



Director of Community and Economic Development

UPDATE

June 27, 2022
Updated 6-27-2022

■ Special Permit and Site Plan Review; 203 Ayer Road

SYNOPSIS

- No new information has been provided by the applicant and the peer review consultant provided their report on June 3, 2022.
- Additionally, the BOH indicates significant challenges and without progress in this area, it makes no sense to meet in consecutive meetings until this can get closer to resolution.
- The analysis below will focus on Beals & Thomas comments are still relevant since the plan has not been updated. Please refer to prior editions of UPDATE for that information. Prior Director comments in past UPDATES still stand as current analysis.
- The Design Review Board process has not moved forward as the DRB is still awaiting new submittal information.
- Finally, based on the legal opinion provided by Town Counsel prior to the 6/3 meeting, the Board should try to determine if this information is clear (and actionable) because the Board's decision may partially rest on that information. If anything is not clear, I would follow up with Town Counsel to try to get clarity as needed.
- At this point, the Board should query the applicant as to their intentions and make a decision on proceeding based on the response (see below).

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.

PEER REVIEW COMMENTS & STAFF RESPONSES

General Comments:

- §125-20.D of the Bylaw requires the development to provide water supply and sewage disposal approved by the Board of Health (BOH). We acknowledge the proposed connections to the previously installed on-site systems. We note this for the benefit of the Board and defer review and approval of the adequacy of these connections to the Board of Health Review process.

I understand that the Board of Health review will be very complex for this site and given that two of the three proposed buildings do not have a designated use, this makes it even more difficult to make a determination. The applicant will need to provide some evidence that the BOH is or can be satisfied with a specific development scheme prior to rendering a decision. Alternatively, you could make a special condition stating that no building permits may be issued until this is in hand.

- §125-29.I of the Bylaw requires a building factor calculation to confirm the lot shape. The referenced calculation does not appear to have been provided by the Applicant. We request that the Applicant provide the referenced calculation in accordance with the referenced section of the Bylaw.

The question is, similar to 295 Ayer Road, as to whether the current submittal reflects the lot expected to be the subject of this development. If not, the applicant should probably address any lot changes through the ANR process prior to final analysis. However and regardless, the build factor calculation shall be provided by the applicant on the cover page or zoning analysis table.

- §125-30.B of the Bylaw requires a total building floor area calculation for all levels of all buildings. Understanding that buildings B & C are not fully designed, as proposed, the Project does not appear to comply with the 10% maximum coverage area. We request that the Applicant clarify the design intent and document compliance with the referenced section of the Bylaw.

As shown above in Figure 1, the Assessors Database and GIS show the current legal lot at 11.9 acres. This complete lot is not shown on the site plan. Further, the site plan states the lot size at 11.03 acres suggesting that part of the lot will be ANR'd off. Given either 11.9 or 11.03 acres, the FAR should be below the 10% threshold because the total proposed floor area is 42,615 s.f.

- §125-30.D of the Bylaw requires that the area within 20-ft of the street line be clear of signage, fences, plantings, etc., to provide adequate visibility for oncoming traffic. As proposed, the landscape plan does not appear to comply with this requirement. We request that the Applicant clarify the design intent and document compliance with the referenced section of the Bylaw.

