



Town of Walpole
Commonwealth of Massachusetts

Date: February 14, 2020, revised **11-9-2020**
To: Zoning Board of Appeals
From: Conservation Commission/
Landis Hershey, Conservation Agent

RE: Comprehensive Permit Application and Notice of Public hearing
Cedar Crossing and Cedar Edge (51-53-55 Summer Street)

MA Wetland Protection Act

The Applicant filed a Notice of Intent (NOI) Application with the Conservation Commission, May 21, 2020. The first public hearing was June 24, 2020 and continued hearings August 12, 2020, September 23, 2020, and October 28, 2020. Presently the hearing was continued to December 9, 2020.

The Conservation Commission retained BETA consulting Group to peer review the NOI, plans and associated documents for compliance with *310 CMR 10.00 MA Wetlands Protection Act Regulations*. The peer review centered on wetland resource area protection specifically (but not limited to) the impacts of the two wetland crossings, the development's impacts on the three (3) identified vernal pools, and the proposed activities within the riverfront area. In addition, BETA reviewed the TetraTech report dated 4/10/2020 submitted to the ZBA and reviewed the *Stormwater Management Report, by Howard Stein Hudson*, May 2020 for compliance with *310 CMR 10.00*.

Based on the Conservation review process the Applicant moved the stormwater basins out of the riverfront area, expanded the boundary of vernal pool #3, and moved activity at least 100-feet away from the boundary of the vernal pool boundaries. The Applicant also conducted additional on-site soil tests requested by BETA to verify soils for the stormwater management design.

The Commission commended the Applicant for pulling out the activity within the riverfront area leaving an important wetland resource area on-site undeveloped to the benefit of wildlife, passive recreation, water quality, pollution prevention, and flood control.

The Commission briefly discussed the two crossing. At the 10-28-2020 hearing the Chairman asked the Applicant to provide the Commission with a summary justifying why the project required two crossings before the December 9, 2020 continued hearing.

The Commission asked for details on the plan for the crossing culverts, the retaining walls and the replication areas.

There are several items in the BETA report responses by the Applicant 10-14-20 that should be included on the plans.

The Conservation Commission is waiting for the full plan set and revised stormwater management report based on the revisions shown on the *Proposed Site Plan by Howard Stein Hudson, dated revised 10-14-2020* and the Applicant's responses to the BETA reports. When the plans are received the Commission will have the revised materials reviewed by BETA for compliance with 310 CMR 10.00.

Walpole Wetlands Protection Bylaw (revised 5-7-2018) and Regulations (revised 6-26-19)

In addition, to the state level of wetland resource protection under the MA Wetlands Protection Act and Regulations, the town adopted the Wetland Protection Bylaw (Bylaw) and Regulations (Ch. 561. Div. 2 of the General Bylaws) which includes both requirements of the MA Wetland Protection Act and requirements over and beyond that of the Wetland Protection Act and Regulations.

REQUEST FOR WAIVERS

The Applicant is seeking a waiver from the *Wetland Protection Bylaw and Regulations*, specifically the sections taking jurisdiction beyond the MA Wetlands Protection Act and Regulations, such as:

***Regulations section 1.4.1**-The Commission shall require the Applicant to maintain a twenty-five (25) foot wide contiguous, undisturbed vegetative buffer measured from, and parallel to, the wetland resource boundary, as a minimum.*

The no alteration area requirement is supported by the definition of Protected Resource Area **§561-9 of the Bylaw and section 1.2 of the Regulations:**

***§561-9: Definitions-Protected Resource Area** - shall mean the following areas: any bank, freshwater wetland, marsh, bog, wet meadow, swamp, stream, river, pond, lake, vernal pool, or any land bordering thereon, or any land subject to flooding or inundation. Said resource areas shall be protected whether or not they border surface water. Bordering in this context shall mean either (a) 100 feet horizontally lateral from any of the foregoing areas; or (b) 100 feet horizontally lateral from the water elevation of the 100 year storm, whichever is the greater of (a) or (b); and (c) land within 200 feet of the mean annual high-water line of any year round river or stream.*

***Regulations – section 1.2**-Any bank, freshwater wetland, marsh, wet meadow, bog, swamp, stream, river, pond, lake, vernal pool (as defined by the Natural Heritage &*

Endangered Species Program), or any land bordering thereon, or any land subject to flooding or inundation. Bordering in this context shall mean either (a) 100-feet horizontally lateral from any of the foregoing areas; or (b) 100-feet lateral from the water elevation of the 100 year storm, whichever is the greater of (a) or (b); and (c) land within 200-feet of the mean annual high-water line of any year round river or stream. Further defined in Section 9 of the Bylaw.

