



Director of Community and Economic Development

UPDATE

April 4, 2022

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SIDEBAR ON SIDEWALKS

It was suggested that it might be helpful to provide Board members with a primer for some and reminder for others regarding the sidewalk requirements in the Protective Bylaw. Note that [§125-39\(G\)](#) states that “Uses subject to site standards in the Commercial District shall provide curbs and sidewalks at least six feet in width along all sides of the lot which abut a public street. Sidewalks shall be constructed of cement concrete unless an alternative surface is approved by the Planning Board. Sidewalks shall connect to existing sidewalks on adjacent property, if possible, to create a continuous path network. Sidewalks shall be separated from the edge of the road by a buffer strip at least four feet in width.”

This provision has largely been applied with a light touch since many applications have been for rehabilitations, additions, changes in use, etc. and related to the scale and perceived investment. Recently even for small projects, the Planning Board has applied a Special Condition of approval that includes not building a sidewalk but requesting a bond or some other form of surety in order to fund later sidewalk improvements. Since the Ayer Road TIP Shared Use Path is now in the pipeline, it is anticipated that applicants for projects on the west side of the road where this provision would be applied would still need to provide surety, in the event that the TIP project was not built. On the east side of the road, the Planning Board should discuss how the sidewalk provision should be applied. Overall, the key question is: “Does Harvard need or should they have a sidewalk on BOTH sides of Ayer Road or is the SUP on the west side sufficient.” The answer to this question will inform how we apply this provision in the future on the east side. Some guidance may be found in the Master Plan or the Complete Streets Prioritization Plan and I will be able to research this in the near future as desired. If the answer turns out to be “yes” then the Board should work with DPW and the TAC to develop a plan for this system. How to design it, and how to fund beyond the receipts from applicants.

■ Special Permit and Site Plan Review; 203 Ayer Road

Name of Applicant: Yvonne 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

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: The applicant is seeking Special Permits for:

1. A commercial development under the Ayer Road Village-Special Permit, and
2. A large-scale commercial use under Sec. 125-14(D) Commercial entertainment and recreation: indoor with sound isolation from other premises; bowling alley, skating rink, theater, swimming pool, racquet sports, fitness center. Sec. 125-23(B)(2) requires such uses to seek a Special Permit.

The applicant is seeking Special Permit and Site Plan Review approval for the initial phase of a multi-phase commercial development. This first phase (PHASE 1) consists of the development of 29,998 s.f. building to be used as a badminton racquet recreational facility with associated parking, circulation, landscaping, and other related infrastructure.

SPECIAL NOTE 1: As shall be noted frequently in this initial analysis, it is highly recommended that the Planning Board, under the authority granted to the Board as per Mass General Laws Chapter 44, Section 53G, retain a peer review consultant with appropriate knowledge, experience, and qualifications to conduct a complete technical review of this application. The minimum qualifications for this permit shall be recommended as follows:

1. Civil Engineering
2. Traffic Engineering
3. Landscape Architecture
4. Town Planning and Zoning
5. Appraisal and Land Values

Such a peer review consultant (PRC) shall conduct a thorough technical review of the following requirements of the Town of Harvard:

1. Zoning
2. Site Plan Review
3. Special Permits 1, 2, and 3.

SPECIAL NOTE 2: Given the size of the proposed building subject of what shall be termed PHASE 1 is 29,998 s.f., the applicant should be applying for a Section 125-37 Major Buildings Special Permit, which has not been received, thus technically making this an incomplete application.

Technical Review

The First Section below addresses the site plan elements of the project while subsequent sections will address the elements of each special permit request.

Section 125-38, Site Plans

Note that due to the scale of this submittal, it is recommended that a peer review consultant (as per Mass General Laws Chapter 44, Section 53G) be sought to assist the Planning Board with the formal site plan review and special permit elements of the application. However, as staff, I will provide preliminary comments below to merge with comments of any consultant retained.

The following is an assessment of how the application meets the requirements of §125-38, Site Plans, Section A and B (purpose and applicability). A site plan set was duly submitted for the above referenced project. Said project as proposed is appropriately seeking site plan review under this Section.

Site Plan Content – Section D specifically states that plans shall be prepared by a professional engineer, land surveyor, architect, and/or landscape architect and this set is in compliance with the provision. Specifically, as per this Section, the plans include the following:

- 1. Lot boundaries and buildings and other structures (including signs) within the lot or side setback area abutting the lot, including elevation views as well as plan views to show conformance to the Bylaw.**

The submitted site plan does show these elements. Elevation views limited to front/street side elevation.

- 2. Parking, loading, maneuvering, storage and service areas or uses, walkways, driveways, lighting, green areas and visual screening; and**

The site plan includes sufficient detail for parking, maneuvering, walkways, green areas. Luminaires are shown for parking and circulation areas but not for buildings. No specific buffering or visual screening is depicted.

- 3. Provisions for water supply and reservoirs, surface water drainage, and treatment and disposal of sewage and any other wastes;**

Public water supply, septic system, and stormwater all provided in the plan set. It is noted that the plan set for the Board of Health indicates that Building #1, subject of this application, as proposed as “warehouse” use whereas the application for Special Permit indicates an indoor recreation use. This should be noted in case the requirements for each related to wastewater are different.

- 4. Levels and grades where substantial excavation or fill is involved.**

Separate grading plan (Page C4.1) has been provided.

- 5. Clearing limits used to calculate both the volume and rate of surface water runoff.**

Drainage plan provided including a stormwater report.

- 6. Design Review, applicability, procedure, and purpose**

As per Section 133-55, Applicability, of the Town of Harvard Code, the Design Review Board shall examine design elements of development proposals in the Commercial District for projects that require a building permit for new construction, an addition, or exterior alteration, or are subject to site plan review and/or a special permit granted by the Planning Board. The Design Review Board shall apply design guidelines adopted by the Planning Board that display qualities of development Harvard wishes to encourage.

Prior site plan and special permit applications may not have implemented this section for minor cosmetic improvements such as painting or replacement of damaged or deteriorated building materials. However, the scale of this project is clearly applicable. Therefore, Section 125-38F shall be applied and used by the Design Review Board and their findings, in the form of an advisory report, shall be used by the Planning Board in their consideration of the site plan and Special Permit.

7. Landscape Plan

Applicant has submitted a required landscape (planting) plan.

Comments: Basic submittal requirements of site plan review have been submitted. However, additional criteria may be required based on special permit review and peer review process.

Section 125-39, Site Standards

1. Parking and Loading

- a. No shared elements are being proposed in this application. This can be addressed to applicant related to adjoining properties.*
- b. Proposed ingress/egress has been designed for safe and rapid access as per 125-39A1. There is a concern over the location of the driveway as noted below.*
- c. Meets parking area subdivision minimums, parking stalls are a minimum of 9x19, parking aisles are minimum of 24' in width permitting 90° angled parking. No car stops are proposed and are not required.*
- d. No loading docks or facilities are provided. Applicant should provide details related to any needed loading facilities unless using parking and driveway areas.*

Comments: The Board or peer review consultant (PRC) may seek additional information related to loading and any related site element.