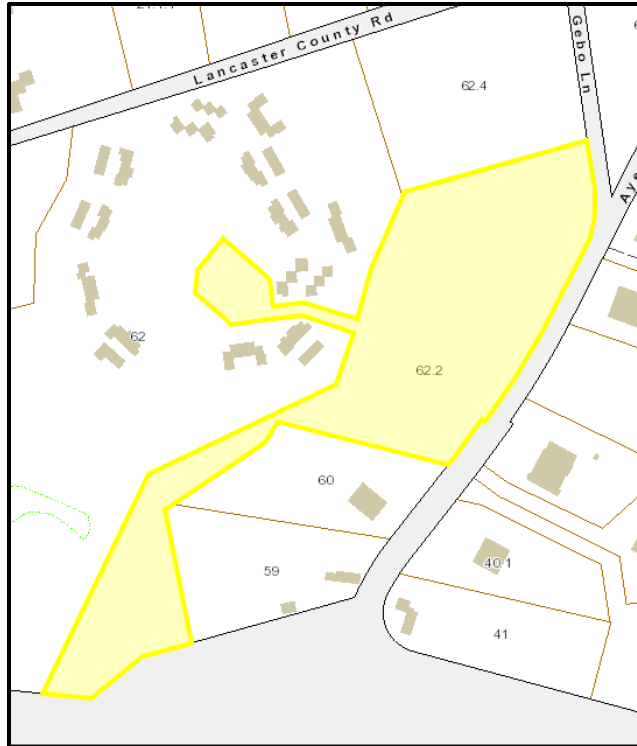


Figure 1

This is a valid point. However, I would ask Beals & Thomas if the ingress/egress (curb cut, driveway) should be in this location in the first place. I have previously recommended a realignment of the drive to be lined up with the commercial drive for Dunkin on the east side of the street to create a 4-way intersection and eliminate another offset driveway in the corridor. Do they have any traffic safety concerns about the proposed cut? Once the Board accepts the driveway location, more granular criteria such as that noted above can be addressed.

- §125-31.B(2) of the Bylaw requires each branch of a shared driveway shall include a turnaround for vehicles, especially emergency vehicles. We acknowledge the swept path analysis provided for a SU-30, or a typical delivery truck. Based on this analysis, the required turnarounds do not appear to be provided. We request that the Applicant clarify the design intent and document compliance with the noted section of the Bylaw for vehicles larger than a SU-30 and more typical of a fire engine. We defer ultimate review and approval of the driveway geometry and adequacy of the emergency access provided to Harvard Fire Department personnel.

The applicant should provide this information and the Harvard Fire Department should provide written confirmation that this and any other fire-related provision have been addressed satisfactorily.

- §125-38.D(2) of the Bylaw requires that site plans include provisions for lighting. A lighting design does not appear to be included in the current submission. We request that the Applicant clarify the design intent for lighting and provide a photometric plan as may be applicable.

Agree, this should be provided, including the photometrics. This is an important criterion to address in conjunction with hours of operation and times that the Harvard Green adjacent parking area is lit—either constantly or intermittently.

- §125-38.D(3) of the Bylaw requires site plans include provisions for water supply to be provided. A layout of the proposed water distribution network is provided; however, the specific length, size and material of water main is designated as “to be determined.” Additionally, a fire suppression system is also proposed, but again, designated to be “designed by others”. We request that the Applicant clarify the design intent for the water system to the satisfaction of the Board and the overarching BOH review process.

Agree and this also needs satisfaction of the Board of Health and Fire Department.

- §125-38.D(3) of the Bylaw requires site plans include provisions for waste water collection to be provided. We acknowledge the Subsurface Sewage Disposal System Upgrade plan provided. We note the plan includes the use of 4” collection pipe, which appears to be smaller than industry standard for buildings of this size. We request that the Applicant clarify the design intent for the sewage collection.

This needs to be designed to the satisfaction of the Board of Health and the consultant. It is clear the BOH will not be very open to authorizing a system predicated on two “to be determined” uses and also have expressed that it is doubtful that there will be any appreciable capacity beyond that needed by the badminton facility. The Planning Board should remain closely coordinated with the BOH on this because there are significant “chicken and egg” issues here.

- §125-38.F(1) of the Bylaw requires that renderings for the front, rear and side elevations of the proposed development be provided including external HVAC equipment, generators, etc. A comprehensive package of the required renderings does not appear to have been provided by the Applicant. The renderings provided appear to be inconsistent with the site plans relative to the layout and orientation of Building “C”. We request that the Applicant document compliance with the noted section of the Bylaw.

Renderings have been provided to the Design Review Board as well as sets to the Planning Board. But it is the DRB that must first render a recommendation prior to any decision. Agree that all HVAC and other mechanicals should be provided on any elevations provided to the DRB and that the packet be “comprehensive” as has been conveyed to the applicant.

- §125-38.G of the Bylaw requires a landscape plan, prepared by a Registered Landscape Architect (RLA). We acknowledge the landscape plan provided; however, there appears to be an inconsistency with the plan scale. We request that the Applicant clarify the noted inconsistency and revise the plan as applicable.

This should be addressed satisfactorily by the applicant. The provision was included by the Town for a reason and is certainly even more applicable to larger, visible, signature projects. If the applicant does not want to meet this requirement, any waiver request should explain the reasoning and why it is a special case.

- §125-39.B(5)(a)(2) of the Bylaw requires trip generation analysis for average daily traffic. The Applicant does not appear to reference what trip generation is being assumed for Building A, and without known uses for Buildings B and C, it is unclear how this analysis can be conducted accurately. We request that the Applicant clarify what assumptions are being made of trip generation and document compliance with the noted section of the Bylaw.

