

BLACKSTONE STREET IMPROVEMENT PLAN - BELLINGHAM, MA
CHAPTER 247 WETLAND REGULATIONS
SECTION 247-25.E (1) - VERNAL POOL NO-DISTURBANCE ZONE
REQUEST FOR WAIVER SECTION 247-1.D(6) AND SECTION 247-10.E
DEP FILE NO. 105-0986

PREPARED BY WALL STREET DEVELOPMENT CORP.
DECEMBER 5, 2025

Summary

Wall Street Development Corp. ("Wall Street") is proposing to construct and improve the Private Way known as Blackstone Street (the "Property") to be consistent with Town's construction standards for roadways. As certain portions of the improvements to the Private Way are within the Commission's jurisdiction, a Notice of Intent (the "NOI") was filed to obtain an Order of Conditions (the "Order") to construct the proposed improvements within the Commission's jurisdiction.

Blackstone Street starts at the intersection with South Main Street (Route 140) and runs southwesterly to the Blackstone town line, where it continues as "Bellingham Road" in Blackstone. The portion of Blackstone Street from South Main Street (Route 140) to its intersection with Maddie Way is an improved public way. The remaining portion of Blackstone Street from Maddie Way to the Blackstone town line (as shown on the Site Plan) currently exists as a variable width gravel road, with some overgrown vegetation. Attached as Exhibit 1 are photos of the existing conditions of Blackstone Street.

The historical records of the Town of Bellingham (the "Town") indicate that the entire length of Blackstone Street to the Blackstone town line was laid out by the Selectmen as a public way on February 22, 1768. Included among the historical records is a 1940 plan of Bellingham showing Blackstone Street as an existing way. Up until 2001, Blackstone Street, including the unpaved, gravel portion of Blackstone Street was classified as a public way in the Town. In 2001, Town Meeting voted to abandon that portion of Blackstone Street between the westerly side of Allen's Way (now Maddie Way) and the Bellingham-Blackstone town line. The Town's vote to abandon this portion of Blackstone Street removed the Town of the responsibility to repair and/or maintain the portion of Blackstone Street, west of Allen's Way (Maddie Way).

The Town Meeting vote to abandon this portion of Blackstone Street resulted in the roadway reverting back to "private way" status, with the fee in the right of way continuing to be subject to the rights of others that may be entitled to use the private way portion of Blackstone Street (the "Private Way"). The Private Way is an existing variable width (between 27 ft and 40 ft) right of way that consists of a gravel-packed road with a gradual hilled terrain. The gravel road serves as primary access to the Property which had been previously used as a gravel mining operation. Wall Street proposes to construct and improve the Private Way to be consistent with the Town's subdivision construction standards.

In preparation of the NOI, the Property was inspected by Goddard Consulting, LLC of Northborough, MA ("Goddard") for the presence of wetland resources as defined by: (1) the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, 40; the "Act") and its implementing regulations (310 CMR 10.00 et seq.; the "Regulations"); (2) the U.S. Clean Water Act (i.e. Section 404 and 401 wetlands) and (3) the Town of Bellingham's Wetland Bylaw and Regulations - Chapter 247 (the "Wetland Bylaw" and Bylaw Regulations"). The boundary of Bordering Vegetated Wetlands ("BVW") or, in the absence of BVW, Bank was delineated in the field in accordance with the definitions set forth in the Regulations at 310 CMR 10.55(2)(c) and 310 CMR 10.54(2). These resource areas have been surveyed and shown on a plan entitled "Blackstone Street Improvements in Bellingham, MA" dated February 14, 2025, last revised October 31, 2025, prepared by Allen Engineering & Associates, Inc. (the "Site Plan"). As noted on the Site Plan, Goddard's delineation shows that the existing gravel road bisects a large BVW system with an internal stream channel south of the existing roadway.

Wall Street proposes to complete and improve the Private Way to provide access for 8-10 lots that have frontage along the Private Way. The property shown on the Site Plan is owned by Varney Bros. Sand & Gravel, Inc. of Bellingham, MA ("Varney") and SAK Realty Trust of Mendon, MA ("SAK") (the "Owners") and is identified on Bellingham Assessor's Map 66, Lots 01 and Map 62, Lots 05 and 01 (the "Property").