2. Standards for Driveways

This information will be provided by peer review consultant, if applicable, and any input to be provided by the Department of Public Works (DPW) at a later time.

Comments: A key issue will need to be the consideration of an alignment of the proposed 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.

3. Open Areas

There is an 867' lot width necessitating a 10% or 86.7' buffer strip around the perimeter of the property. The applicant notes a 20' buffer strip in the zoning table. The applicant also notes 64.3% green area for the site which exceeds the minimum 50% required.

Comments: The applicant may be required to redesign site plan showing appropriate buffer strip or should request a waiver from this requirement.

4. Screening

No proposed lighting plan is shown in the plan set and the only lighting proposed on the site plan sheet (C3.2) are pole luminaires in parking and circulation areas. A photometric plan should be provided to indicate any spillage and site and elevation plans should show wall mounted or other fixtures contributing to light production and details should show specific fixtures and their luminescence and shielding.

Plan shows fencing around waste receptacle but utility infrastructure does not indicate any screening.

Rear property line adjacent to AR zoning district shows vegetative screening in the form of several tree species including evergreen "Frasier Fir" and an unnamed species of evergreen. The Board should determine whether this is sufficient or whether a berm or fence should be required. Screening plantings should be evaluated as per proper proposed installation and species by peer review consultant.

Comments: At this stage, it appears that in order to properly evaluate screening needs, a photometric plan needs to be provided. Further, the landscape plan (L1.01) should indicate plantings intended to screen utility installations such as transformer pads.

5. Fire Protection

Fire Dept. comments will be provided as received. Additional comments may accrue from peer review consultant.

6. Drainage

Peer review consultant (PRC) will provide comments on drainage.

7. Sidewalks

An internal pedestrian circulation system has been provided and appears adequate. Sidewalk widths are the required 6' and the system shows a proposed connection to the Ayer Road Shared Use Path (SUP). Specific specifications should be evaluated by PRC and/or Building Commissioner.

Gravel paths connecting to Harvard Green and the Soccer Field Parking Lot should connect directly to the internal pedestrian system. As shown now, they do not. They should also be coordinated with the owners of these properties for maximum utility.

Comments: 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.

Section 125-40, Lighting

Lighting criteria evaluation requires showing all fixtures, their output and shielding, and a photometric plan showing any possible spillage. This has not yet been provided.

Section 125-41, Signs

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.

Zoning Requirements

The applicant, rather than strictly complying with the recently adopted minimum 20' setback and maximum 50' setback from the ROW has chosen to request 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.

Special Permit Requirements

1. **Advice from Planning Board or Other Town Boards** (Pending – It is anticipated that, at a minimum, comments will be forthcoming from the following agencies):

- a. *Conservation Commission*
- b. *Fire Department*
- c. *Board of Health*
- d. *Department of Public Works*

2. **Special Permit Authorization**

Two special permits have been applied for and this review indicates that a third special permit is required for the proposed project. These reviews shall be conducted concurrently for the benefit of reviewers and the applicant. The first section below will evaluate the general special permit criteria listed in Section 125-56 followed by an evaluation of any specific special permit criteria for each class of permit applied for and applicable.

- a. **General Special Permit 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.
 - (a) *The submitted stormwater analysis will be duly evaluated by the PRC and included in a subsequent version of this analysis by reference and may be summarized.*
 - (b) *Pollution will also be evaluated by PRC in a manner described in (a) above.*

- 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; and

As this is a major arterial road and not a residential street, this provision is 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.

(a) **To conserve health;** *To be determined*

(b) **To secure safety from fire, wind, flood, and traffic;** *May create traffic and safety issues based on increased trip generation, truck egress, left turn movements and conflicts with other driveways. PRC shall evaluate this for future assessment.*

(c) **To preserve and increase the value of land and buildings;** *The estimated appraisal value of the completed project shall be a factor based on design and layout.*

(d) **To protect the community from the detrimental effects of unsuitable development;** *Suitability can be directly related to the goals and objectives of the Town as expressed in the Master Plan and Protective Bylaw—most specifically the provisions of the ARV-SP and the Commercial Design Guidelines. As presently constituted, the plan does not likely meet this criteria.*

(e) **To preserve and increase the amenities of the Town;** *This proposal may provide a specific amenity but this is inconclusive.*

(f) **To prevent overcrowding of the land;** *To be determined.*

(g) **To provide for compatibility with individual water supply and sewage disposal systems and their renewal, and with public systems which may become available;** *This determination must come from the Board of Health.*

(h) **To facilitate future reuse and redevelopment of property;** *The use and proposed improvement of the property may impact future use given the permanent nature of the project and thus every effort shall be made to ensure optimal adherence with this Bylaw.*

(i) **To provide for safe, rapid traffic flow to, from, and along the streets;** *It is undetermined what trip generation will occur for this PHASE 1 and the PRC will provide a summary analysis and also determine whether a full traffic study is warranted. Further, as it is likely that future phases will be forthcoming, such traffic analysis may need to be revised accordingly. Alternatively, the Board may wish to request that the applicant provide a complete traffic study and estimate the intensity of the uses of the subsequent buildings in order to get a picture of potential impact up front.*

(j) **To avoid confusing and distracting signs in areas along the streets;** *It is unknown what the design of the signs will be and thus this needs to be better understood before definitively assessing this factor.*

- (k) **To avoid unsuitable traffic on residential streets;** *This is not applicable.*
- (l) **To preserve the streets of the Town as firebreaks;** *This is not applicable.*
- (m) **To protect persons and property against the hazards of inundation and pollution;** *Inundation is assumed to be water and this and pollution is to be assessed in peer review.*
- (n) **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;** *Same recommendation as m. above.*
- (o) **To preserve storage areas for seasonal or periodic high waters;** *To be determined by peer review.*
- (p) **To protect ponds from accelerated and excessive plant growth and premature decay into swamps;** *This is not applicable.*
- (q) **To conserve natural conditions and open spaces;** *This is to be determined but the initial assessment is that no significant natural areas are proposed to be protected or newly created.*
- (r) **To separate and otherwise isolate potentially conflicting property uses** *Most specifically to this provision, the applicant must propose a suitable screening and buffering between this use and the adjacent residential use in Harvard Green, which is zoned AR.*

1. Section 125-52 ARV-SP Criteria

Objectives of ARV-SP – This section will provide an initial summary evaluation of the proposed project in accordance with how it appears to meet the following objectives of the special permit.

- a. Promotion of mixed-use development.

De minimus adherence at this stage of the application. While subsequent phases are not specifically under review at this time, it appears that a total of 45,098 s.f. of commercial space is ultimately sought while only 900 s.f. of residential is proposed or 1.2% of the overall development. Note Section 125-13(Z) which specifies that multifamily residential use must be at least 30% of the use mix and be integrated into the commercial uses. It is expected that the applicant understands the intent of this Special Permit objective and that mixed-use has a wider, common definition of providing sufficient space in both residential and commercial uses to facilitate the synergy that mixed-use is intended to create.

- b. Promotion of shared access in properties, with appropriate links to adjoining properties, lessening the need for curb openings on Ayer Road.

