



Board of Health

TOWN HALL • 19 WASHINGTON ST. • SHERBORN, MASSACHUSETTS 01770
508-651-7852 • FAX 508-651-7868

MEMORANDUM

TO: Sherborn Zoning Board of Appeals (ZBA)
FROM: Sherborn Board of Health (BoH)
DATE: August 27, 2025
RE: Recommendations on Waivers for Washington Street Sherborn Homes 40B

In a waiver request document from June, 2025, Washington Street Sherborn Homes LLC requested waivers to broad sections of Sherborn Board of Health (BoH) regulations rather than identifying needed waivers to specific BoH regulations.

The following tables contain BoH recommendations regarding waivers that would be necessary for the project according to the April 29, 2025 version of the plan and additional soil test results reported by DGT on May 19, 2025. The plan was reviewed by the Health Agent and the Board for Title 5 compliance *only* at the BoH meeting of May 21, 2025 and was also approved for Title 5 compliance at that meeting. At its meeting of August 20, 2025, the Board discussed and voted to make the recommendations contained herein regarding needed waivers.

The recommendations are considered important to the well-being of the future residents of the project and are consistent with protections for all residents, regardless if they live in market rate or affordable housing. Any additional costs associated with implementation of the recommendations are expected to be minor relative to other costs, including with respect to future health and/or remedial (e.g., treatment) costs associated with potentially degraded groundwater quality.

Particular attention was given to septic regulations because of the potential for impacts to drinking water supplies from septic systems. 310 CMR 15.240(3) notes that soil absorption systems (a.k.a., leaching fields) "... shall achieve the following objectives of the soil treatment process:

- (a) maximum stabilization of organic wastes in the effluent;
- (b) removal of pathogenic organisms, nutrients, and particulates;
- (c) recharge of the ground-water table with adequately treated effluent with minimal attendant pollution of the groundwater; and
- (d) disposal of the effluent without discharge to the ground surface or the creation of any nuisance."

In the case of Sherborn, to be "adequately treated" requires the more stringent regulations to protect its drinking water supply area. Not all groundwaters of Massachusetts are used as drinking water supplies and Sherborn, like many other municipalities, has developed additional effective regulations to protect this vital resource. Title 5 minimum standards alone are not protection of the groundwater quality.

Regulation I: Sewage Disposal

The applicant requests a waiver of all requirements except for:

- 3.4.1 Plan Requirements
- 3.4.2 Design Requirements
- 3.4.3 As Built Plans
- 18.3 Temporary Facilities

The Board does NOT recommend a waiver to the entirety of Regulation I: Sewage Disposal, excluding the sections itemized above, where no waiver is requested.

Per 310 CMR 11.02, local septic regulations were developed to address Sherborn's specific circumstances.¹ Most notably, the minimum standards provided by Title 5 are not sufficiently protective for a town that relies on drinking water resources co-located with septic systems' discharges.²

There are trade-offs between the need for affordable housing and the goal of equitably fostering good quality and quantity of water for residents. If a septic system contaminates a water supply(s), the result is additional financial demands and responsibilities for all affected residents, including residents of affordable units.

The sections within this regulation:

- outline design standards important to health and safety;
- specify technical details to be included on a plan (critical for installers to build the system as the engineers intended and upon which an approval shall be based);
- provide guidance about the process (e.g., pre-installation conferencing, oversight and verification during installation, documentation required after a septic system is installed).

¹ Title 1 of the State Environmental Code, 310 CMR 11.02, states: *"Unless otherwise expressly provided in any other title, the legally designated health authority of any city, town, county or other legally constituted governmental unit within the Commonwealth having the usual powers and duties of the board of health may, as it considers necessary to promote and protect the health and wellbeing of the particular locality under its jurisdiction, adopt under its own legal power as exists in the General Laws any rules or regulations containing requirements stricter than those contained in this code. Nor should the existence of this code limit or otherwise affect the power of any health authority with respect to any matter for which this code makes no provision."*

² From Title 5, 310 CMR 15.003(3): *Local approving authorities may enact more stringent regulations to protect public health, safety, welfare and the environment only in accordance with M.G.L. c. 111, section 31. [Note that Section 31 states: "Boards of health may make reasonable health regulations. ..."]*