Current Conditions

At the present time, there are no utilities or stormwater facilities within the Private Way. Following the filing of the NOI, it was brought to Wall Street's attention that a culvert that had been installed beneath the Private Way that allowed water to pass from the northerly side of the Private Way to the BVW on the southerly side. Upon further investigation, it was determined that the culvert had been blocked, obstructing the flow from the northerly side of the Private Way to the southerly side. While it is unknown how long the culvert has been blocked, the obstruction of the culvert caused the water to pond on the northerly side of the Private Way. With the culvert blocked, water from the pond would over-top the Private Way during high water winter and spring conditions instead of flowing through the culvert. In addition, the blocked culvert caused the hydrological connection between the northerly side of the Private Way and the southerly side to be interrupted. Moreover, the ponding area became a confined basin that was further enlarged with an excess volume of water as a result of the blocked culvert. When the ponding area reached its maximum capacity, the excess water would reach a level that resulted in the excess water overtopping its bank onto the Private Way. In addition, without having an outlet, the confined ponding area held the additional volume of water for much longer periods of time.

While both the Wetland Regulations (310 CMR 10.00) and Section 247-10.A of the Bylaw Regulations permit the restoration and/or reconstruction of the existing blocked culvert, Wall Street has elected not to restore this culvert in lieu of the proposed roadway and stormwater improvements shown on the Site Plan. The proposed improvements include grading, widening and paving the existing gravel road within the existing right of way, along with the installation of utilities and stormwater features to treat and manage stormwater.

As previously mentioned, as a result of the culvert beneath the Private Way being blocked the hydrologic connection between the northerly side and the southerly side of the resource areas had been interrupted for an unknown period of time. As the Site Plan shows, the improvements to the Private Way will include the installation of stormwater features. The proposed stormwater features include the installation of a box culvert to restore the hydrologic connection between the northerly and southerly wetland resource areas. In May, 2025, after the filing of the NOI, Wall Street was made aware that the confined ponded area adjacent to the northerly side of the Private Way had been recently certified as a "vernal pool" by the Massachusetts Wildlife's Natural Heritage & Endangered Species Program ("NHESP"). The proposed box culvert has been designed to maintain the existing water elevations to preserve and sustain the characteristics and functions of the vernal pool.

Along with the NOI and the Site Plan, a report entitled "Drainage Analysis for Blackstone Street Improvements — Blackstone Street in Bellingham, MA" revised through October 31, 2025 prepared by Allen Engineering & Associates, Inc. (the "Drainage Analysis") was filed with the Commission. The Drainage Analysis demonstrated that the stormwater system shown on the Site Plan is designed to manage peak rates of stormwater runoff and stormwater volumes from the Property following the completion of the proposed improvements related to the construction of Blackstone Street in accordance with the MA Stormwater Regulations (the "Stormwater Regulations"). The Drainage Analysis shows that the stormwater runoff will be controlled using "Best Management Practices" and in full compliance with the Stormwater Regulations. The Drainage Analysis demonstrates that the post-construction conditions of Blackstone Street will result in a significant improvement over existing conditions by installing a Stormwater Management System that will provide treatment and 100% groundwater re-charge, while also reducing the peak rates of runoff and offsite runoff volumes.

The goals of the Stormwater Regulations are "aimed at encouraging recharge and preventing stormwater discharges from causing or contributing the pollution of the surface waters and groundwaters of the Commonwealth." The Stormwater Regulations promote direct infiltration of stormwater, treatment of runoff from impervious paved surfaces with best management practices that trap oil and grease and remove sediment, infiltration of treated stormwater to maintain aquifer yield, and good operations and maintenance of stormwater infrastructure. These goals have been embodied in the Stormwater Regulations, standards and methods for implementation and are described in Volume 2 of the MA Stormwater Handbook (the "Stormwater Handbook") and are incorporated in the Stormwater Regulations.

The Stormwater System designed by Allen Engineering is compliant with the Stormwater Regulations and includes appropriate Best Management Practices as described in Volume 2 of the Stormwater Handbook. The Stormwater System includes deep sump catch basins with hooded outlets that are designed to collect sediment, trap grease and oil and treat stormwater.