No shared access is being proposed. It appears that a stub street has been provided within Harvard Green to eventually be connected to this parcel. While the proposed uses are not specifically compatible with this connection, if additional residential uses were proposed, it could be a logical connection. Additionally, a connection to the southerly parcel (Map 8, Parcel 60) is also strongly suggested along with the potential value of establishing a shared driveway

between the subject lot and this parcel 60 directly adjacent to the commercial driveway across Ayer Road. Note that related to southerly parcels closer to Route 2 interchange, DPW and Planning Board may wish to evaluate potential curb cuts related to traffic safety for any new development or redevelopment and find a means to ensure interparcel connectivity to facilitate traffic flow out of a possible 4-way intersection.

- c. Promotion of development that emphasizes pedestrian accessible walkways, benches, pathways, bicycle racks, and pedestrian-scale lighting and signage.

This is a mixed bag in the initial design. While there is a reasonable provision of an internal pedestrian walkway system, it does not connect to adjacent parcels via the gravel path system as proposed. These gravel paths connect to 1) the stub street for Harvard Green and 2) the soccer field (Parcel 62.4). This part of parcel 62.4 is directly adjacent to a soccer goal and could not reasonably be established in this location. It is recommended that the applicant gain permissions from these adjacent property owners for connectivity in these locations. Benches, bicycle racks and other amenities have not been provided.

- d. Encouragement of building and site designs compatible with the local architecture, rather than generic designs.

This has not been achieved.

- e. Avoidance of excessive building massing and unbroken building facade treatments.

This has not been achieved.

- f. Subordination of parking, loading docks, on-site utilities, heating, ventilation and air conditioning equipment (HVAC), utility lines, and solid waste dumpsters to building form.

This is undetermined.

ARV-SP Review Criteria

- a. Applicant has appeared to comply with the parking lot provisions.
- b. 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.
- c. Solid waste appears to be addressed adequately related to PHASE 1.
- d. No loading facilities have been proposed.
- e. PHASE 1 building is out of scale with the neighborhood and surrounding properties.
- f. Changes in grade and these impacts shall be evaluated by PRC.
- g. 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.

Section G3 Findings

- a. 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

- b. Connectivity between adjoining sites, or provisions for curb-cut reduction, shared access, and shared parking.

No

- c. Inclusion of multifamily use with a set aside of affordable housing units.

No

It is assessed that no Section G3 criteria have 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 this specific provision.

2. Section 125-20 Use Criteria

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.

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.*

2. 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:

- 1. The Site and Buildings** – The Design Review Board Advisory Report will be a necessary part of the analysis for the site and buildings. Additionally, the buildings are not massed and configured in a way that adheres to the ARV-SP objectives. It is recommended that the applicant rethink the concept.
- 2. Parking and Circulation** – Parking allotment requires formal PRC evaluation to ensure that it is sufficient for the proposed use. The parking associated with the other buildings cannot be determined without a specific use category to be applied. Further, the parking should not be so excessive as to create unnecessary stormwater runoff. Shared parking concepts should be considered as well as interparcel access to facilitate internal circulation without requiring drivers to go out to Ayer Road for every trip.
- 3. Traffic** – At the very least, this situation should be closely evaluated by the PRC. It may rise to the level of a traffic study being required of the applicant, particularly related to the proposed driveway and impact on the local road system.
- 4. Use** – The proposed badminton facility use is interesting and intriguing. However, it is a targeted and limited use and likely has a very specialized and long-distance draw. It would be more appealing to consider adding additional indoor recreation related uses such as a fitness center. It could also easily facilitate and align with retailing (sports related?) and hospitality such as a health food restaurant. The applicant is also strongly recommended to design in a substantive multifamily residential component that includes affordable units. The Planning Board may be very amenable to any residential component that adheres with the MBTA Communities Guidelines recently released by the state. The applicant may also integrate community spaces in the building and on the site as well.
- 5. Water and Wastewater** – Site must meet requirements of the Harvard Board of Health.
- 6. Other Comments** – This application has a long way to go including:
 - Filing additional Section 125-37 Special Permit as noted above.
 - Meeting the ARV-SP criteria.
 - Completing the Design Review Board process.
 - Collaborating with the peer review process.
 - Making explicit that this shall be a phased project with this initial application comprising PHASE 1 which includes the initial 29,998 square foot building and the extents of the parcel.

Subsequent buildings proposed shall be evaluated as amendments to the special permits and site plan, as applicable.

- Providing timely responses to additional required information contained in this review, the Planning Board hearings, peer review assessments, and DRB recommendations.

Recommendation: Based on the above comments and recommendations, the Board should first make a Section 53G determination regarding peer review consulting. Then, the Board should conduct the first hearing and determine what will be asked of the applicant for subsequent hearings. This may include the need to request an extension from the applicant since a decision must be rendered by June 14, 2022 unless so extended. Finally, the Board should determine whether the application itself is even complete given the lack of special permit filing for Section 125-37.

■ 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)
Application For: Modification to Special Permit and Site Plan Review w/ Special Permit

Request: The Applicant is seeking to modify a Special Permit for an indoor athletic facility in the C district. Based on the provisions of Section 125-14(D) of the Protective Bylaw, such businesses are allowed in the C district with a Special Permit and Site Plan Review.

Summary: The applicant, Scott Patterson, is seeking to modify a previously granted Special Permit to convert the existing commercial building to an indoor athletic facility “...*primarily configured to provide batting cages...*” It is the intention of the owner (Scott Patterson) at this time to no longer pursue enlargement of the garage facility and paved apron and instead wishes to expand the “barn” building by ~1,968 s.f. for the purpose of storage of equipment. It is emphasized that this additional space will not be used to expand the use itself. The existing garage would be removed along with the paved driveway and is proposed to be loamed and seeded and returned to lawn area.

NOTE: The applicant was supposed to provide an as-built site plan before occupancy. This is not evident and should be provided before a decision in this application is made.

Section 125-38, Site Plans and Section 125-39, Site Standards

Parking and Loading – It appears that the revised site plan shows a different parking configuration. As an as-built site plan was required to be submitted, this should indicate whether any prior modifications occurred that should be incorporated into this modified site plan.

Further, it has been observed on multiple occasions that cars have been parked along the length of the north driveway on both sides of the driveway. This indicates that there may not be sufficient parking spaces dedicated for peak events. I would recommend that the Board follow up on current perceived needs and ensure that the site plan designates enough dedicated spaces on the plan.

The Board may wish to inquire as to how many spaces are needed for a maximum capacity event and ensure that this many spaces are provided. We are not requiring them to pave these spaces so it is not a heavy lift for them to provide what will be needed. Parking areas must have a 24' aisle if 90-degree parking and a minimum 9' x 19' stall area. General rule of thumb would be 2 spaces for each batting cage and 1 space for every 250 s.f. of activity area.

Standards for Driveways – I would recommend emphasizing that the driveway is not intended for permanent or visitor parking and should be noted as such on the plan and perhaps via signage on site.