RECOMMEND TO DENY WAIVER:

The Conservation Commission is in opposition to the ZBA waiving the Bylaw and Regulation requirement to include a 25-foot no alteration area as a minimum for the proposed project for the following reasons.

1. The Applicant has already shown that they can design the project and maintain the 25-foot no alteration area within the majority of their site.
2. The project proposes to develop the majority of the buffer zone to the wetlands, maintaining a portion of the buffer zone as undeveloped is beneficial to the town's aesthetics, recreation and health benefits for water quality, pollution prevention, flood control and the potential impacts of climate change.
3. The no alteration area provides protection to the wetland resource areas for the interests of the Town as stated:

***§561-1: Purpose** -The purpose of this Bylaw is to protect wetlands, water resources, flood prone areas and adjoining land areas in this municipality by controlling activities deemed by the ("Commission") likely to have significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, ground water, flood control, water pollution, erosion and sedimentation control, storm damage prevention, fisheries, shellfish, wildlife habitat, recreation, aesthetics, and agricultural values (collectively, the "wetland values protected by the Bylaw ").*

4. **Section 1.3 of the Bylaw Regulations -Bordering Lands** explains the benefits of the no alteration area. Summery below:

The no alteration area provides a vegetative buffer to prevent incremental alteration of wetland resource areas from erosion, sedimentation, landscape maintenance practices, windblown trash and pollutants, and potential impacts of climate changes, and supports the protection of wildlife habitat, water quality, flood protection and ground water protection.

The no alteration area benefits the protection of the wetland resource areas by providing shade from forested buffer areas to modify temperature fluctuations, the vegetation traps pollutants, filters sediments, slows water velocity, the roots permit absorption of water into the groundwater, reduces potential flooding, and protects wildlife by maintaining a small portion of upland corridors for travel, edge habitat, and food and shelter.

5. **Buffer Zone Protection Documentation:** These benefits of protecting a portion of the upland adjacent to wetland resource areas is extensively included in the MACC (Massachusetts Association of Conservation Commissioners) *Buffer Zone Guidebook*, dated June 6, 2019.
6. **Proposed Plans:** The Applicant included the 25-foot no alteration area into the proposed design of the project so it appears that they are able to incorporate the requirement into their design. It is the opinion that the requirement should remain so that the Conservation Commission may provide the ZBA with additional comments if the design changes.
7. **Vernal Pool protection:** The Conservation Commission in the past has imposed a 50-foot no alteration area around vernal pool habitat. The relationship between upland habitat and vernal pool habitat is important in that the species which inhabit the vernal pool in the spring to reproduce live in the upland area during other seasons.

I did not see a request for waivers to *the Stormwater and Erosion Control Bylaw*.

Recommended conditions:

- A. **A construction period stormwater management plan** should be submitted for review including but not limited to:
 - a. Location of stock pile areas, construction entrance, wash out areas, erosion control (compost sock) boundary and reserve.
 - b. Methods for controlling construction period stormwater (such as temporary basins or swales) shown on the plan.
 - c. Temporary and permanent stabilization specifications.
 - d. Requirements to hire erosion control specialist.
 - e. Notes for dewatering,
 - f. Phasing of the project (limiting site clearance to 5 acres at one time).
- B. **Detailed sheets:**
 - a. The crossings with details of the culverts.
 - b. Details of the retaining walls. The retaining walls should be designed not specified designed by others.
 - c. Stormwater BMPs structures details: cross sections of the basins with elevation of ground water and bottom of basins. Include in notes method to protect infiltration basins during construction to prevent compaction. Include in notes that the stormwater basins will be As-built and As-built provided to the Conservation Commission prior to post-construction use. Include in notes that observation of excavation for each basin shall be witnessed by the Town Engineering department.
 - d. **Replication Plan** including location, grades, plantings, soil profile, method to control invasive species during construction and after construction and include bi-annual (spring and fall) monitoring schedule and reports with pictures.

- C. **Revised stormwater report:**
 - a. Including test pit profile information and test pits located on the existing conditions plan and test pits data located at each drainage basins and infiltration units,
 - b. Include O and M plan with location map of BMP's to be maintained, manufacturers specifications for Stormceptor Units and isolator rows, inspection and maintenance of proposed outfalls and culverts.
- D. **Include location of the no alteration signs** approximately every **150-feet** on site plan (taking into consideration the twists and turns of the wetland boundaries to determine locations) with sign specifically at replication areas and crossing.
- E. Show on site plan **pet waste removal signs** at both ends of Riverfront where trail begins and ends.
- F. **Include landscape plan for areas within the 100-foot buffer zone** specifying invasive species maintenance plan, removal of grass clipping and cuttings outside the buffer zones, limit use of non –organic fertilizers and no herbicides or pesticides, drought resistant native plantings, and no private wells for irrigation.