



## Director of Community and Economic Development

# UPDATE

April 25, 2022

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### SIDEBAR ON MULTI-MEETING APPLICATIONS & STATUS OF CURRENT SUBMITTALS

So as to not inundate members with multiple repetitive lengthy UPDATE versions covering applications that span two or more meetings, it is advised that members please keep initial and subsequent versions as reference material and I will just provide summaries of past comments and focus on new or revised issues or material.

#### 203 AYER ROAD STATUS

- Special Permit and Site Plan application filed and has undergone initial staff review (1 meeting held)
- Design Review Board materials filed and have undergone initial staff review (2 meetings held)
- No revised documents have been received for either design review or special permit/site plan
- No peer review consultant has yet been retained

#### 256 AYER ROAD STATUS

- Special Permit and Site Plan application filed and has undergone initial staff review (1 meeting held)
- Design review to be conducted by Planning Board. No materials received for this yet.
- Revised documents have been received for special permit/site plan on 4/21/22 but not reviewed here.

#### 295 AYER ROAD STATUS

- Special Permit and Site Plan application filed and has undergone initial staff review (1 meeting held)
- Design Review Board materials not yet filed
- Revised documents have been received for special permit/site plan on 4/19/22 and reviewed for this edition
- No peer review consultant has yet been retained but Beals & Thomas has made a proposal.

## ■ Special Permit and Site Plan Review; 203 Ayer Road

**Name of Applicant:** Vyonne Churn and Wheeler Realty Trust  
**Location of Property:** 203 Ayer Road, Harvard, MA  
**Assessors Map/Parcel:** 8/62.2  
**Zoning District:** Commercial (C)  
**Property Owner:** Wheeler Realty Trust  
**Consulting Engineer:** Goldsmith, Prest, & Ringwall, Inc.  
**Application For:** Special Permit and Site Plan Review w/ Special Permit  
**Public Hearing Session:** #2

### SYNOPSIS

- **Section 125-37 Special Permit** – Recommend that Planning Board consider waiving the requirement.
- **Section 125-38 and 125-39 Site Plan Review** – There were a number of criteria that are missing or not fully clear in the initial site plan submittal. Much of these sections will need the peer review to be conducted before final assessment.
- **Section 125-46 Special Permits** – Much of these criteria must await the review of the peer review consultant. There are a few elements that are either clearly met or not met as noted below.
- **Section 125-52 ARV-SP Criteria** – Much of these criteria are not met and as the application currently stands, I would suggest that the project currently does not meet the criteria for this Special Permit.
- **Section 125-20 Use Criteria** – Similar to above, these Use Criteria are a mix of “need more information” and subject to peer review.
- **Design Review** – Project is still in the early stages of this process with the 3<sup>rd</sup> meeting of the DRB scheduled for 4/26/22.

**RECOMMENDATION:** Hear applicant update and anticipate continuing the hearing to a future date.

**Request:** The Applicant is seeking two Special Permits for a commercial development in the C district. Based on the provisions of Sections 125-52 and 125-23(B)(2) of the Protective Bylaw, such developments and businesses are allowed in the C district with a Special Permit and Site Plan Review.

### Summary of Meeting #1 Comments and New Comments

1. PEER REVIEW – Recommended peer review consultant. Planning Board voted to authorize staff to develop a consultant scope in conjunction with the Applicant’s representative. This scope has been released and we are awaiting responses. Peer review of technical aspects of the application (ie stormwater management, traffic study) seems appropriate but believe it is inappropriate to hire an outside expert at great expense to applicant to interpret the Harvard Zoning Bylaw which is the expertise of the Planner the responsibility of the Planning Board.
2. SECTION 125-37 – Originally recommended that the applicant file the needed Special Permit. Conducted additional research, as follows:
  - [a] It was noted in April 4<sup>th</sup> UPDATE that the applicant would be required to also apply for a Section 125-37 Special Permit for Major buildings since the building subject of the application is 29,998 s.f. The primary purposes of this specific Special Permit are to further evaluate the proposed building related to bulk, design, and fire protection.
  - [b] The Applicant asserts that due to a filing of a 125-52 Special Permit, which includes a Section G(2) request for authorization of a building larger than that permitted by 125-37(A) supersedes the latter requirement. This notwithstanding that there is no specific limitation on size noted in this Section.