Screening – No existing or proposed lighting is shown on the plan and the Board should determine whether these should be added. Outdoor storage is within a fenced area but it is not clear whether the fence will include screening with landscaping or slats. As this property is surrounded by other commercial properties, the Board may wish to exclude this requirement. If not, the applicant must meet the requirements of subsections D(4) and D(5).

Fire Protection – No updates for this filing from the Fire Department. However, it is not clear how fire equipment will be able to access all sides of the existing and new building area.

Drainage – There will likely be no substantial increase in runoff since the new building area is to be offset by demolition of comparable impervious area.

Sidewalks – While the Bylaw says that any use subject to site standards shall provide sidewalk and curbing, this certainly cannot pertain to changes in tenancy with little site development. I would suggest that this provision is not applicable in this instance.

Section 125-40, Lighting – The applicant should at minimum note whether additional lighting is being proposed either attached to buildings or on poles. The Board should, based on this description, determine whether they wish the applicant to provide these lighting fixtures on the site plan, show details, and whether a photometric plan is desired. I would expect this not to be the case but will defer to the Board regarding this requirement.

Section 125-41, Signs – Not applicable unless applicant is seeking additional signage.

Special Permit Requirements / Special Permit Authorization

❖NOTE: As this is a modification, this section will simply assess if any changes to initial review are warranted.

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.

- *While no stormwater analysis was conducted, it is anticipated that there will be minor, if any, changes to stormwater as a result of the proposed project.*
- *Pollution is not anticipated to be an issue.*

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; and

- *Trip generation will only be applicable if additional activity is anticipated as part of this modification.*

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.

- To conserve health;

Not deemed applicable.

- To secure safety from fire, wind, flood, and traffic;

May create minor traffic issues if increased trip generation.

- To preserve and increase the value of land and buildings;

The proposed modification may modestly increase property values.

- To protect the community from the detrimental effects of unsuitable development;

This is not unsuitable.

- To preserve and increase the amenities of the Town;

This proposal does not impact amenities.

- To prevent overcrowding of the land;

This is not applicable.

- To provide for compatibility with individual water supply and sewage disposal systems and their renewal, and with public systems which may become available;

This determination must come from the Board of Health.

- To facilitate future reuse and redevelopment of property;

The use and proposed improvement of the property does not impact future use.

- To provide for safe, rapid traffic flow to, from, and along the streets;

It is undetermined whether trip generation will increase and thus impact traffic flow and safety along Ayer Road.

- To avoid confusing and distracting signs in areas along the streets;

The proposed number of signs is not unreasonable for such a property and use in the corridor. It is unknown what the design of the signs will be and thus this needs to be better understood before definitively assessing this factor.

- To avoid unsuitable traffic on residential streets;

This is not applicable.

- To preserve the streets of the Town as firebreaks;

This is not applicable.

- To protect persons and property against the hazards of inundation and pollution;

Inundation is assumed to be water and this is not expected to be a factor. If the Board is concerned about pollution from landscaping materials, peer review is recommended.

- 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;

Same recommendation as #13 above.

- To preserve storage areas for seasonal or periodic high waters;

This does not seem to be applicable.

- To protect ponds from accelerated and excessive plant growth and premature decay into swamps;

This is not applicable.

- To conserve natural conditions and open spaces;

This is not applicable as there are no natural features impacted by the proposal.

- To separate and otherwise isolate potentially conflicting property uses.

This is not applicable.

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.

Section 125-20 Use Criteria

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 and idling vehicles.

- Smoke, dust, odor, fumes, or other air pollution;

Idling vehicles should be prohibited due to air pollution.

- Glare, fluctuating light, or electrical interference;

It is not anticipated that light, glare, or electrical interference will be generated.

- Danger of fire, explosion, radioactivity, or other danger;

Fire or explosion are not seen as relevant issues.

- Wastes or refuse (except at the Town Transfer Station);

There is a question of where waste staging will take place and what facilities will be used for the holding of wastes. Applicant should specifically note on site plan where waste receptacle(s) will be placed and what screening will be used. Additionally, what times of the day will waste be hauled away.

- 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;

Not anticipated.

- Other characteristics.

None anticipated.

- 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:

Buildings

Applicant has done a reasonable job improving the façade and condition of the buildings generally. It is expected that the building addition will be in line with this. The Planning Board should determine whether

this building addition requires Design Review Board jurisdiction given §133-55 Applicability referencing building additions.

Parking and Circulation

- Customer Parking – Additional parking may be needed based on site visit evidence of overcrowding and parking on driveways.
- Employee Parking – How many staffers at peak? Where do they park?

Traffic – The use is not likely to substantially increase car and truck traffic but what the exact impact will be is unknown.

Use Activity – The Planning Board should understand specifically how the new space should be used, what the existing floor area of the facility that currently contains the equipment to be moved to the new addition will be used for once cleared. Will no new activity area be established in either the existing or new building area?

Water and Wastewater – Site must meet requirements of the Harvard Board of Health. If any new activity at all is being established and any additional customers anticipated, the Board of Health should be consulted.

Other Comments – Other departments and boards may have additional comments prior to the hearing.

Recommendation: Based on the above comments and recommendations, the Board should evaluate and determine what, if any, additional information will be required from the applicant. If satisfied with the responses of the applicant, a modification should be granted with or without additional conditions. However, before a decision is rendered, the applicant should provide the as-built plans as noted above.

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

Name of Applicant: Kennedy & Company, 362 Main Street, Acton, MA 01720

Location of Property: 295 Ayer Road, Harvard, MA

Assessors Map/Parcel: 4/27

Zoning District: Commercial (C); Watershed Protection & Floodplain (WFH); and Agricultural Residential (AR)

Parcel Size: 13.4 Acres

Current Land Use: Vacant

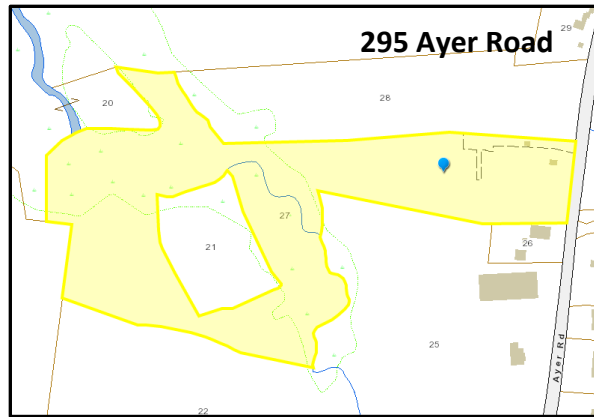
Property Owner: RDJ Realty Co.