As noted in the Drainage Analysis, the calculations performed for all design storm events, including the 2-year, 10-year, 25-year and 50-year storm events, confirm that the total peak rates of runoff for the post-development conditions will not exceed those of existing conditions as a result of the implementation of the Stormwater System. The implementation of the Stormwater System, along with the Operation and Maintenance plan (the "O & M Plan") included in the Drainage Analysis, will result in rates of runoff from the proposed Project that will be less than the runoff experienced under the existing conditions.

State Regulatory Jurisdiction

As a result of the 2001 Town Meeting vote the status of the unconstructed portion of Blackstone Street that is the subject of the NOI was reverted back to a Private Way. As a Private Way, the rights to construct and/or make improvements to the Private Way falls under the provisions of M.G.L. c. 185, sec. 5 which provides, in part, the following:

"the owner or owners of real estate abutting on a private way who have by deed existing rights of ingress and egress upon such way or other private ways shall have the right by implication to place, install, or construct in, on, along, under and upon such private way or other private ways pipes, conduits, manholes and other appurtenances necessary for the transmission of [utilities]"

Moreover, in Guillet v. Livernois, 297 Mass. 337, 340 (1937), the Supreme Judicial Court ruled that a property owner with rights in a paper street had "the right to make [the] street passable and usable for its entire width, having due regard to the rights and interests of others." The Court explained:

This follows from the general principle that "when an easement or other property right is created, every right necessary for its enjoyment is included by implication." The right of anyone entitled to use a private way to make reasonable repairs and improvements is well established in cases where the way is already in use. The right exists even more clearly where without improvement the way is impassable and useless. Whether improvements made are reasonable in view of the equal rights of others is largely a question of fact.

In further support of this proposition, the Courts have ruled that because the owners are the "grantee of a lot bounded by a sufficiently designated proposed way not only has an easement in its entire length, Murphy v. Mart Realty of Brockton, Inc., 348 Mass. 675, 677 - 678 (1965), but also has the right to make it passable and usable for its entire width, having due regard to rights and interests of others.... The right exists even more clearly where without improvement the way is impassable and useless. Guillet v. Livernois, 297 Mass. 337,340 (1937)." LeBlanc v. Board of Appeals of Danvers, 32 Mass. App. Ct. 760, n.7 (1992). See also, Brennan v. Decosta, 24 Mass. App. Ct. 968 (1987); Goldstein v. Beal, 317 Mass. 750, 755 (1945).

Based on M.G.L. c. 185, sec. 5 and the rulings of the Court, the proposed construction of improvements to the entire width of the Private Way, as shown on the Site Plan, is permitted as of right.

In conjunction with M.G.L. c. 185, sec. 5, the Wetland Regulations at 310 CMR 10.02(b)2. i. and j. provide the following exemptions:

2. The following minor activities, provided that they comply with 310 CMR 10.02(2)(b)1., are not otherwise subject to regulation under M.G.L. c. 131, § 40:

i. Installation of underground utilities (e.g., electric, gas, water) within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the completion of each workday;

j. Installation and repair of underground sewer lines within existing paved or unpaved roadways and private roadways/driveways, provided that all work is conducted within the roadway or driveway and that all trenches are closed at the end of completion of each workday.

The proposed construction of improvements to the Private Way are considered an exempt activity pursuant to the Wetland Regulations.

Bylaw Regulatory Jurisdiction

The certification of the vernal pool by NHESP initiated an area of jurisdiction under the Bylaw Regulations. Section 247-25 of the Bylaw Regulations entitled "Vernal Pools, associated 100 foot buffer zone and no disturbance zone" regulates activities within the vernal pool and buffer zone of a Vernal Pool as follows:

247-25.D. Presumption of significance. Where a proposed activity involves the removing, filling, dredging, or altering of a vernal pool or its adjacent buffer zone, the Commission shall presume that the vernal pool and/or its zone is significant to the protection of wildlife habitat and rare plant and animal habitat.