[c] Regardless of the lack of clarity of the 125-52 reference, it is inferred that this section 125-37 intends to allow a building larger than 10,000 s.f., a threshold that appears to only be identified in the Bylaw through provisions seeking to exceed this number.

[d] The applicant's claim that a Section 125-52 Special Permit filing supersedes the need for a Section 125-37 Special Permit seems rational but is unsupported by any provision in the Bylaw and thus, in this reviewer's opinion, should dictate a Planning Board finding of same and consideration of granting of a waiver of the necessity of filing a 125-37 Special Permit due to the inferred redundancy. Since the Planning Board is the Special Permit Granting Authority for both special permits, it would seem logical that the Planning Board has the authority to waive or render superfluous, the 125-37 Special Permit by a formal vote. However, the Board may wish to seek Town Counsel opinion on this step.

We believe that the best approach is to amend our application to add a request for an additional 125-37 Special Permit. This does not change anything substantive about the application. With the Planning Board's approval, we will submit a formal letter rerequesting this amendment.

3. SITE PLAN COMMENTS – The following comments were intended to be actionable by Applicant or inquiries for further clarity or needed information:

[a] Noted that elevations for the rear and two sides of the building were required to be submitted.

[b] Recommended further lighting information including lighting intended in parking areas and attached to building.

[c] Noted that additional screening and/or buffering elements may be necessary but not to be addressed until further into the application process.

[d] Wastewater solution needs to be approved by the Board of Health for current proposed use. Board of Health should address what the remaining capacity in the system would be after this use meets the requirements.

[e] Design review is in process and will be available to the Planning Board prior to a decision to be considered as part of the Special Permit.

[f] Basic submittal requirements of site plan review for landscaping have been submitted. However, additional criteria may be required based on special permit review and peer review process.

4. PARKING, LOADING, AND DRIVEWAYS. Most items will be addressed by traffic study. Shared parking is addressed in our comment to page 7 of this memo regarding Section G3 of the Bylaw. Updated architectural plans show loading access to be provided at the rear of the building.

[a] No shared parking elements are being proposed in this application. Shared parking is specifically where adjacent or proximal parcels share (typically a combined) parking area. This is one of the important criteria for the ARV-SP as well.

[b] Expressed a concern over the proposed ingress/egress location along this stretch of Ayer Road.<sup>1</sup> This will be a focus of peer review and DPW should comment.

[c] Thus, the proposed alignment of the driveway in relation to the existing curb cuts along Ayer Road and whether alignment or coordination with other driveways may be deemed appropriate. Further, such a 4-way intersection, with the associated turning movements, may require intersection signalization. A traffic study may be necessary to make these determinations.

[d] No loading docks or facilities are provided. Applicant should provide details related to any needed loading facilities unless using parking and driveway areas, which should be verified.

[e] Recommended that a traffic impact study be conducted based on the proposed use and an assumed set of other uses (in this case suburban office and general variety retailing). Reviewing

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<sup>1</sup> The ideal solution would be to a) line up the driveway with the Bowers Brook development driveway to create a formal 4-way intersection and signalize it. Connect parcel to the Kurian property to the south and to the Harvard Green property to the west. Eliminate one or both curb cuts to the two Kurian properties to the south.

the recommended ITE Trip Generation 10<sup>th</sup> edition data for peak hour, the 3 use categories are estimated as follows:

- Badminton (16 courts) – evaluated in line with tennis, on a per court basis, at 4.21 trips per court peak hour or  $16 \times 4.21 = 68$
- General Office (Suburban) – evaluated at 1.16 trips per 1,000 s.f. or  $8 \times 1.16 = 9$
- Variety Retail – evaluated at 6.84 trips per 1000 s.f. or  $6.84 \times 8 = 55$
- TOTAL COMBINED PEAK HOUR = 132

- [f] Granted that each use may have a different peak hour, but this trip generation suggests that the site, if developed as illustrated, would likely well exceed the threshold 400 trips needed to justify a traffic impact study. *We disagree that 400 trips will result from this development but have agreed to the traffic study.*

#### 5. OPEN AREAS, LIGHTING, BUFFERS, & SCREENING

- [a] The applicant states on the Site Plan cover page that there is an 867' lot width but that they wish to employ the alternative building siting offered as an incentive under 125-52. While the 125-52 provision is unrelated to the buffer strip, it appears that what the applicant explained in the meeting regarding the measurement of lot width, which is not the same as that provided in the zoning table, is accurate. I would seek the peer review consultant's analysis on this point.
- [b] Thus, an 86.7' buffer strip around the perimeter of the property would not be required as previously stated. *Agree that the 86.7 foot buffer is not required. Our 20 foot buffer is sufficient under the bylaw.*
- [c] Still suggest that the applicant needs to provide a complete lighting plan as indicated in the UPDATE dated 4/4/2022. *This will be provided.*
- [d] Planning Board may wish to request that screening solution be upgraded to include more plantings, a berm, or fencing.