Consulting Engineer: Goldsmith, Priest, and Ringwall, Inc. (Bruce Ringwall, PE)

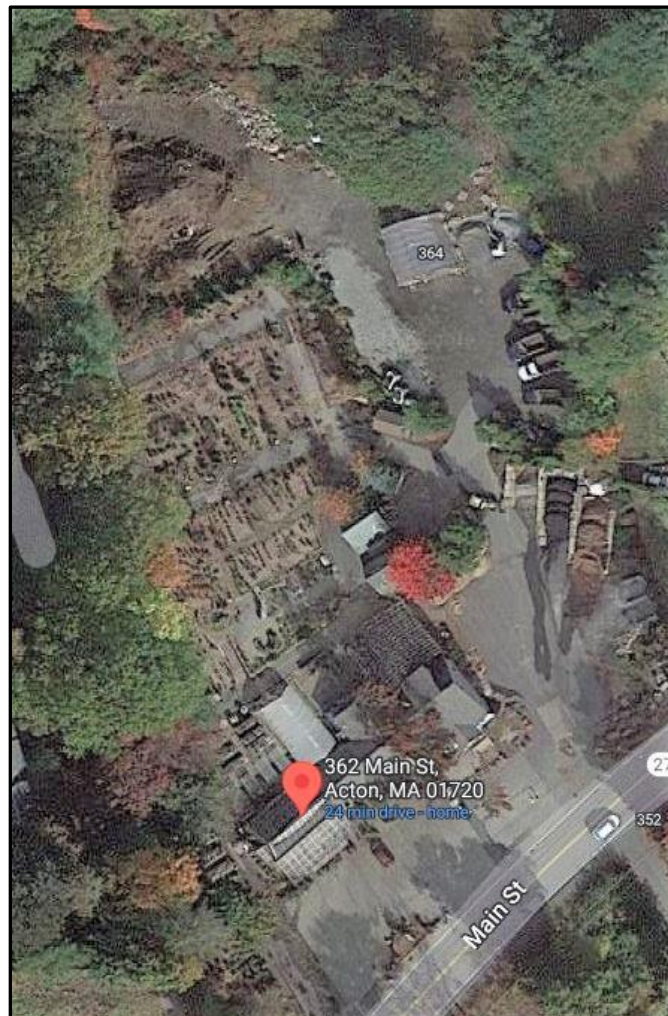
Application For: Special Permit and Site Plan Review w/ Special Permit

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.

Summary: The applicant, Kennedy & Co., is seeking a Special Permit to establish a landscaping and nursery business similar to that operated out of 362 Main Street in Acton for the past 28 years (see images below).



The narrative, dated March 14, 2022, indicates that a new lot is to be established for this business and location but no new lot has thus far been created via ANR and thus this review will be conducted on the entirety of Lot 27 as it currently exists.



In addition to a gravel materials access area, the applicant is proposing a 10' x 40' modular office (specific definition should be provided), and a 20' x 40' hoop greenhouse. A 19-space paved parking area is being proposed including two handicapped spaces. The existing house is proposed to be retained but no specific use has been identified for this space. Other proposed site details shall be noted below.

NOTE: Be aware that we have no idea of the scale of this business which makes it difficult to evaluate the potential impacts. It could be a very small operation and not even tax the size of the proposed parking lot, or it could be similar in scale to their Acton operation all the way up to a Mahoney's Garden Center. The site plan should include a periodic renewal and review in case the business exceeds what is anticipated by this review.

Section 125-38, Site Plans

The following is an assessment of how the application meets the requirements of §125-38, Site Plans:

Content

1. Existing and proposed lot boundaries and buildings and other structures (including signs) within the lot or side setback area abutting the lot, including elevation views as well as plan views to show conformance to the Bylaw; and

The site plan does not technically show the full extents of the existing property, although in this case, as the applicant will be seeking an ANR and the rear of the property is the Solar Farm, this is not an issue.

Proposed improvements include proposed signage, greenhouse, office, stormwater basin, landscape stock bins, a proposed septic drainfield, proposed force main, and new gravel for parking and circulation, although the extents and directions of flow are not indicated. No elevation views have been submitted.

There is a portion of the site plan that shows a collection of shipping containers with an arched cover. It is not clear whether this is intended to be a building or structure or intended to function as one. We will be seeking comment from the Building Commissioner to assess the status or definition of this element.

2. Parking, loading, maneuvering, storage and service areas or uses, walkways, driveways, lighting, green areas and visual screening; and

The applicant proposes nineteen (19) dedicated parking spaces for both customers and employees (it is assumed), including two (2) handicapped spaces. It is assumed that a large portion of the lot is desired to be gravel for the purpose of materials storage, vehicular and machinery access, and other purposes. However, this gravel area is not precisely depicted. There should be an existing conditions plan in order to show what natural vegetation (if any) has been retained. The site and landscaping plans should show where the gravel areas are limited to and what natural vegetation has been preserved.

No site lighting has been proposed but if desired to be installed, it should be shown on the site plan. A walkway is shown leading from parking area to the house, so it is inferred that the house will be utilized for some part of the operations. This should be explained so that the Board can assess if any scrutiny of this building or use should occur.

Proposed storage includes stock bins and the site plan should show heavy equipment and truck ingress/egress point(s) and maneuvering around the site. Any outdoor storage of machinery and equipment shall be shown on the plan.

3. Provisions for water supply and reservoirs, surface water drainage, and treatment and disposal of sewage and any other wastes;

A new water well is proposed in front of the proposed office but does not appear to be connected to any other part of the site. A proposed septic system is shown, which indicates connection to the modular office and the house. It is not clear as to why the hookup to the house is needed if the house is not proposed to be occupied. This should be inquired about. As noted, the applicant proposes a single stormwater basin but the Board should ask about alternatives including Low Impact Development (LID) as is recommended in the Commercial District Guidelines. Peer review would be required to evaluate the stormwater report.

4. Levels and grades where substantial excavation or fill is involved.

It is not indicated if any grading of the site will occur but significant clearing has already taken place and more is expected. Applicant should explain if any grading for the site is planned.

5. Clearing limits used to calculate both the volume and rate of surface water runoff.

Not determined if these measurements will be forthcoming.

Site Visit Notes - *On Wednesday, March 30, 2022 I conducted a brief site visit and determined the following:*

1. *The site was significantly cleared but stumps and brush had not yet been cleared.*
2. *The existing house is in poor condition.*
3. *Fencing may be recommended on north property line to demark and secure the solar farm access road/drive.*

Design Review, Applicability, Procedure, and Purpose

In this reviewer's opinion, design review guidelines should be applied to this application. The applicant is proposing to establish a 400 s.f. modular building, erect a greenhouse, and retain the existing house. Additionally, as a visible site along the Ayer Road commercial corridor, and expected to be a lasting improvement in the district, it seems not only within the DRB jurisdiction, but important to establish and maintain a positive appearance in this area.

While not providing any specific guidance, I would suggest that the applicant can, and should be considered for, specific DRB application waivers so as to minimize additional cost of this application, due to the scale of the development and the anticipated improvements cost.

Landscape Plan

Applicant has provided a landscape plan for the site. As per Sec. 125-39(C)(1), a 10% lot perimeter buffer should be provided (306' frontage x 0.10 = 30.6' buffer). The buffer areas should show either natural vegetation or landscape plantings.

It is recommended that a fence be installed on the northern border and the materials bins should be moved out of the required buffer area.