The NOI and the Site Plan has demonstrated that the proposal to construct improvements to the Private Way do not include activities that involve "removing, filling, dredging or altering" the vernal pool. However, the proposed construction of the improvement to the Private Way is adjacent to the Vernal Pool and within the buffer zone to the vernal pool. Therefore, the Bylaw Regulation includes a presumption that the activity related to the construction of the improvements within the buffer zone to the vernal pool is "significant to the protection of wildlife habitat and rare plant and animal habitat."

The presumption in Section 247-25.D. of the Bylaw Regulations is reliant on a simple premise - that the condition of the buffer zone to the vernal pool is in a natural, undisturbed condition where wildlife habitat, rare plant and animal habitat may exist.

As previously noted, the Private Way consists of a variable width gravel road approximately 27-40 feet in width. The Private Way serves as the primary access to the Property and was regularly used as access for the gravel extraction operation previously conducted on the Property. The Private Way remains passable and is in continued use as a Private Way. In addition, the Photos attached as Exhibit 1 show that the natural vegetation within the Private Way has been removed, altered or otherwise significantly modified. Moreover, the existing gravel road surface is indicative that any top soil has been removed many years ago. Given the disturbed status of the buffer zone to the vernal pool within the Private Way, it is clear that the buffer zone is not "significant to the protection of wildlife habitat and rare plant and animal habitat." In Wall Street's view, the existing conditions of the Private Way demonstrates that the presumption that the buffer zone is "significant to the protection of wildlife habitat and rare plant and animal habitat" is not valid and therefore, the presumption has been overcome.

Notwithstanding, that the circumstances and existing conditions of the Private Way is clear evidence that the presumption in Section 247-25.D. has been overcome. In any event, should the Commission not be in agreement and does not find that the presumption has been overcome, Section 247-25.E. of the Bylaw Regulations provides for the "Establishment of a no-disturbance zone." which states the following:

Unless the presumption set forth in Section 247-25D of these regulations is overcome, the following standards shall apply to a vernal pool and its buffer zone:

(1) No-disturbance zone. The Commission may require that no activity shall be permitted within a designated number of feet from the delineated edge of a vernal pool, or in the case of a wetland resource area that encompasses the pool, within a designated number of feet from the delineated edge of said wetland resource area. In many cases, this no-disturbance zone may extend for 50 feet. Prohibited activities include, but are not limited to, mosquito spraying, fertilization, herbicide and pesticide applications, grading, landscaping, vegetation control, pruning, cutting, filling, excavation, roadway construction and/or driveway construction. (emphasis supplied)

While, Section 247-25D. allows the Commission to "presume" that a vernal pool and/or its adjacent buffer zone is significant to the protection of wildlife habitat and rare plant and animal habitat, the determination of a setback pursuant to Section 247-25.E is discretionary and does not require a mandatory 50 foot "no-disturbance zone" from the delineated edge of a vernal pool. (See above)

Not only does Section 247-25.E. not mandate a 50 foot "no-disturbance zone", but Section 247-25.E. also does not prohibit activity adjacent to a vernal pool. Section 247-25.E. only provides that the Commission "may require that no activity be permitted within a designated number of feet". Given the provisions of the Section 247-25.E., a no-disturbance zone for this Project is not required.

The Commission has not made a finding that the presumption in Section 247-25.D. has been overcome or that a setback distance is required pursuant 247-25.E. of the Bylaw Regulations. Therefore, a waiver from the Bylaw Regulations pursuant to Section 247-1.D.6 is requested. Section 247-1.D.6 provides that a waiver from the Bylaw Regulations may be granted where the Commission specifically finds based upon clear evidence presented by the Applicant that:

- (a) Owing to circumstances relating to the soil conditions, hydrological conditions, topography of such land and especially affecting such land, but not generally affecting wetlands within the Town;
- (b) A literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the applicant; and
- (c) That desirable relief may be granted without detriment to the values protected by the Town wetland bylaw and these regulations and without substantially derogating from the extent or purpose of the Town wetland bylaw and these regulations.