This is critical information and should be conducted with the utmost technical rigor. Clearly, not having uses specified for buildings B and C makes this a guesstimate, but if I were the applicant,

unless they provide greater specificity regarding uses, I would apply the greatest traffic generating use just to be conservative.

- §125-39.B(5)(e)[1] of the Bylaw requires specific turning radii for the proposed driveway. The radii for the driveway as proposed do not appear to meet the minimum requirements. We request that the Applicant document compliance with the noted section of the Bylaw and revise the design accordingly.

This should be provided as recommended by the consultant.

- §125-39.B(5)(a) of the Bylaw requires shared entrance and exit access driveways be separated by a traffic island. We acknowledge the concrete rubble island proposed by the Applicant; however, its location would appear to intercept the referenced location of the future Town installed shared use walkway. It is unclear if the concrete rubble strip will be an acceptable or compatible material in this location or if further design coordination will be required. We note this for the benefit of the Board.

Indeed the applicant should coordinate with the Town's engineering consultant TEC to make sure that each plan set (applicant and Town 25% design) show an appropriate and acceptable traffic island.

- §125-39.E of the Bylaw requires provision be made for fire protection. As noted herein, the fire suppression system is designated to be "designed by others". We request, to the satisfaction of Harvard Fire Department personnel, that the Applicant document compliance with the noted section of the Bylaw.

Agree that a written set of comments addressing all fire-related criteria is necessary.

- §125-39.G(1) of the Bylaw requires projects subject to the site standards within the Commercial District provide curbs and sidewalks. As proposed, the Project does not propose either. Understanding that sidewalks and curbs do not exist on this portion of the Ayer Road, it is unclear if the referenced Bylaw is applicable to this specific Site. The Applicant also makes reference to a future Town installed shared use walkway parallel to Ayer Road. We defer to the Board to determine the applicability of the noted Bylaw relative to the Project location.

As noted with 295 Ayer Road, the Ayer Road TIP project, currently in the 25% design phase, will provide a shared use path (SUP) along the site frontage. We just will require the applicant to coordinate with TEC and MassDOT to insure proper connectivity. It is up to the Board as to whether to request a Bond as a contingency in case TIP project does not get implemented.

- §125-41.B(3) of the Bylaw stipulates setback requirements for signage. The sign location proposed does not appear to comply. We request that the Applicant clarify the design intent of the sign (dimensions and size) and document compliance with the noted section of the Bylaw relative to its proposed location.

Agree. Applicant should redesign to be compliant.

- §125-52.D.(4)(a) of the Bylaw stipulates that no more than 25% of the parking should be located in the building "front yard." Building A proposes front yard parking and when considering the potential contribution for "front yard" parking spaces from Building C, it does not appear that the Project complies with the noted Bylaw. Furthermore, without known uses for Buildings B and C, it is

unclear how the proposed total number of parking spaces was derived. We request that the Applicant clarify their interpretation of noted Bylaw to the satisfaction of the Board and document the assumptions made relative to the number of parking spaces provided.

Agree that this is an important aspect of the ARV-SP and the Commercial Design Guidelines and this justification and rationale should be provided. Ideally, if the project were focused on aligning with the frontage of Ayer Road, the Board should not only ensure full compliance, but may also wish to recommend a redesign with ALL parking to the side or rear. For an alternative urban design where a village cluster might be proposed centered on the side, more flexibility for curb side parking might be appropriate. However at this stage, the design is very closely following the suburban office park model rather than the type of development that the Bylaw is seeking to achieve.

- The Applicant has proposed accessible parking spaces at the entries to each of the proposed buildings; however, the van accessible spaces at the front of Building A are shown as 9' wide with a 6' wide access aisle. The aisle should be revised to 8' wide with 8' wide spaces in accordance with Section 23.4.7.e of the Massachusetts Architectural Access Board (MAAB) regulations (521 CMR).

Agree.

- We request that the Applicant confirm that the proposed site lights are full cutoff fixtures, and they submit a lighting plan that demonstrates that the proposed site lighting complies with §125-40 Lighting.

Agree. Applicant should provide this information clearly and succinctly.

- §125-52.D.(4)(c) of the Bylaw requires facilities to provide a means for solid waste collection. Building A is proposed with a trash enclosure; however, Buildings B and C are not. We request that the Applicant document compliance with the referenced section of the Bylaw.

