



Questions and Answers

Training Workshop March 30, 2022

DEM Freshwater Wetlands Rules (250-RICR-150-15-3)

Session 1. Questions on New or Revised Exemptions

Question Does the exemption for pedestrian trails include trails utilized by school departments that have existed over the years?

Answer If it is an existing trail and it existed prior to the new rules or if it's existing and has a permit, no – there will be no impact. Those trails would be able to remain and be maintained as they have been. This would only apply to new trails.

Session 2: Questions on Infill Lots

Question: In these scenarios, have you considered locating a septic system and well in addition what the zoning setbacks will do to the house location? It may be problematic in some cases.

Answer: That is exactly the case. The examples speak to those situations as well. If you are in a neighborhood that does not have access to public utilities such as drinking water and/or sewers, designers have to find a place to locate their septic system and well. In addition, the septic systems must be at least 100' feet from any existing drinking water wells. There still may some instances where you can arrange the drinking water well and septic system while still meeting the buffer standards or at least meeting the infill lot standards which allow you to get a little closer to the wetland edge and leave a smaller buffer. However, that's not always the case and if you need to site a septic system and well in a way that cannot meet the standard, then you would have to go through the variance process. You'll have a pretty good case for a variance if you cannot meet the septic system and/or well requirements while meeting the setback and buffer standards.

Question: In example 1, if the adjacent lot is non-conforming by dimension (inside the front setback line from the street), is the infill owner required to seek a dimensional variance from the Town Zoning Board? (It was mentioned that the infill house needs to line up with the existing).

Answer: Yes, if the adjacent lot is non-conforming. But they might be able to alleviate that by

going to the city/town and requesting relief from the road setback. [That will be discussed in more detail later on in this presentation].

Question: Will those diagrams be available for future viewing by the public?

Answer: Yes, they will be available in the recording of this workshop that will be posted to the website and also as standalone illustrations.

Question: If lot has house on one side and wetland lot on other side, can this rule be used? or does it have to HAVE structure on BOTH sides?

Answer: If a lot does not have structures on both sides, it would not meet the infill lot requirement and would have to meet the regular Freshwater Wetlands Rules standards.

Session 3. Questions on Variances (Part II)

Question: Is town zoning relief (if needed) required prior to the freshwater wetlands permit or can it be done concurrently?

Answer: The relevant portion of the Variance Requirements reads, "In those instances where a variance would be obviated or reduced if a variance for a setback were acquired from a local municipality, the applicant must first exhaust his or her remedies before the local municipality prior to submitting an application for a permit to the Department [or CRMC]" (emphasis added). If an applicant exhausts their remedies with the municipality prior to submitting to the Department or CRMC as required and provides documentation that the municipality granted only partial relief (or even if no relief is granted at all), then the Variance requirement would still be satisfied. Whether or not such partial relief would be sufficient for the project to receive approval would depend on whether the applicant met all other requirements for a Variance, including whether all of the Review Criteria were met.

Question: Seems unreasonable that the sins of a past owner now fall to a new owner unknowing what was done in the past.

Answer: Regarding timeline: A lot that was created last year that does not meet the regulations in September 2022 is completely eligible for a variance. They didn't know at the time exactly what the new regulations would be. That's why the timetables for our examples are into the future (2024, 2026).

In terms of new owners purchasing property: You must complete your due diligence in terms of purchasing a property that has wetlands on it, that is waterfront (coastal or freshwater). They should check to see if there are previous permits or restrictions on this property? What is the history of this property? Purchasing a property that was

created in September 2022 and does not meet the requirements in September 2022 is in some ways a failure of due diligence. Once the regulations exist and are active, that makes the variance that much harder.

Question: Is the variance going to be stipulated in the permit so that it becomes part of the chain of title?

Answer: At CRMC, when we issue permits, they are registered in the land evidence records and most of the issues that we have had in the past, it usually revolves around sub-divisions. A sub-division is created, that's recorded in the land evidence records. Then a subsequent buyer comes in, they may or may not have done their due diligence and then the new applicant wants to do something that is variant to the current. However, the new rules don't take effect until July 1, 2022. That is when we will begin applying these requirements. Anyone doing their due diligence will find the permit records in the land evidence records. For more significant variances, CRMC will provide stipulations in variances that indicate no further variance from the standards will be permitted. DEM does not currently have the same stipulations in the variances but does ensure that the variances are recorded in the land evidence records.

Session 4. Questions on Municipal Coordination

Question: With respect to the Building Permit provision, would an edge verification be needed to confirm no application required?

Answer: If somebody has an issued building permit before July 1, 2022, and they were not required to obtain a wetlands permit before that date, they do not need a permit. If they are unsure if a wetlands permit is required, they should come in to RIDEM and get some advice on that. An edge verification, while not required, makes that determination process clearer.

Question: If an application comes in for review before the new rules go into effect and then is determined to be an application to alter and is required to go formal, will it come back in under the old rules or be under the new rules?

Answer: If RIDEM receives an application prior to the new rules and then during the course of review we determine it to be a significant alteration after the new rules have gone into effect, that would come in under a new application and would have to satisfy the new rules and the new standards. However, the determination regarding significant alteration would be made using the active rules at the time (old rules before July 1, 2022, new rules on or after July 1, 2022).