The three (3) prong test is met as follows:

First, regarding circumstances relating to the soil conditions, hydrological conditions, and the topography of such land which affects this property but not generally affecting other wetlands, the following information is provided in support of a waiver, if required:

1. The Private Way has been in existence for well over 100+ years and bisects the BVW system and stream.
2. Regardless of whether the Commissions issues an Order permitting the construction of the proposed improvements, the Private Way will continue to be used in its existing condition with annual maintenance to allow through access to the Property;
3. The Private Way had a culvert under the road to maintain the hydrologic connection;
4. It was later determined that the culvert was not maintained, allowing the culvert to silt in with sediment and debris, slowly creating a barrier to the hydrologic connection. As a result of the inability of the water body to flow in its natural course, the upgradient portion of the resource area (to the north) turned into a confined basin or ponded area with characteristics of a vernal pool.
5. Due to the unique soil conditions, hydrology and topography this confined basin was turned into a pond and then into a vernal pool over time. It was not based upon natural wetland features.

6. The Private Way now runs parallel and adjacent to the basin and vernal pool;
7. The existing Private Way running along and parallel to the vernal pool divides the BVW/Vernal pool on the northerly side of the Private Way from the BVW on the southerly side of the Private Way. By virtue of the location and condition of the Private Way, it is clear the buffer zone extending from the edge of the vernal pool and/or BVW has been previously disturbed and is without any natural vegetation;
8. In addition to the unique gravel road condition, the grade and topography of the Private Way travels along a variable hilly terrain with the created vernal pool situated at the low point of the Private Way. Stormwater and surface runoff follows the sloping of the gravel road from both directions to its low point where surface runoff and sediment flows into the vernal pool;
9. Currently there are no provisions for stormwater management and control within the existing Private Way to prevent stormwater and sediment from flowing into the vernal pool. Without the proposed stormwater features, it can be expected that stormwater flow will continue to erode the gravel road and further impair the functions of the vernal pool;
10. Under the unique existing conditions, the ability to maintain a "no-disturb buffer" to the vernal pool does not exist and the existing conditions serve no benefit to protect the interests or the functions under the Wetland Bylaw or the Wetland Protection Act;
11. The proposed improvements of the Private Way with stormwater management features, including a box culvert, will manage and control the stormwater runoff using "Best Management Practices" and in full compliance with the Stormwater Regulations. The proposed improvements of the Private Way will result in a significant improvement over existing conditions and will provide treatment, 100% groundwater re-charge and will reduce the peak rates of runoff and offsite runoff volumes;
12. The implementation of the stormwater features, along with the Operation and Maintenance plan (the "O & M Plan") included in the Drainage Analysis, will ensure the treatment of runoff from the impervious paved surfaces with best management practices that trap oil and grease and remove sediment, and infiltration of treated stormwater. These features will further ensure that no significant adverse impacts will affect the vernal pool from outside of the 50 feet buffer zone.

Second, the literal enforcement of the provisions of this Wetland Bylaw would involve substantial hardship, financial or otherwise, to Wall Street for the following reasons:

1. The Bylaw Regulations do not provide a definition of "hardship." Therefore, when a term, such as hardship, is not defined in the Bylaw Regulations, the rule of law is to use the common meaning of the term.
2. "Hardship" has been applied in Massachusetts case law for variances as not being reasonably able to use property for the purposes, or in the manner, allowed by the municipal zoning requirements due to circumstances particularly affecting that property. The conditions that establish hardship are more diverse under the Bylaw Regulations than pertain to waivers. According to several definitions "hardship" is defined to mean "a condition of life that causes difficulty or suffering" or "a condition that is difficult to endure; suffering; deprivation; oppression."
3. In addition, the Court in Marashlian v. Zonin Bd. of Appeals of Newburyport, 421 Mass. 719, 725-726 (1996) stated "hardship requirement satisfied by showing it would be economically impractical and not economically feasible as a result of unique conditions affecting locus"; and in Josephs v. Board of Appeals of Brookline, 362 Mass. 290, 293 (1972) (alternative schemes to bring development into compliance would involve safety hazards or loss of usable space within proposed building).
4. In Burdo vs. Blake, the Land Court found that the impediment to building outside the 25-foot setback established in a Chelmsford Zoning Bylaw as it relates to the no-build provisions in the Wetlands Bylaw was a "circumstance relating to the soil conditions" of the Subject Lot for the determination of hardship and entitlement to a variance from the setback.