Agree.

- §125-52.E of the Bylaw requires approvals for the privately owned and maintained sewage disposal systems be provided by the BOH. We note this for the benefit of the Board and defer to overarching BOH review and approval process.

This will be a complicated process and it is not yet clear if the applicant will be able to propose a system with a capacity that will sufficiently serve all buildings and whether there is sufficient land area for leaching fields. The applicant is encouraged to work diligently with the BOH to get this resolved ASAP.

- The Project proposes a gravel driveway to future parcel "A" beyond Building B. It is unclear what the future intent is for parcel "A" and if this access will be gated or monitored in any way. We request that the Applicant clarify the need for future access to parcel "A".

It appears as though the applicant is seeking to meet the G(3)(b) requirement criteria. It is this reviewer's perspective that it does not as it does not seem to be functionally integrated into the circulation pattern of the subject lot and seems a "throw in" provision. It is recommended that the applicant put more effort into a site design that meets the spirit and intent of the Bylaw, use best practice urban design principles, and consider how each site element functions both internally but

also externally in relation to adjacent sites and the public realm. The bar set by this project will be the likely target point for future applications.

- The architectural plans provided appear to include a residence on the second floor of proposed Building A. It is unclear if this seemingly residential use within the Commercial Zoning District would require additional permitting. We request that the Applicant clarify the residential component of the Project as proposed.

An additional question is whether this unit is intended to try to meet the “mixed use” objective of the Bylaw or if it is really needed as a custodial or managerial residence? If so, are there site design, BOH, fire, building code, and other criteria that will need to be met? Will an elevator be required? As stated previously, the Bylaw does seem to suggest that mixed use should include a residential component—perhaps the upper floors as loft apartments to buildings B and C. However, if the applicant would consider dedicating the ground floor spaces in these buildings for retailing or services, and create a more walkable core area, this could be an appropriate alternative.

NOTE: The Planning Board may wish to try to be a little more assertive and proactively convey some ideas to the applicant about what the Board would like to see to meet the Bylaw objectives (and when DRB concludes, the Design Guidelines) not only related to uses but also the layout of the lot and issues like interparcel connectivity, location of driveway, etc.

- Though a numbered route, it does not appear that Ayer Road is under the jurisdiction of MassDOT at the Project location. A large gore and street markings exist that create two lanes of southbound traffic approaching the interchange of Rt 2. The proposed Project driveway will impact the existing markings and would appear to require a reconfiguration of the existing traffic pattern. We request that the Applicant clarify the future design intent for the intersection of the Project driveway at Ayer Road.

This may be a reasonable comment but does the consultant have access to the 25% design for the TIP project? Would these comments be different if so?

- Although plantings are proposed along the rear property line that abuts a residential zoning district and residential units, the proposed screening does not appear to comply with §125- 39.D.(4) and (5). We request the Applicant revise the Planting Plan to provide additional plantings to provide the required screening.

Agree.

Stormwater Management Comments:

Please refer to the Beals & Thomas letter for these items. It is likely that the applicant and Beals & Thomas will need to discuss these items and come to a mutual understanding regarding needed actions and a means to facilitate this understanding to the satisfaction of the Board.

SUMMARY OF ISSUES

1. The Special Permit and Site Plan Application is for a category of development that the Applicant has not shown eligibility for. Additionally, the proposed layout does not meet the spirit of the bylaw framework. Therefore, initial zoning analysis is not favorable.