Regulation I: Sewage Disposal		
Waiver Requested	Summary	BoH Recommendations
8.0(1) Vertical Grades and Clearances	The bottom of any leaching area shall be a minimum of five (5) feet above the maximum high ground water table.	<p>This requirement is not met for the septic plan submitted and waiving this common and key protection in a water supply area is not recommended.</p> <p>For reasons described in the Background section below, the Board recommends that, if the ZBA determines that this 40B project is to be granted this waiver, the 5-foot local minimum height above maximum high groundwater be applied to the mounded system. This would mean raising the system further, which might also cause the system to encroach farther into wetland resource buffers.</p> <p>See also Recommended Conditions #1 and #2.</p>
8.0(2) Vertical Grades and Clearances	A depth of at least five (5) feet of pervious material (determined by percolation test) in natural soil shall be maintained below the bottom of the leaching area. The vertical distance from any leaching surface of a subsurface disposal system to bedrock, ledge, fractured ledge or impervious soil shall be a minimum of six (6) feet.	<p>Subsurface investigations conducted to date suggest that these requirements may be satisfied, in which case no waiver would be required. As the septic system is being installed, this can be confirmed due to exposure of the full area for the subsurface disposal system.</p> <p>See also Recommended Condition #1.</p>
Background to BoH Recommendations		
<p><i>The regulatory sections noted above are among the most important local protections for the shared drinking water resources in Sherborn. More filtering and more time for treatment en route to reaching groundwater is critical for water quality.</i></p> <p>The Board maintains that having at least 5 feet of separation between the bottom of a soil absorption system (SAS, a.k.a. leaching area) and maximum high groundwater, comprised of naturally occurring/deposited soils, is important to the health standards applied to all new construction in Sherborn and to repair/replacement systems where feasible. Having 5 feet of vertical separation in native soils provides a greater degree of septic effluent filtration and pathogen attenuation.</p>		

Regulation I: Sewage Disposal

An area meeting 8.0(1)'s vertical separation to groundwater requirement in naturally-deposited soils was not identified through the subsurface investigations performed for the site. The septic plan reviewed and approved for Title 5-only relies on a mounded system to meet even Title 5's minimum separation of 4 feet. Given that the required fill specified by Title 5 has minimal treatment capacity in comparison to naturally deposited soils, the BoH recommends that the mound be raised to provide 5-feet of separation to groundwater.

The Board recognizes that this will increase the footprint of the mound, potentially encroaching on wetland resource buffer areas. While this would require Conservation Commission input, this adjustment to septic design would likely be more protective of the quality of shallow groundwaters reaching the wetland areas prevalent on and near the site.

Regulation II: Water Supply		
<p>The applicant requests a waiver of all requirements except for:</p> <p>15.0.B Well Abandonment Procedures</p> <p>17.6 Other Use Prohibitions</p>		
<p>The Board does NOT recommend a waiver to the entirety of Regulation II: Water Supply.</p> <p>A formal well application has not yet been submitted to the BoH but an anticipated location of a well is shown on the septic plan dated April 29, 2025. Approval of the septic plan per Title 5 ONLY does not indicate approval of the well at this point. However, that septic plan was used to roughly identify the Water Supply regulatory sections that may require a waiver from the ZBA</p> <p>The health and safety standards outlined within Regulation II ensure the sanitary performance, location, quantity and quality measures of the proposed wells. 105 CMR 410.180 requires property owners to provide a safe supply of drinking water to occupants from a public water supply or <i>a private source approved by the local BoH</i>. There are no regulations other than those of the local BoH that are in effect for private wells because the State designated the authority for such to local Boards of Health.</p>		
Waiver Requested	Summary	BoH Recommendation
6.0(G)	<p>(1) Defines a protective area around a semi-public wellhead</p> <p>(2) Any such protective area shall be entirely contained within the project's property.</p>	Recommend waiver as long as all other private well setbacks are met and the Recommended Condition is implemented.
7.0 Number of Wells	<p>Only one well per property, business, or residence shall be allowed.</p> <p>No well shall be used to supply more than one dwelling unless permitted as a Public Water Supply or as a Semi-Public Water Supply.</p>	An irrigation well(s) shall not be permitted on this site for reasons of maintaining groundwater quantity.

Regulation III: Public and Environmental Health Review Regulations and Standards for Selected Site Development Activities or Other Special Conditions, or for Other Than a Single-Family Dwelling on a Single Lot		
The applicant requests a waiver to this section in its entirety except as noted below, to the extent that it would apply additional local requirements to the project site or any portion thereof in excess of the Title V requirements.		
The Board does not recommend a waiver to any part of this regulation, with the exception of that noted below.		
Waiver Requested	Summary	BoH Recommendation
3.1 Environmental Health Impact Report (EHIR) (and associated 14.0 EHIR – Scope and General Submittal Requirements)	Requires submittal of a complete EHIR for an application for approval of a Comprehensive Permit under M.G.L. c.40B, s. 20-23	Recommend waiver, for reasons stated in the footnote. ³
10.0 Bedrock Disruption	Requires a permit prior to any bedrock disruption activities in excess of 10 cubic yards	Recommend that NO waiver be granted, if applicable. ⁴
13.0 Earth Removal Standards	These standards apply to any proposed earth removal operation exceeding 350 cubic yards of material per lot or 1000 cubic yards per project.	Recommend that NO waiver be granted, if applicable. To date, site development descriptions have included bringing additional fill material onto the site, not removal of existing earth to off-site.

