

MEMORANDUM

TO: Anthony Ruggiero
Tim Dexter
John Clarke

FROM: Keane & Beane, P.C.

RE: Calculating Buildable Lot Area

DATE: January 24, 2018

The City Council is considering adopting legislation concerning how the City will calculate minimum lot area. At this time, the following language is proposed to be included in the Schedule of Regulations for Residential Districts, § 223-17 of the Code of the City of Beacon:

For all R1 zoning districts involving a parcel over 3 acres and for all RD zoning districts, the lot area per dwelling unit calculation shall first deduct any lot area with slopes over 20 percent, covered by surface water, within a federal regulatory floodway, or within a state or federally regulated wetland.

Please note that the proposed language has already been added to § 223-41.14.B of the Code of the City of Beacon concerning bulk regulations in the Fishkill Creek Development (FCD) District, adopted December 18, 2017 by local law 19 of 2017. The City may want to consider also adding this restriction to the actual text of the City Code, as it did with the FCD District regulations, to make this restriction easier to locate and follow.

Please find below a chart of how other municipalities in Dutchess County regulate minimum lot size. Most municipalities specifically exclude wetland and watercourses in lot area calculations. However, there are a few municipalities that also exclude step slopes.

Municipality	Language	Code Section
Town of Fishkill	<p>In determining compliance with minimum lot area and shape requirements of this chapter, the following shall apply:</p> <p>A. Land subject to easements for drainage facilities and underground public utilities may be included, but street or highway, easement for vehicular access, private right-of-way for vehicles or easement for aboveground utility transmission lines may not be included.</p> <p>B. Land in a zoning district having a higher lot area requirement shall not be used to satisfy a lot area requirement in a zoning district having a lesser lot area requirement; and land in a residence district shall not be used to satisfy a lot area requirement in any other district.</p>	§ 171-26
Town of Pine Plains	<p>A. Applicability. These provisions shall apply to any subdivision, site plan, or special use permit application proposing the development of residential uses.</p> <p>B. Calculation. Wherever the phrase "lot area," "minimum lot area," or "minimum lot size" or a similar term appears in this Zoning Law, such phrase shall be deemed to be based upon net acreage after exclusion of the following lands:</p> <ol style="list-style-type: none"> (1) The one-hundred-year floodplain as defined by the Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps as those maps now exist or as they may be amended from time to time. (2) Wetlands, including New York State designated wetlands, but excluding the one-hundred-foot buffer, and wetlands regulated by the U.S. Army Corps of Engineers or any successor agency, all as those wetlands now exist or as may be found to exist. (3) Lands covered by natural or constructed water bodies, including, without limitation, retention and detention basins. (4) (4) Steep topography in excess of 25% slopes. For topography between the slope ranges of 15% and 25%, 50% of said land area shall be excluded from the calculation of minimum lot area. 	§ 275-16.

Town of Wappinger	Net Lot Area is defined as the gross area of a property minus 100% of the area of wetlands, lands within the one-hundred-year floodplain, and areas of steep slopes in excess of 25% when measured over a distance of 50 feet.	§ 240-5
Town of Pawling	Lot Area is defined as the total area within the property lines, excluding external roads. The property line adjacent to the road, for the purpose of this chapter, shall be deemed to be not less than 25 feet from the center line of a minor road, nor less than 30 feet from the center line of a collector road, nor less than 40 feet from the center line of a major road, nor less than 60 feet from the center line of an arterial highway. To calculate the lot area, not more than 10% of the minimum area required by the Town Code may be comprised of land which is under water or subject to periodic flooding.	§ 111-3
Union Vale	<p>A. No more than 25% of the required minimum lot area for any lot in any zoning district may be fulfilled by land which is included within either a designated wetland as delineated by the New York State Department of Environmental Conservation in accordance with Article 24 of the Environmental Conservation Law or any other wetland area subject to jurisdiction by the U.S. Army Corps of Engineers pursuant to Section 404 of the Federal Clean Water Act, which lies under water or which is subject to periodic flooding under conditions of a one-hundred-year flood, as delineated by the Federal Emergency Management Agency and set forth within Article II of the chapter as the Flood-Fringe Overlay District (FF-O) District. In other terms, any lot must include dry upland area of not less than 75% of the minimum lot area for the zoning district.</p> <p>B. In the RD-10 District, not less than 50% of the required minimum lot area for the zoning district shall be provided through contiguous dry upland area. In all other zoning districts, not less than 60% of the required minimum lot area shall be provided through contiguous dry upland area.</p> <p>C. All minimum front, side and rear yard requirements set forth within the District Schedule of Area and Bulk Regulations must be satisfied by measurement wholly on dry land, except that for purposes of this subsection, land which is covered by a stream less than 10 feet in average width at mean water level or land covered by a pond not more than 2,000 square feet in surface area at normal high-water level shall not be considered as being under water.</p>	§ 210-22

Town of Clinton	At least 75% of the required minimum lot area for any lot in any district shall be fulfilled by land which is not within a designated wetland, as regulated by the New York State Department of Environmental Conservation and by land which is not under water. Land completely under water shall not be used in the calculation of the maximum number of dwelling units permitted in a subdivision. All minimum front, side and rear yard requirements must be satisfied by measurement from the flagged wetland boundary or the mean high water mark for surface water, whichever is more restrictive. However, for purposes of this section, land which is covered by a stream less than five feet in average width at mean water level, or land covered by a pond not exceeding 150 square feet in surface area at normal high water level, shall not be considered as being under water.	§ 250-26
Town of Rhinebeck	No more than 25% of the required minimum lot area in a conventional subdivision, for any lot in any district, may be fulfilled by land which is included within a designated wetland, as delineated by the New York State Department of Environmental Conservation, regulated by the United States Army Corps of Engineers and/or the Town of Rhinebeck, which lies under water, or which is subject to periodic flooding under conditions of a one-hundred-year flood, as delineated by the FF-O District. When calculating the dimensional standards to be applied in a conservation subdivision, no more than 25% of the house lot area may be fulfilled by land which is included within a designated wetland, as delineated by the New York State Department of Environmental Conservation, regulated by the United States Army Corps of Engineers and/or the Town of Rhinebeck, which lies under water, or which is subject to periodic flooding under conditions of a one-hundred-year flood, as delineated by the FF-O District. All minimum front, side and rear yard requirements must be satisfied by measurement wholly on dry land, except that, for purposes of this section, land which is covered by an isolated pond not exceeding 150 square feet in surface area at normal high water level shall not be considered as being under water. Chapter 120 of the Town Code, the Town of Rhinebeck Freshwater Wetlands Law, also imposes additional requirements and may require issuance of a wetlands permit by the Town Planning Board. Applicants for development should consult Chapter 120 and, as applicable, state and federal agency requirements, to obtain a complete understanding of the regulations in place on sites containing freshwater wetlands.	§ 125-32
Town of Dover	In computing minimum lot sizes pursuant to the Dimensional Table, the area of wetlands shall be subtracted from total acreage in the lot area calculation.	§ 145-40.A