#### 6. FIRE PROTECTION

- [a] Fire Dept. comments will be provided as received. Additional comments regarding fire protection may accrue from peer review consultant.

#### 7. DRAINAGE

- [a] Peer review consultant (PRC) will provide comments on drainage. However, please see Harvard Green Order of Conditions #16 from 1997: *The stormwater management design does not connect to Harvard Green detention basins.*

m. The **detention basin design** has **not, and cannot** be approved for **future development** not included within the Notice of Intent covered by these Orders, including but not limited to the development of the adjacent Commercial portion of the original parcel. **THIS IS A PERMANENT CONDITION.**

#### 8. SIDEWALKS

- [a] Proposed gravel paths suggesting connection to external properties should 1) indicate how these will be received by these abutters and 2) that they connect directly to the internal sidewalk system proposed by the applicant. *We will talk with with Harvard Green & amend sidewalk system.*
- [b] Proposed TIP Shared Use Path has been engineered and should be shown on the site plan. *We will make this change. See rendered landscape plan with modified walks.*

- [c] The Board should request on bond or other surety as a provisional compliance with sidewalk requirements in the event that the SUP is not constructed. *The proposed TIP shared use path will be installed and funded under the TIP program. We request a waiver from this requirement.*

## 9. SIGNS

- [a] Anticipated standing and wall signs shall be provided as part of the Site Plan and Design Review Board processes and the PRC and staff planner will evaluate according to the provisions of this Section 41. *Location of standing sign is shown on the plan.*
- [b] Business sign appears to possibly interfere with visibility of stop sign.  
*The sign is 20 feet back from the stop line.*

## 10. ZONING REQUIREMENTS

- [a] Rather than complying with the recently adopted minimum 20' setback and maximum 50' setback from the ROW, the applicant has requested the alternative minimum standard as depicted in Section 125-52(G)(1)(c) and as such has proposed a 104' setback for this PHASE 1 structure. This is not recommended and defeats the purpose of the new standards, design guidelines, and the ARV-SP objectives.
- [b] However, should the applicant propose a revised site layout which more closely aligns with the ARV-SP principles and the Design Guidelines for a village-like cluster, this may be more suitable.

*See 125-52 G(1)(c) - Alternative structure setback requirements are a basic feature of the Ayer Road Village Special Permit.*

## 11. SPECIAL PERMIT REQUIREMENTS

- [a] Advice from Planning Board or Other Town Boards – Pending
- [b] Special Permit – General Criteria

- [1] Will not result in substantial increase of volume or rate of surface water runoff to neighboring properties and streets, and will not result in substantial danger of pollution or contamination of the groundwater supply, a groundwater absorption area, a well, pond, stream, watercourse, W District, or inland wetland. Any and all surface water runoff resulting from development shall be retained within the lot in which it originates or shall be discharged into existing identifiable watercourses without material impact on abutting properties – ***To be determined based on stormwater analysis and peer review.***
- [2] Will, if the use is not agricultural or residential, result in no substantial increase in traffic, compared to refusal of the permit, on any residential street where the premises have access – ***Not seen as applicable.***
- [3] Will be in harmony with the general purpose and intent of the Bylaw, including each purpose stated in § 125-1. Purpose, which is pertinent to the particular application.  
*These purposes were a part of the original bylaw when written in 1967 and last amended in 1969, for the purposes of explaining the need for a zoning bylaw and not as permitting criteria. We strongly disagree with the individual conclusions below.;*
- (i) ***Elements Met***
- To prevent overcrowding of the land
- (ii) ***Elements Not Met***
- To protect the community from the detrimental effects of unsuitable development
  - To conserve natural conditions and open spaces
- (iii) ***Elements To Be Determined***
- To conserve health
  - To secure safety from fire, wind, flood, and traffic (traffic issues)
  - To preserve and increase the value of land and buildings (based on final design)