Section 125-39, Site Standards

Parking and Loading

- a. *No shared parking, loading, or other traffic areas is being proposed. Not recommended for this scale of review.*
- b. *While proposed parking areas are highlighted, the Planning Board may wish to get further information related to whether the lot will include curbing, lighting, or other improvements.*

Standards for Driveways

- a. *It is not clear whether proposed driveway meets the AASHTO line of sight criteria given the plantings and sign at the entrance. This should at least be addressed by the applicant to ensure traffic safety entering and exiting the site.*
- b. **Non-residential driveway standards**
 - o *No trip generation data is recommended but applicant should speak to expected truck and motor vehicular traffic anticipated on a daily basis and the timing of said traffic. At this point, the Board has no knowledge of the scale of this business.*
 - o *No interparcel connectivity is proposed. There would seem to be logical connections to parcels 25 and 26 to the south. However, the current rear yard of parcel 26 is filled with equipment. However, it makes sense to recommend the connections since the curb cuts for these two parcels is so close together.*

Open Areas

- a. *Buffer strip requirement is not met on the proposed plan set.*
- b. *The 50% minimum green area needs to be shown on the landscape plan.*

Screening

No existing or proposed lighting is shown on the plan and the Board should determine whether these should be added. As this property is surrounded by other commercial properties, the Board may wish to exclude this requirement. If not, the applicant must meet the requirements of subsections D(4) and D(5).

Fire Protection

Pending comments from Fire Department.

Drainage

Likely modest stormwater impacts due to removal of vegetation and increase in impervious surface. See prior comments about the potential for Low Impact Development. A stormwater report has been provided and peer review is recommended.

Sidewalks

The Bylaw says that any use subject to site standards shall provide sidewalk and curbing. Since the Ayer Road TIP Shared Use Path is planned for this location, 1) the applicant should coordinate with MassDOT at this time to ensure that the path is built optimally for this site, and 2) that in the event the SUP is not

installed, the applicant should provide a bond or surety in the amount necessary to build a sidewalk segment along this frontage. Note that this is in line with the waiver request submitted by the applicant.

Section 125-40, Lighting

The applicant states in their narrative that no site lighting will be proposed. This should be sufficient if the business will not be open during dark hours.

Section 125-41, Signs

There are no existing signs on the property and one business sign is proposed (see narrative).

Special Permit Requirements

Advice from Planning Board or other Town boards

To be determined

Special Permit Authorization

- 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.
 - a. *A stormwater analysis was conducted and peer review will be required to adequately analyze.*
 - b. *Pollution is not anticipated to be an issue but the Planning Board has the option of seeking peer review on this issue related to the outside storage of landscape materials.*
- 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; and

I have no ability to assess traffic generation by this use since I do not possess the ITE Trip Generation book. I do speculate that there will be a few more trips, both car and truck, generated by the use, but cannot speculate as to how much. If the Board is concerned about this, I recommend peer review.

- 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.
 - 1) To conserve health;
Not deemed applicable.
 - 2) To secure safety from fire, wind, flood, and traffic;
May create minor traffic issues based on increased trip generation.

- 3) To preserve and increase the value of land and buildings;

The proposed use is not expected to be very different than current adjacent uses and if the buildings and site are improved over the current condition of the buildings and site, this is likely to slightly improve property values.

- 4) To protect the community from the detrimental effects of unsuitable development;

While the proposed use is not in precise alignment with the goals for developing the Ayer Road corridor, it is a reasonable interim use if developed thoughtfully and, in this case, it is NOT unsuitable.

- 5) To preserve and increase the amenities of the Town;

This proposal does not impact amenities.

- 6) To prevent overcrowding of the land;

This is not applicable.

- 7) To provide for compatibility with individual water supply and sewage disposal systems and their renewal, and with public systems which may become available;

This determination must come from the Board of Health.

- 8) To facilitate future reuse and redevelopment of property;

The use and proposed improvement of the property does not significantly impact future use.

- 9) To provide for safe, rapid traffic flow to, from, and along the streets;

It is undetermined whether trip generation will increase and thus impact traffic flow and safety along Ayer Road. There is a concern about a second curb cut onto Ayer Road, especially so close to the existing entrance for the solar farm. It is unclear whether the easement for the solar farm would allow access for this business so it may be valuable to obtain any agreements or similar documentation.

- 10) To avoid confusing and distracting signs in areas along the streets;

Applicant should verify if the existing business sign is proposed to be relocated from Acton or if a new replica is being created. Applicant should address how sign meets existing Harvard Bylaw.

- 11) To avoid unsuitable traffic on residential streets;

This is not applicable.

- 12) To preserve the streets of the Town as firebreaks;

This is not applicable.

- 13) To protect persons and property against the hazards of inundation and pollution;

Inundation is assumed to be water and a stormwater analysis has been provided by the applicant. If the Board is concerned about stormwater or pollution from landscaping materials, peer review is recommended.

- 14) 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;

Same recommendation as #13 above.

- 15) To preserve storage areas for seasonal or periodic high waters;

This does not seem to be applicable.

- 16) To protect ponds from accelerated and excessive plant growth and premature decay into swamps;

This is not applicable.

- 17) To conserve natural conditions and open spaces;

Applicant should conserve natural features and vegetation to the extent practicable.

- 18) To separate and otherwise isolate potentially conflicting property uses.

This is not applicable.

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.

Section 125-20 Use Criteria

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;

The possibility of smoke, dust, and fumes from handled materials, dumping or loading, or processing should be addressed by the applicant.

- Glare, fluctuating light, or electrical interference;

It is not anticipated that light, glare, or electrical interference will be generated but lighting should be addressed.

- Danger of fire, explosion, radioactivity, or other danger;

Fire or explosion are certainly possibilities and applicant should explain how these risks will be minimized. Applicant should detail what materials and equipment will be stored on site.

- Wastes or refuse (except at the Town Transfer Station);

There is a question of where waste staging will take place and what facilities will be used for the holding of wastes. Applicant should specifically note on site plan where waste receptacle(s) will be placed and what screening will be used. Additionally, what times of the day will waste be hauled away.

- 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;

A stormwater report has been submitted. To be analyzed, peer review will be required.

- Other characteristics.

None anticipated.

- 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:

1. Application seen as relevant for DRB jurisdiction.
2. At a minimum, in order for the stormwater analysis to be reviewed, it will require invocation of Chapter 44, Section 53G for peer review. The Board may also wish some other elements of the site plan review to be peer reviewed if we retain a PRC for stormwater.
3. Detail should be provided on site features such as circulation areas, buffer strips, water and sewer hookups, waste disposal, and the use of the house.
4. House should be rehabilitated and the site landscaped, even if no immediate use proposed. If use is proposed, the applicant must provide the Planning Board with use specifics.
5. New driveway curb cut needs to be evaluated by DPW. Existing driveway to solar farm needs to show permissions or allowance for shared access. Interparcel connection recommended to the south.
6. The SUP should be shown on the site plan.

7. Determine whether modular building is permissible in C district for an office.
8. Consider recommending fence on north property line.
9. Consider Low Impact Development for stormwater.
10. Provide sign elevation detail.
11. Provide signage detail.
12. Water and Wastewater – Site must meet requirements of the Harvard Board of Health.
13. Other Comments – Other departments and boards may have additional comments prior to the hearing.

Recommendation: Based on the above comments and recommendations, the Board should evaluate and determine what additional information will be required from the applicant. It is likely that this will necessitate a continuance to the following meeting.