³ When the BoH last updated its regulations, the Board at the time agreed that III.3.1(g) should be covered by the other descriptors for projects and that 40B projects should not be identified separately. That clause appears in the regulation because it was too late in the regulatory update process to remove it without cancelling the many other updates being discussed in that public hearing. Thus, while the BoH believes that an EHIR can be useful toward understanding whether larger projects potentially pose risks of environmental changes that may negatively affect future residents of the project or its neighbors, it was not deemed a requirement for this project.

⁴ Thus far, there has been no confirmation that bedrock disruption will be required by this project. In the event that bedrock is encountered during site development, the BoH recommends against a waiver to this requirement because:

- costs associated with this requirement are minimal (e.g., there is no permit fee, nearby properties shall be given advance written notice of the bedrock disruption activities);
- geologic characteristics of bedrock in Sherborn have the potential to contaminate groundwater when disrupted, which is an important factor for the future residents of this project and neighbors.

Appendix A: Board of Health Guidelines to Obtain a Building Permit		
The applicant requests a waiver to Room Count Definitions and proposes to deed restrict the homes to three bedrooms.		
Waiver Requested	Summary	BoH Recommendation
BoH Guidelines	<p>Defines criteria for a “bedroom” and room count calculations as total rooms divided by $\frac{1}{2}$, rounded down to the nearest whole number.</p> <p>Note that 8 room homes may be classified as 3-bedroom homes provided that counts do not exceed 3 bedrooms when including:</p> <ul style="list-style-type: none"> any room above the first floor as a bedroom, and any room with a $\frac{3}{4}$ or full bathroom that opens directly into that room as a bedroom. 	<p>Recommend that NO waiver be granted.</p> <p>Once the house plans are finalized, the BoH will review them in accordance with standard procedures and provide additional recommendations at that time.</p> <p>MassDEP provides cautionary guidance about the use of deed restrictions that are important to proper septic system sizing, noting that deed restrictions are subject to local authority approval, per Title 5.</p> <p>The BoH’s long-standing practice has been to evaluate homes from the perspective of how they might be used by future occupants, not only by the use plans of the applicants.</p>

Recommended Conditions to Support the Shared Water Supply and Wastewater Management Systems for the Project	
The following conditions are recommended to strengthen performance of the project into the future.	
Condition	BoH Recommendation
#1: <i>Fiscal and Procedural Assurance Mechanisms for the Operation and Maintenance of the Shared Well and Septic System</i>	<p>The Board encourages the ZBA to practice its administrative privileges and ensure that the Condominium Association’s Master Deed establishes a robust financing mechanism for on-going operation and maintenance of the shared wells and wastewater systems, prior to occupancy.</p> <p>If the ZBA chooses to incorporate this recommendation in the Comprehensive Permit, the BoH requests a condition of the Comprehensive Permit be that the Health Agent for this project be allowed to review the operation and maintenance plan for the septic system for appropriate inclusion of technical issues.</p>
#2 <i>SAS Mounding Impacts Reduction</i>	<p>In Health Agent Stantec’s project review memorandum of April 9, 2025 (updated May 21, 2025), the following mound-related points were raised in Comments #9 and #10:</p> <p><i>9. Mounding analysis is not required by either Title 5 or BOH Regulations for systems with less than 2,000 gpd. Nevertheless, from our prior work with the Board in review of a “Title 5 only design”, we know that the Board seeks a prudent SAS design that respects local concerns on protecting groundwater and wetland resources. Therefore, for the Board’s benefit, Stantec ran Hantush mounding analyses for the proposed design conditions.</i></p> <p>Stantec found that groundwater mounding beneath the soil absorption system (SAS) could add approximately 0.59 feet to the groundwater level beneath the SAS, thereby further reducing the distance between the bottom of the SAS and groundwater. However, the analysis performed further highlights the importance of applying the Sherborn requirement for 5 feet of separation, which will effectively be 4.4 feet at certain times.</p> <p><i>10. Plans show five 84-ft long trenches that encroach on the two 100-ft wetland buffer zones. The Applicant could consider that it may be possible to keep the SAS area out of these buffer zones if eight 53-ft trenches (e.g., two sets of 4 trenches with central distribution) are proposed instead. Overall length of SAS could be about 120-ft (2 x 55’ + 10’ for central distribution box) and the width of the primary leaching area would be 26 ft.</i></p>

	<p><i>Applicant Response: We have considered this option and have decided to remain with the current design configuration.</i></p> <p>Subject to the details of a redesign effort such as that suggested by Comment #10, this option might also offset the wetland resource buffer impacts potentially associated with raising the SAS mound from 4-feet of separation to groundwater to the critical Sherborn standard of 5-feet of separation.</p>
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