Under the present circumstances, failure to grant a waiver would result in significant additional cost to Wall Street to design, construct and maintain a new roadway access across a natural BVW and natural intermittent stream to access the intended property along the Private Way. The granting of a waiver would greatly minimize other impacts to BVW. As detailed in the alternatives analysis below, multiple design options were examined and the preferred alternative was selected based on the intention to avoid, minimize and mitigate impacts to resource areas.

Alternative No. 1. - No Build:

The "No Build" alternative assumes that the existing conditions of the Private Way would remain unchanged on the Property. The Private Way does not meet local DPW standards and would continue to lack stormwater features for the proper management and treatment of stormwater runoff into the Certified Vernal Pool. The obstructed culvert would continue to obstruct the hydrologic connection between the Certified Vernal Pool and the BVW and internal intermittent stream south of the Private Way. Additionally, the "No Build" alternative would involve substantial hardship, financial and otherwise, to Wall Street.

Alternative No. 2 - Previously Proposed Plan:

The "Previously Proposed Plan" alternative refers to the initial roadway design dated February 14, 2025. The initial roadway design involved resource area impacts both north and south of the Private Way. Specifically, 1,860 square feet of BVW impacts were proposed south of the Private Way, and 442 square feet of both BVW and vernal pool impacts north of the Private Way. Following the filing of the NOI, the vernal pool was officially identified as a Certified Vernal Pool. Following notification from the Natural Heritage & Endangered Species Program, Wall Street revised the design to avoid direct impacts to the Certified Vernal Pool. The "Previously Proposed Plan" alternative is not an approvable design given the strict jurisdiction and protective requirements applicable to Certified Vernal Pools. Subsequently, the revised Site Plan dated June 20, 2025 eliminated 442 sq. ft. of impact on the northerly side of the Private Way adjacent Vernal Pool.

Alternative 3. Proposed Roadway outside 50-foot No Disturbance Zone:

The proposed "Alternative 3" refers to the relocation of the proposed roadway south of the 50-foot No Disturbance Zone cast off the Certified Vernal Pool north of the existing Private Way. This design would involve a significant physical alteration in the proposed roadway south of the 50-foot No Disturbance Zone and north of the 100-foot Buffer Zone to the Certified Vernal Pool. This alternative would result in a significant increase in new BVW impacts and require an extensive stream crossing across Quick Stream.

The maximum bank-full width of the flagged portion of the stream channel is approximately nine feet in width. According to the Massachusetts River and Stream Crossing Standards, the proposed width of the alternative culvert must achieve a span equal to at least 1.2 times the maximum bank-full width. Based on a bank-full width of nine feet, the culvert would therefore need to be approximately eleven feet in width, at least three feet in height, and thirty-five feet in length to comply with the general openness requirement of 0.82 feet for the stream standards. The construction of a new culvert of this size at a different location without the existing roadway would require significant new construction, including extensive grading, substantial tree clearing, and the installation of large, costly infrastructure to support the new roadway.

"Alternative 3" would result in a significant increase in impacts to BVW, doubling from the preferred alternative, increasing from approximately 2,525 +/- square feet to almost 6,000 +/- square feet of BVW alterations. This would also involve the creation of a 12,000 +/- square foot wetland replication area likely on the western edge of the BVW south of the Private Way. A wetland replication area of this size will require substantial alterations to mature buffer zone and upland forest habitat; all impacts that should be avoided

The shift of the roadway away from the existing roadway southward would also interfere with the preferred location of Infiltration Basin No. 3. Currently, the proposed basin is designed to intersect with the 100 foot Buffer Zone to the Certified Vernal Pool. The relocation of the proposed basin would require further encroachment into the 100-foot Buffer Zone to accommodate the proper management of all stormwater runoff on the Property.

Finally, "Alternative 3" would not improve the existing portion of the Private Way south of the Certified Vernal Pool or its functions. During stormwater events, the edge of the Private Way will continue to erode into the Certified Vernal Pool, and the hydrological connection will remain significantly disrupted due to the obstructed culvert.