- To preserve and increase the amenities of the Town (inconclusive)
- To provide for compatibility with individual water supply and sewage disposal systems and their renewal, and with public systems which may become available (Board of Health determination)
- To facilitate future reuse and redevelopment of property (inconclusive)
- To provide for safe, rapid traffic flow to, from, and along the streets (traffic issues)
- To avoid confusing and distracting signs in areas along the streets (unknown)
- To protect persons and property against the hazards of inundation and pollution
- To prevent pollution or contamination of, to conserve, and to protect watercourses, and their adjoining lands, groundwater absorption areas, and the groundwater table on which the inhabitants depend for their water supply
- To separate and otherwise isolate potentially conflicting property uses

(iv) **Inapplicable Elements**

- To avoid unsuitable traffic on residential streets
- To preserve the streets of the Town as firebreaks
- To preserve storage areas for seasonal or periodic high waters
- To protect ponds from accelerated and excessive plant growth and premature decay into swamps

[c] Section 125-52 ARV-SP Criteria **Please see our response to this Section regarding our compliance with the Objectives of the Ayer Road Special Permit at the end of the review.**

[1] Objectives of ARV-SP Please see our comments to this section of the review at the end.

- (i) Promotion of mixed-use development – **Not met by current application.**
- (ii) Promotion of shared access in properties, with appropriate links to adjoining properties, lessening the need for curb openings on Ayer Road- **Not met by current application.**
- (iii) Promotion of development that emphasizes pedestrian accessible walkways, benches, pathways, bicycle racks, and pedestrian-scale lighting and signage - **Initial plan set had partial compliance. Will re-review subsequent submissions.**
- (iv) Encouragement of building and site designs compatible with the local architecture rather than generic designs - **Not met by current application.**
- (v) Avoidance of excessive building massing and unbroken building facade treatments – **Not met by current application.**
- (vi) Subordination of parking, loading docks, on-site utilities, heating, ventilation and air conditioning equipment (HVAC), utility lines, and solid waste dumpsters to building form – **Partially met by current application. Parking subordination not met.**

[2] ARV-SP Review Criteria

- (i) Mixed Use Project Siting – Not located, sited, or grouped in a manner that aligns with the context of adjoining residential uses. Does not meet appropriate clustering.
- (ii) Historical Significance – Not applicable.
- (iii) Development Designed for Pedestrian and Bicycle Passage – Does have some measure toward this objective but will need additional modifications.
- (iv) Building and Site Design Impacts Mitigation:

- Applicant has appeared to comply with the parking lot provisions.
- Stormwater and landscaping do not seem to be integrated. For example, there are no obvious Low Impact Development (LID) features but rather more typical detention basins.
- Solid waste appears to be addressed adequately related to PHASE 1.
- No loading facilities have been proposed.
- PHASE 1 building is out of scale with the neighborhood and surrounding properties.
- Changes in grade and these impacts shall be evaluated by PRC.
- Sewage disposal shall be evaluated as per meeting Title V requirements by the Harvard Board of Health and in conformance with this section by the PRC.

[3] Section G3 Findings – Section G3 of Section 125-52 provides for specific incentives to applicants in exchange for meeting the objectives and criteria. The Planning Board must first assess whether they feel the objectives and criteria have been met at a threshold level and then have been exceeded before determining to what extent these incentives should be awarded.

- (i) Preservation of an agricultural use, natural resources, including but not limited to woodlands, wetlands, streams and/or fields, or land with historic structures or other unique features - **NO** We comply. Project has been designed to preserve natural resources and both improves and preserves the existing wetland.
- (ii) Connectivity between adjoining sites, or provisions for curb-cut reduction, shared access, and shared parking - **NO** Design provides connectivity among the on site uses, Town soccer field and Harvard Green, and to future sidewalk along Ayer Road. There is only one curb cut providing shared access. The interconnected uses and walkways makes it possible for visitors to utilize parking spots as convenient.
- (iii) Inclusion of multifamily use with a set aside of affordable housing units - **NO**

It is assessed that Section G3 criteria have not been met and that this project, in the assessment of this reviewer, is not eligible for any of the incentives noted in Section G2. Overall, no objectives of the ARV-SP have been met in full or partially. At this point, this reviewer does not see that this application has met the minimum criteria to be eligible for an ARV-SP and should resubmit a revised application packet that shows how it meets these specific provisions.