■ Ayer Road Vision Plan Project – Phase 1

At this time, Justin Richard, and I came to the conclusion that we needed to change horses in this ride in regard to the consultant. I will provide some context as follows:

Status of Consulting Work in Phase 1

It was decided to terminate the contract of the consultant The Chesapeake Group and Tischler Bise (“the contractor”) based on a mutual acknowledgement that the contractual relationship is not a good fit for both parties. While this is an unfortunate circumstance and a loss of critical time regarding project progress, it was a necessary step to ensure that the work product during Phase 1 was robust, fully informative, and trustworthy. Specifically, we made the following findings regarding the situation leading to the decision to terminate:

1. Communication between the contractor and Town officials was not optimal.
2. The survey conducted by the contractor and its results were not seen as informative or robust.
3. The other sources of data that the contractor was required to obtain was not sufficiently identified.
4. General presentation materials and methods were not aligned with expectations and needs.

The contractor agreed with our assessment and was willing to terminate the contract without “harm” whereby no charges for the work performed would be assessed and the contractor would not be required to share their work product to-date. This was found to be satisfactory to Harvard.

Therefore, we still retain the full \$45,000 grant awarded by the state EEA. However, as shall be seen below, the project period for the grant may need to be adjusted accordingly.

Options Available to Proceed

We were fortunate to have had two strong responses to our Phase 1 RFP and the other proposal received was from a company called Weitzman, a real estate advisory firm based in New York, NY. The Chair and Director of Community and Economic Development have reviewed Weitzman’s original proposal, reviewed their responses to follow up questions, and spoken to them on March 14, 2022 to gauge whether they remain interested in the project and whether they can carry out the scope as proposed. As noted previously, Weitzman represented themselves professionally and competently and seem fully capable to performing the work required in Phase 1 and based on a final review of the scope, the Planning Board may be prepared to engage with them provided we can successfully negotiate a contract.

How This Impacts Project Timeline

The contract with TCG sought a late April initial deliverable so that the data from the analyses could be used to inform a pending CPIC request for Phases 2 and 3. Unfortunately, this pivoting to an alternative contractor shifts our timeline to the fall. CPIC has indicated that they would be supportive of a fall 2022 application for funding these phases. They have indicated that since the data from Phase 1 is a necessary precursor to green lighting Phases 2 and 3, that this is preferable to them and links directly to their support for the project.

Therefore, if we successfully contract with Weitzman for Phase 1 work, we estimate completing it no later than the first week of August—well in advance of Fall Town Meeting. This allows the us to have ample time to effectively and broadly disseminate the findings from Phase 1 in order to provide a strong justification for funding Phases 2 and 3.

■ MBTA Multifamily Zoning Draft Guidelines Update

Draft Letter

The draft letter was finalized, signed, and submitted to the state on 3/29/2022. It was also sent to MAPC, MRPC, 495 MetroWest Collaborative, and the Assabet Regional Housing Consortium.

Options to Proceed

At this point and to be discussed at the last meeting and this meeting, the Planning Board needs to further discuss potential alternatives for approaching this task. Once alternatives are developed, the Board can assess whether a single strategy will be pursued or whether it makes sense to try to develop more than one as a contingency. Here are some suggestions:

1. **OPTION A:** Consider weaving the provisions into the Ayer Road Vision Plan. Here we would shoot for Annual Town Meeting 2023 with a Form-Based Code solution that would include

the multifamily requirements. This is arguably the ideal solution as we were advocating for a mixed-use solution for Ayer Road anyway and this allows for the seamless integration of MBTA Guidelines into our postponed bylaw.

Positives	Negatives
<ol style="list-style-type: none"> 1. Best location 2. Aligns with pre-existing goals and objectives 3. Easiest to advocate for and sell 4. Citizens have expressed an interest in this area 	<ol style="list-style-type: none"> 1. Will take the longest time frame 2. No guarantee project will move forward

2. **OPTION B:** Find a specific location in the vicinity of the Ayer Road Corridor (but not in the C District) to zone for a standalone district. We will need to use a map and brainstorm specific locations that have reasonable access to Ayer Road and also are good options for hooking up to Devens or Ayer water and sewer. Ideally these parcels should be either part of larger parcels already zoned commercial or that are adjacent to commercially zoned parcels. Utilize a new standalone replacement language for existing multifamily language in bylaw.

Positives	Negatives
<ol style="list-style-type: none"> 1. Next or alternative best location 2. Near alignment with pre-existing goals and objectives 3. Easiest to advocate for and sell 4. Citizens have expressed an interest in this area 	<ol style="list-style-type: none"> 1. May cause opposition from neighbors

3. **OPTION C:** Consider a temporary provision by amending the ARV-SP to meet the minimum requirements in order to buy time to develop something more appropriate and fitting. This would involve enhancing the ARV-SP to align with state guidelines and also remove it as a special permit (or say that if multifamily is built to requirements, it can be by-right but otherwise would need a special permit still).

Positives	Negatives
<ol style="list-style-type: none"> 1. Best Location 2. Allows Town to buy time to thoughtfully consider a better permanent solution 	<ol style="list-style-type: none"> 1. Will be hard to build trust on a temporary solution 2. May be unintended consequences

4. **OPTION D:** Look for a specific location or locations throughout Harvard that meet the guidelines and use the existing multifamily language in the bylaw as a starting point. This would require an even bigger brainstorming effort by looking at the map for the entire community. Should you wish to proceed on this option, I would recommend taking the following preliminary steps:

- a. Note the locational guidance provided by the Guidelines, which state *“When an MBTA community has no land area within 0.5 mile of a transit station, the multi-family district should, if feasible, be located in an area with reasonable access to a transit station based on existing street patterns, pedestrian connections, and bicycle lanes, or in an area that otherwise is consistent with the Commonwealth’s sustainable development principles—for example, near an existing downtown or village center, near an RTA bus stop or line, or in a location with existing under-utilized facilities that can be redeveloped into new multi-family housing.”*
- b. Think about other locational criteria that would apply such as being close to shopping and services, walkability, compatibility with adjacent zoning or land uses, etc.

- c. Use the GIS [HERE](#) to research parcels in town. If you do not know how to use the GIS, let us know and we can provide for you the useful tutorial that Liz developed a couple years ago. Using the GISm you can turn on and off layers showing zoning, wetlands, topography, and other criteria that can help you seek suitable properties.
- d. I can also send you a PDF file of the town map with parcels showing if that would be helpful. I have had several members already provide a map of parcels to consider and I have created a master map showing all of them. I can send this to you as well if you wish to see what others did.
- e. You may also wish to create a narrative or description for each property you identify that notes why this property is a good option and how it meets one or more criteria.