Alternative No. 4 - Preferred Alternative:

The "Preferred Alternative" refers to the currently proposed improvements to the roadway adjacent to existing Private Way, avoiding impacts to the Certified Vernal Pool. The preferred plan incorporates a slight bend of the proposed roadway to avoid alterations to the ponded area north of the Private Way. Additionally, the preferred plan minimizes BVW impacts, proposing only 2,525 square feet of alterations, with a 5,095 square foot wetland replication area to mitigate unavoidable impacts.

Under Alternative No. 4, the desirable relief may be granted without detriment to the values protected by the Town wetland bylaw and its regulations and without substantially derogating from the extent or purpose of the Town Bylaw and the Bylaw Regulations for the following reasons:

1. The existing topography and conditions of the Private Way allows stormwater and surface runoff to follow the sloping of the gravel road from both directions to its low point where surface runoff and sediment flows directly into the vernal pool without treatment or other stormwater management features.
2. The proposed stormwater management features of the preferred alternatives, including a box culvert, will manage and control the stormwater runoff using "Best Management Practices" and in full compliance with the MA-DEP Stormwater Regulations and will result in an improvement of habitat and pollution control functions over existing conditions.
3. These stormwater features are supplemented with an Operation and Maintenance plan (the "O & M Plan") that will ensure the treatment of runoff from the impervious paved surfaces with best management practices that trap oil and grease and remove sediment, and infiltration of treated stormwater. This will enhance the functions of the vernal pool.
4. Also, by granting the waiver, the Commission will promote the public good by minimizing impacts to the BVW and other resource areas.

Based on the foregoing, the requested waiver may be granted by the Commission without nullifying or substantially derogating from the intent and purpose of the Wetland Bylaw.

CONCLUSION

The location and pre-existing conditions of the Private Way creates a set of unique circumstances that makes clear that a literal enforcement of the provisions of the Bylaw Regulations to set a no disturb limitation would involve substantial hardship, financial and otherwise, to Wall Street. Moreover, the setting of a no-disturbance limitation would not enhance the functions of the vernal pool.

From the information provided herein, it is easy to conclude the following:

1. The Private Way has been existing for well over 100 years;
2. The Private Way is the primary means of access to the Property;
3. The existing condition of the Private Way, directly adjacent to the vernal pool consists as a gravel road where all natural vegetation and topsoil has been removed. Therefore, the buffer zone does not provide any significant characteristics to the protection of wildlife habitat and rare plant and animal habitat;
4. The existing condition of the Private Way does not have any stormwater management features which causes erosion and sediment to discharge into the resource areas;
5. An existing culvert beneath the Private Way has been blocked for several years causing a hydrologic separation of the two resource areas on either side of the Private Way;
6. The proposed stormwater management features of the preferred alternatives will manage and control the stormwater runoff using "Best Management Practices" and in full compliance with the Stormwater Regulations and will result in an improvement of habitat and pollution control functions over existing conditions.
7. The proposed stormwater features will also include a box culvert to restore a hydrologic connection between the two resource areas; and
8. The proposed improvements to the Private Way will enhance the public good by improving the conditions of the Vernal Pool and minimizing impacts to the BVW along the Private Way.

In light of the foregoing information, it is requested the Commission find that owing to circumstances relating to soil conditions, hydrological conditions, topography of Private Way and especially affecting the Private Way but not generally affecting wetlands within the Town, a literal enforcement of the provisions of the Wetland Bylaw would involve a substantial hardship, financial or otherwise, to the Wall Street and that there is no practicable or economically equivalent alternatives. In addition, it is further requested that the Commission find that a waiver may be granted without detriment to the values protected by the Wetland Bylaw and the Bylaw Regulations and without substantially derogating from the extent or purpose of the Wetland Bylaw and the Bylaw Regulations.

Thank you for the Commission's attention and consideration of this waiver request.

Respectfully Submitted,
WALL STREET DEVELOPMENT CORP.

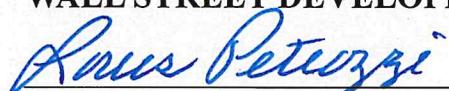

By: Louis Petrozzi, President

EXHIBIT 1

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