2. The Board of Health has significant issues with the uses the applicant proposes (and has not yet proposed) on one hand and the limited wastewater capacity of the site on the other. This reviewer agrees that not identifying specific uses for the two remaining buildings is problematic in evaluating a full range of criteria such as water and wastewater, parking and circulation, etc. Note that applicant does not even want to propose a specific use for a building (not a tenant).
3. The Design Review Board awaits a resubmission of an application and packet for DRB. This must be a full submission based on the checklist on the application.
4. Beals & Thomas have submitted a number of comments in their critique. All of these should be responded to and the consultant and applicant should have a final list of items indicating where each stands. The Board may choose to reject peer review issues and go with the Applicant, but it is not recommended and it must be grounded in a compelling reason that can be defended in the Bylaw.
5. Given the various areas that need to be addressed, it makes sense for the Planning Board to discuss all of these with the Applicant and determine how the Applicant wishes to proceed, what their timing for rectifying each area is, and how this can all be coordinated in an efficient and fair way and not result in spinning of wheels.
6. The Board may wish, based on the Applicant's answer, to either offer the opportunity to withdraw without prejudice at this time, or to ask the Applicant for an extension of from 4-6 months so they can have time to work through all of this. If neither of these are acceptable to the Applicant, the Board may be faced with making a forced decision. I do not have confidence that the Applicant will have all of their issues resolved in a few weeks and I believe it would be in the best interest of the Applicant to give more time and effort to meet the requirements of the Planning Board, the Design Review Board, and the Board of Health, in full.
7. Finally, I urge the Board (and DRB) to consider providing some wisdom and guidance to the applicant. The Board should establish what the ARV-SP means to members, visualize the ideal or preferred outcome, and try to urge the Applicant in that direction. Instead of being reactive, consider taking a more proactive approach and telling them what you would like to see.

Recommendation: See 1-7 above.

■ Special Permit and Site Plan Review – 295 Ayer Road (Kennedy & Co.)

Synopsis

- The applicant and peer review consultant need to discuss and address their differences and progress should be reported back to the Planning Board.

Synopsis

- Note current concerns expressed by BOH (and B&T) related to water and wastewater. Applicant should make an effort to rectify BOH concerns to the extent feasible and obtain a letter/memo from BOH providing BOH sign-off or status. Board should make BOH compliance a special condition of approval making a building permit and CO contingent.
- Appears BOH also requires an ANR of project area in order to make the final Title V determination.
- Starter decision has been created in the decisions folder.

Request: The Applicant is seeking a Special Permit for a landscaping and nursery business in the C district. Based on the provisions of Section 125-13(T) of the Protective Bylaw, such businesses are allowed in the C district with a Special Permit and Site Plan Review.

STATUS OF APPLICATION – See SYNOPSIS above.

BEALS & THOMAS SUMMARY

Based on the June 20, 2022 letter from Beals & Thomas, I have the following supplementary comments for this application:

1. B&T recommends condition requiring documentation of compliance.
2. Compliant and no further action.
3. Need ConCom statement of compliance.
4. Compliant and no further action.
5. While DRB will not be invoked, the Board must be satisfied with any applicable Commercial Guidelines that it sees as applicable.
6. See #5 above and also Board must be comfortable with no RLA participation.
7. Compliant and no further action as long as PB ok with split rail fence as solution.
8. Compliant and no further action.
9. Fire response, "...based on the plans submitted it appears there will be sufficient access for emergency vehicles in both the existing solar array driveway and the proposed new commercial parking lot."
10. Compliant and no further action.
11. Compliant and no further action.
12. Compliant and no further action as long as PB is satisfied with this solution.
13. Compliant and no further action.
14. As long as the applicant agrees to provide a connection from the residence to the planned SUP (and provides surety in the meantime), this special condition should be sufficient.
15. Compliant and no further action.
16. Compliant and no further action.
17. Compliant and no further action.
18. Compliant and no further action.
19. Compliant and no further action.

20. Compliant and no further action.
21. Compliant and no further action.
22. Compliant and no further action.
23. Compliant and no further action.
24. Compliant and no further action.
25. Compliant and no further action.
26. B&T recommends that that compliance with the NPDES program and submission of a SWPPP prior to construction be considered as potential conditions of approval.
27. B&T recommends that the O&M and BMP plan be updated to reflect the proposed stormwater management system.
28. Compliant and no further action.
29. Compliant and no further action.
30. Compliant and no further action.

Recommendation: Continue hearing by first allowing consultant to summarize discussions with applicant and where things stand. They should bullet point each area of continued disagreement. These points should be addressed by the applicant followed by Board discussion and questions. This also goes for the BOH. The Board may be in a position to begin discussing special conditions at this time but may not be able to close the hearing or make a decision.

■ Update Regarding MBTA Multifamily Zoning Guidelines

I recommended that Harvard contact the Mass Housing Partnership to ask about technical assistance for this endeavor. My contact has been Katy Lacy and she can be reached at klacy@mhp.net or Work: 617-330-9955 Cell: 617-240-8478. The latest update was that this technical assistance would be worked out late spring so this is a good time to follow up.

■ Update Regarding Phase 1 Market and Fiscal Impact Analysis Project

Weitzman provided their first report for the project and while I have provided it to you separately, I will summarize it here.