**Section 125-20 Use Criteria** If the Planning Board would like any additional information please let us know.

The applicant shall show satisfactorily that the use will comply with the Bylaw including in particular § [125-20](#). If a special permit is authorized, the authorizing board shall impose as a part of such permit conditions, safeguards, and limitations of time and use, in addition to any specifically provided in the Bylaw, as may be appropriate for protection of the neighborhood, the community, and the natural environment, including the groundwater supply, a groundwater absorption area, or other wetland resource. These criteria shall be reviewed by the PRC as part of their analysis.



(A) No use is permitted which is injurious, offensive, or otherwise detrimental to the neighborhood, the community, or the natural environment, including the groundwater supply, a groundwater absorption area, or other wetland resources, because of:

- Concussion, vibration, noise, or other mechanical disturbance; *Applicant should speak to hours of operation, use of machinery on site, and idling vehicles*;
- Smoke, dust, odor, fumes, or other air pollution; *Not anticipated based on initial PHASE 1 use but this should be confirmed*;
- Glare, fluctuating light, or electrical interference; *The applicant needs to provide additional information related to lighting as noted above*;
- Danger of fire, explosion, radioactivity, or other danger; *Fire or explosion are not anticipated based on proposed PHASE 1 use*;
- Wastes or refuse (except at the Town Transfer Station); *Applicant should note what times of the day waste will be hauled away given the close proximity to a residential area*;
- Likelihood of substantial increase in volume or rate of surface water runoff to neighboring properties and streets, or substantial danger of pollution or contamination of the groundwater supply, a groundwater absorption area, or a well, pond, stream, watercourse, W District, or inland wetland; *Shall be reviewed as part of PRC*;
- Other characteristics. *None anticipated*.

(D) Development shall provide water supply and sewage disposal approved by the Board of Health.

*Defer to comments to be provided by the Board of Health.*

### Comments and Recommendations

Based on a review of the submitted packet, site visit, and review of the Protective Bylaw, staff has the following comments:

- See Synopsis above for a summary of comments, status, and recommendation.

**Recommendation:** Hear applicant update and continue hearing to a future date certain.

### ■ Special Permit Modification – 256 Ayer Road (256 Ayer Road, LLC/Scott Patterson)

**Name of Applicant:** Scott Patterson, 11 Spring Street, Lunenburg (In the Batters Box)  
**Location of Property:** 256 Ayer Road, Harvard, MA  
**Assessors Map/Parcel:** 4/41  
**Zoning District:** Commercial (C)  
**Parcel Size:** 3.63± Acres  
**Current Land Use:** Mixed-Use (Commercial and Residential)  
**Property Owner:** 256 Ayer Road LLC  
**Consulting Engineer:** Goldsmith, Priest, and Ringwall, Inc. (Nicholas Pauling, PE)



## **Response to Planner's Conclusions Regarding Compliance with Objectives of the Ayer Road Village Special Permit Bylaw.**

Section 125-52 does not require or contemplate that an application will meet every objective of the Ayer Road Village Special Permit Bylaw. Additionally, the Planner appears to determine that these objectives have not been met which is a subjective determination to be made by the Planning Board.

We do believe that this project meets the Objectives of the Bylaw as set forth below:

(i). Mixed use Development. We submit that the proposed combination of recreational use and office/commercial use is Mixed Use. Mixed used development is defined as follows:

"pedestrian-friendly development that blends two or more residential, commercial, cultural, institutional, and/or industrial uses." See

<https://www.completecommunitiesde.org/planning/landuse/mixed-use-development/>

(ii) Our design provides connectivity among the site uses, Town soccer fields, new Council on Aging Facility and Harvard Green. It also provides connectivity with the sidewalks and crosswalk to be constructed along Ayer Road and, once the town project is completed, will provide connectivity to the buildings at 188-200 Ayer Road, the Bowling Alley and the Post Office.

(iii) The plan includes pedestrian walkways, benches, pathways, bicycle racks, gazebo, pedestrian scale lighting and signage.

(iv) and (v) – We have incorporated façade changes on the building in order to be compatible with local architecture and to break up building mass.

(vi) The plan has been carefully prepared to include subordination of parking, loading docks, on-site utilities, heating, ventilation and air conditioning equipment, utility lines and solid waste dumpsters. 75% of the parking for the badminton facility is behind the building.