Positives	Negatives
<ol style="list-style-type: none"> 1. May find a location that does not have as much overall impact on Harvard 2. More likely to maintain rural character by marginalizing the development 3. Potential to isolate in an area that has no visibility or connectivity 	<ol style="list-style-type: none"> 1. Likely to cause opposition from citizens and neighbors. 2. Location(s) may be controversial 3. May not meet state's criteria

5. **OPTION E:** Consider establishing an MGL 40R district and include MGL 40S. DHCD has indicated that they may come up with a specific program like 40R for the MBTA communities. This may be more challenging to establish because it is complex and has lengthy requirements, but it also has some key benefits to consider. Foremost in benefits is cash payments from the state to the Town for each unit built and each school kid anticipated as part of the development. These are *one-time* payments and not ongoing but pretty big. I guess you might argue, "If you have to build multifamily, why *wouldn't* you do this?"

Positives	Negatives
<ol style="list-style-type: none"> 4. MGL 40R provides payments to Harvard for two provisions: zoning incentives and density bonus payments. 5. MGL 40S provides payments to communities that establish 40R districts to cover the cost of educating school-age children of up to \$600,000 and an additional \$3,000 per student. 6. Aligns with Ayer Road Vision Plan 	<ol style="list-style-type: none"> 1. Will take a long time to develop. 2. Will likely require a consultant to assist. 3. May not be timed to align with ARVP. 4. May not provide Harvard enough flexibility to control the design and layout.

Some of these may be blended or used together (e.g., 1, 3, and 5). The Board should also consider how it wants to engage the public. Would the Board want the public to give input on suggestion solutions or locations, or rather give the public a few options to respond to? Maybe the Board doesn't think public input is necessary or desirable? IMPO I would consider engaging early and often. There is a lot to further develop by the state before Harvard can go much further. For example, they may modify the guidelines based on community input. However, some of these issues should at least be preliminarily discussed.

Potential Timelines

The following table is a rough estimate for how long each suggested option might take. Of course, they will vary based on how we integrate public outreach, funding requirements, technical assistance, and other factors.

Option	Q2 2022	Q3 2022	Q4 2022	Q1 2023	Q2 2023	Q4 2023	Q1 2024	Q2 2024	Q3 2024	Q4 2024
OPTION A										
OPTION B										
OPTION C										
OPTION D										
OPTION E										

Finally, please note that the Planning Board is NOT constrained by the typical two-year wait to bring failed bylaws back to Town Meeting. This is clearly stated in MGL 40A, Section 5 as follows:

No proposed zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting shall be considered by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board.

All it requires to supersede this provision is to develop a Planning Board report recommending passage of the Bylaw. The passage above is a clickable link taking you to MGL Chapter 40A, Section 5.

■ ZBA Request for Comments

247 Littleton County Road Special Permit (FERENCE)

Property Location: 247 Littleton County Road

Map/Parcel: 14/53.1 and 53.2

Registry of Deeds: Book/Page 21955/05 and 60401/353

Zoning: Agricultural Residential (AR)

Application: Special Permit

Owner: William FERENCE

Bylaw Reference: Harvard Protective Bylaw Sections 125-3C, Non-conforming structures other than one- and two-family dwellings.

Request: Addition to a pre-existing, non-conforming structure.

Background/Introduction

The applicant is seeking two special permits for 1) Section 125-3(C) Non-conforming structures and 2) Section 125-3(D) Non-conforming uses. The applicant proposes to use the property as an events venue and retreat center with on-site lodging and food service. The application asserts that this specific set of uses has been in continuous operation since 1947.

Non-Conforming Use

The applicant has asserted that each of the uses they are seeking to operate going forward have been in continuous operation since the advent of the Protective (Zoning) Bylaw and thereby are a pre-existing, non-conforming (PENC) use, eligible for continuation. Section 125-3(D) notes that any proposed changes or

alterations to the PENC use must seek a special permit and site plan review. This will formalize the use and determine the extent of the use and its corresponding non-conforming structures, as applicable.

The key criteria in which to evaluate this Special Permit request is validation of the non-conforming use claim through evidentiary analysis. Mass General Law Chapter 40A, Section 6 provides for rejection of the non-conformity claim if any of the identified uses have been abandoned or unpracticed over two consecutive years. The ZBA must achieve a level of confidence for continuous operation of each use subcategory that can reasonably be expected to be presented. Should this evidence be so provided, a case for granting a Section D finding can be made.

Non-Conforming Structure

Once this PENC use finding is made, the ZBA can then evaluate the specific requests for improvements such as the establishment of a commercial kitchen, upgrading the septic system, erecting an outdoor tent platform, and developing an on-site parking lot. For each of these requested improvements, obviously the ZBA must find that each will not be more detrimental than the existing non-conforming use or structure to the neighborhood. In doing so, the ZBA will apply the factors listed in § [125-20A](#) and will identify other site-specific impacts that affect quality of life in the neighborhood. Furthermore, the site plan review standards of Section 125-39 should be applied. Finally, it is recommended, if the ZBA sees the merit in granting these special permits, that a detailed decision letter be developed that lays out both the standard and special conditions under which the permits are granted so that future applications can be grounded in this decision.

■ Field Trip to Ayer Road Corridor: Senator Jamie Eldridge and Rep. Dan Sena

This is an update on the visit to Ayer by Senator Eldridge and Representative Sena on April 8th at 1:00 pm. Debbie Thompson of COA has now made two vans and drivers available the afternoon of the 8th and the idea was that we would all meet initially in Upper Town Hall for a lunch and head out afterward. The itinerary is as follows:

Agenda:

1. Convene and Introductions / Box Lunch
2. Welcome and Other Speaking Slots
 - a) *Welcome – Justin Brown, Rich Maiore*
 - b) *Remarks – Senator Jamie Eldridge*
 - c) *Remarks – Representative Dan Sena*
 - d) *Presentation – Justin Brown and Chris Ryan*
3. Break for Tour (seven [7] stops)
4. Conclude Tour
5. Follow Up

Staci has agreed to take notes during the tour and Doug has agreed to take photographs and video (although I welcome pics and video from anyone else on the tour).

I will send out the presentation in case anyone has any suggestions for edits. I'd recommend just major issues like errors or omissions. Again, there may be some other issues to discuss Monday night. I will bring this up under Director's Report.

■ Outreach for Ayer Road Vision Plan Project

Here are a few ideas for conducting outreach for the Ayer Road Vision Plan project over the next few months:

1. Booth at Annual Town Meeting (May) – This has been discussed at the Planning Board and no further advancement of the idea as of yet. Perhaps we can have stacks of the handouts and perhaps a few bound versions of the White Paper (or we can have flash drives with the pdf loaded on it too). We could have Chris and one PB member staff the booth before and during Town Meeting. Any other ideas? Who do we need to speak to regarding securing a booth?
2. Build Up Website – So far, the project website is pretty robust but may be a little dated. Members should take a look at the site (link below) and evaluate it for what else we can do and how to improve.
3. Focus on Facebook Development – I have an economic development Facebook Group and we could further develop this or develop the Page as well. Right now, it only has seven followers but we could flesh it out a bit.
4. Other social media ideas include further marketing the Planning Blog, creating a podcast, creating a vlog, hosting coffees at the HGS, or something similar. We also discussed visiting the transfer station and we could also have a booth or presence at sports fields.

Additional ideas are welcome. The project page link is here:

<https://www.harvard-ma.gov/economic-development/pages/ayer-road-planning-framework-project>
