictional area may do so under a PBN as authorized by RSA 482-A:11, VI if the project is the repair or replacement of an existing legal boat launch under Env-Wt 518.07(b)(1).
5. In accordance with RSA 482-A:3, XIII(a), all boat docking facilities shall be at least 20 feet from an abutting property line in non-tidal waters, and at least 20 feet in tidal waters.

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6. In accordance with RSA 482-A:11, Administrative Provisions, II, decisions of the department or council under this chapter shall be consistent with the purposes of this chapter as set forth in RSA 482-A:1. Before granting a permit under this chapter, the department may require reasonable proof of ownership by a private landowner-applicant. If a permit is granted, the decision of the department may contain reasonable conditions designed to protect the public good. No permit to dredge or fill shall be granted if it shall infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners.
7. In accordance with Env-Wt 309.08(c), if the PBN application is not complete, the department shall send a written request for more information to the applicant and the local governing body within the timelines in Env-Wt 309.08(a) identifying any deficiencies and the information necessary to complete the application. The request for more information shall notify the applicant to submit all necessary information within 30 calendar days of the date of the written notice or the PBN application shall be denied.
8. In accordance with Env-Wt 309.08(d)(2), within 30 calendar days of receipt of a complete response to a request for more information as described in Env-Wt 309.08(c), the department shall review the response for compliance with applicable department rules and if the complete application does not comply with the applicable requirements, the department shall deny the application and notify the applicant in writing of the reason(s) for denial within 30 calendar days of receiving the complete application.

Finding of Fact

1. On May 30, 2024 the New Hampshire Department of Environmental Services (NHDES) received a Wetland Permit by Notification (PBN) requesting the repair or replacement of an existing legal boat ramp in accordance Env-Wt 518.07(b)(1) and the installation of a seasonal dock in accordance Env-Wt 513.24(a) as specified in Env-Wt 309.06.
2. On June 21, 2024 the Department received written letters of concern from attorney Jason Reimers representing BCM Environmental & Land Law, PLLC and Thomas Burack representing Sheehan Phinney. In summary, the letters expressed concerns related to the legal existence of the boat ramp, the legal title to occupy and use land where the ramp current exists, and the proposed ramp fails to meet the definition of repair or replacement.
3. On June 24, 2024 the Department issue a Request for More Information Letter (RFMI) requesting the applicant provide material evidence that the existing launch surface is a legal ramp pre-dating July 2, 1969. The Department also indicated that technical review of the proposed ramp relative to the existing conditions plan and photographs conclude that the proposed new launch surface is an expansion of the existing surface, not a repair or replacement. The Department request that the applicant retreat the proposed launch repair to only include replacement of the existing footprint of the launch surface. Furthermore, the department request the applicant provide a plan that clearly shows the location of abutting property lines in accordance with Env-Wt 309.07(c)(4).
4. The Department received a letter dated July 8, 2024 from the United States Department of Agriculture (USDA). The letter expressed opposition to the proposed boat ramp as the area to be impacted for the ramp project is part of a Wetland Reserve Program Easement (No. 66142809A0051) held by the United States which prohibits boat launches.
5. On July 18, 2024 the Department received and agreed to waive the timeframes to respond to the Departments June 24, 2024 RFMI Letter in order to provide more time to address the concerns related to the legal existence of the ramp and the issues concerning ownership of the land.
6. On November 1, 2024 the applicant submitted a response to the Department RFMI letter. The response included a revised plan revision dated November 1, 2024 by CMA Engineers (Revised Plan) which maintained the initial proposal to expand the ramp surface. Technical review of the plans indicated that a 2.5 foot x 25 foot seasonal dock would be installed within 20 feet of property identified as Lot 4 on Barrington tax map 105.

Rulings in Support of Denial

1. The Department finds that the proposed 2.5 foot x 25 foot dock is within 20 feet of the abutting property line, therefore, the notification is denied in accordance with RSA 482-A:3, XIII(a).
2. The proposed ramp project is not a repair or replacement as defined pursuant to Env-Wt 104.06 and Env-Wt 104.05, therefore, the Department finds that the notification fails to meet the qualifying criteria in Env-Wt 309.08(b) and the notification is denied.
3. The Department finds that the applicant has failed to provide material evidence that the boat ramp existed prior to July 2, 1969, therefore, the notification fails to meet the qualifying criteria in Env-Wt 309.08(b) and the notification is denied.
4. The Department finds that any future application filed by the Applicant must include clear and convincing evidence that the land to be impacted to construct the ramp is owned by the applicant as necessary to meet RSA 482-A:11.

In accordance with RSA 482-A:10, RSA 21-O:14, and Rules Env-WtC 100-200, **any person aggrieved by this decision may file a Notice of Appeal directly with the NH Wetlands Council (Council) or a Preliminary Notice of Appeal (PNA) and an offer to enter into settlement discussions within 30 days of the decision date, December 11, 2024.** When filing an appeal, every ground claiming the decision is unlawful or unreasonable must be fully set forth in the Notice of Appeal. Only the grounds set forth in the Notice of Appeal are considered by the Council. Information about the Council, including Council Rules, is available at <https://www.nhec.nh.gov/wetlands-council/about>. For appeal related issues, contact the Council Appeals Clerk at (603) 271-6072. A PNA and offer to enter into settlement discussions, shall be filed in accordance with the instructions found at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/prelim-noa-instrctns.pdf> using the form found at <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/prelim-not-of-app.pdf>.

If you have any questions, please contact me directly at (603) 271-4067.

Sincerely,
Calvin G. Diessner
NHDES Shoreland Section Supervisor
Land Resources Management, Water Division

cc: JOSH BOUCHARD Agent
Municipal Clerk/Conservation Commission