

THE SANCTUARY AT MANCHESTER BY THE SEA
0 SCHOOL STREET, MANCHESTER-BY-THE-SEA, MA

April 5th 2022

Through a Comprehensive Permit, the Manchester-By-The-Sea Board of Appeals has the authority under M.G.L. Chapter 40B and its implementing regulations to waive requirements of local bylaws; further, the Board of Appeals can act on behalf of any local permitting authority through the Comprehensive Permit process. The project plans reflect an attempt to minimize the number of waivers requested and we believe reflects a plan that is contextually appropriate on several different levels. Please find a revised table of the waivers necessary to permit the proposed project. This document and waivers shown on the Civil Site Plans revised through 3/23/2022 supersede all prior waiver requests.

<i>By-Law or Regulations Section</i>	<i>Requirement</i>	<i>Notes</i>
Wetlands Bylaw Section 1.2.2: Use of Home Rule Authority	<i>protect vernal pools as an additional resource area recognized by the Town as significant, but not included in the Act;</i>	This extends the resource area boundary 100 feet into the uplands, unlike the WPA definition. This effectively makes a 130-foot no disturbance zone to vernal pools. This application of this bylaw – particularly the extended scope of the resource area and buffer would make the construction of the driveway essentially impossible and thus would be tantamount to a denial of the permit. As will be demonstrated by the Applicant’s consultant, the project will not impair vernal pool function.
Wetlands Bylaw Section 2.9: Vernal Pool	<i>[Definition of Vernal Pool]</i>	As stated in prior explanation, a waiver is required from the

		expanded definition of the extent of a vernal pool and its buffer in that, under such bylaw, the work required for roadway construction would be within the vernal pool or buffer thereto. As will be demonstrated by the Applicant's consultant, the project will not impair vernal pool function.
Wetlands Bylaw Section 4.1.1: Jurisdiction	<i>Any freshwater or coastal wetland; salt marsh; wetmeadow; bog; swamp; vernal pool; spring; bank; reservoir; lake; pond; river or stream; beach; dune; estuary; coastal bank; lands under water body; land subject to flooding or inundation by groundwater or surface water; land subject to tidal action; coastal storm flowage or flooding;</i>	Requesting waiver specifically for the vernal pool resource area section. This application of this bylaw – particularly the extended scope of the resource area and buffer would make the construction of the driveway essentially impossible and thus would be tantamount to a denial of the permit. As will be demonstrated by the Applicant's consultant, the project will not impair vernal pool function.
Wetlands Bylaw Section 4.4: Jurisdiction and Presumption	<i>Unless the applicant demonstrates by clear and convincing evidence that a significant adverse effect will not occur, it shall be presumed that significant adverse effects will result from any alteration within: 4.4.2 - 30 feet of the edge of any salt marsh, freshwater wetland or vernal pool;</i>	A Waiver is required because work is required within 30 feet for stormwater bioretention area outfall. As will be demonstrated by Applicant's consultant, work will be completed without adversely impacting resource area.

<p>Wetlands Bylaw Section 6.1: Applications and Fees</p>	<p><i>Except as provided in Section 5 hereof, a written NOI application shall be filed with the ConCom to prior to performing any activity affecting a Resource Area. The NOI shall include such information and plans as are deemed necessary by the ConCom to describe proposed activities and their effects on the Resource Area or Resource Area Buffer Zone. No activities shall commence without receiving and complying with a permit issued pursuant to this By-Law.</i></p>	<p>All local applications and consideration within the context of the local bylaws, shall be subsumed into 40B process and under the jurisdiction of the ZBA. As such, the applicant will not be submitting a separate local bylaw NOI filing</p>
<p>Wetlands Bylaw Section 9: Permits and Conditions</p>	<p><i>[Standards of Review for applications under the local wetlands bylaw]</i></p>	<p>Waiver from this entire section. This section is not applicable under c. 40B. Permits and approvals to be granted pursuant to G.L. c. 40B. Enhanced standards and burdens of proof are not applicable under 40B and, if applied, could nullify the project. As will be demonstrated by the Applicant’s consultant, the project will not adversely impact the interests set forth under the Wetlands Protection Act.</p>
<p>Wetlands Bylaw Section 2.2.13: Definitions</p>	<p><i>Any incremental activities, changes or work which have, or may have, a cumulative adverse impact on the Resource Areas protected by this By-Law.</i></p>	<p>This local requirement goes beyond what is required in the Wetlands Protection Act.</p> <p>Moreover, The terms “cumulative” and “incremental” are not defined. Thus, it is open to subjective interpretation and could require a major redesign and a substantial</p>

		loss of units depending on the local Commission's interpretation. The Applicant will demonstrate that the project does not result in adverse impacts to Resource areas and will otherwise be subject to approval from the Conservation Commission under the Wetlands Protection Act
Wetlands Regulations Section 10.1	<p><i>10.1.1 – No Build Zone (50 feet)</i></p> <p><i>10.1.2 – No Disturb Zone (30 feet)</i></p>	Work for the creation of the stormwater management area outfall is proposed in the 30' NDZ and 50' NBZ. The stormwater management area will comply with all necessary requirements and standards but for proper operation, the outfall is required to be in the proposed area. Applicant's consultant will provide documentation that project work will not adversely impact these resource areas.
Wetlands Regulations Section 2.17 & 2.18	<p><i>2.17 – Definition -No Build Zone</i></p> <p><i>2.18 – Definition – No Disturb Zone</i></p>	As stated in previous note, a waiver is required from the No Build and No Disturb Zones. Under such bylaw, the work required for stormwater outfall would be within these zones and would be prohibited. As will be demonstrated by the applicant's consultant, the work will not impair these areas.
Wetlands Regulation Section	<i>Delineation and review of vernal pools</i>	Waiver is requested in that vernal

4.4.2		pools have been established by NHESP and the conditions in the field are adequate to review at the present time
Wetlands Regulations Section 8.2	<i>Clear and Convincing Standard</i>	Waiver is requested from standard regarding work in Resource Areas. Applicant will demonstrate no impact by a preponderance of evidence
Wetlands Regulations Section 9.7	<i>Standard of review for Vernal Pools</i>	As stated in prior note, a waiver is required from the expanded definition of, and protections for vernal pools and their buffer in that, under such regulation, which requires higher burden of proof and an alternatives analysis, the work required for roadway construction, which would be within the vernal pool or buffer thereto, would essentially be prohibited. As will be demonstrated by the Applicant's consultant, the project will not impair vernal pool function.
Wetlands Regulations Section 12.4	<i>Mitigation</i>	Waiver is requested from requirements for mitigation due to alterations to certain resource areas and no-disturb zones. Project will not cause adverse impacts and will provide mitigation, as designed