



## Director of Community and Economic Development

# UPDATE

April 25, 2022

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

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

#### 203 AYER ROAD STATUS

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

#### 256 AYER ROAD STATUS

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

#### 295 AYER ROAD STATUS

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

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

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

### SYNOPSIS

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

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

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

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

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

- [c] Regardless of the lack of clarity of the 125-52 reference, it is inferred that this section 125-37 intends to allow a building larger than 10,000 s.f., a threshold that appears to only be identified in the Bylaw through provisions seeking to exceed this number.
- [d] The applicant's claim that a Section 125-52 Special Permit filing supersedes the need for a Section 125-37 Special Permit seems rational but is unsupported by any provision in the Bylaw and thus, in this reviewer's opinion, should dictate a Planning Board finding of same and consideration of granting of a waiver of the necessity of filing a 125-37 Special Permit due to the inferred redundancy. Since the Planning Board is the Special Permit Granting Authority for both special permits, it would seem logical that the Planning Board has the authority to waive or render superfluous, the 125-37 Special Permit by a formal vote. However, the Board may wish to seek Town Counsel opinion on this step.

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

- [a] Noted that elevations for the rear and two sides of the building were required to be submitted.
- [b] Recommended further lighting information including lighting intended in parking areas and attached to building.
- [c] Noted that additional screening and/or buffering elements may be necessary but not to be addressed until further into the application process.
- [d] Wastewater solution needs to be approved by the Board of Health for current proposed use. Board of Health should address what the remaining capacity in the system would be after this use meets the requirements.
- [e] Design review is in process and will be available to the Planning Board prior to a decision to be considered as part of the Special Permit.
- [f] Basic submittal requirements of site plan review for landscaping have been submitted. However, additional criteria may be required based on special permit review and peer review process.

4. PARKING, LOADING, AND DRIVEWAYS

- [a] No shared parking elements are being proposed in this application. Shared parking is specifically where adjacent or proximal parcels share (typically a combined) parking area. This is one of the important criteria for the ARV-SP as well.
- [b] Expressed a concern over the proposed ingress/egress location along this stretch of Ayer Road.<sup>1</sup> This will be a focus of peer review and DPW should comment.
- [c] Thus, the proposed alignment of the driveway in relation to the existing curb cuts along Ayer Road and whether alignment or coordination with other driveways may be deemed appropriate. Further, such a 4-way intersection, with the associated turning movements, may require intersection signalization. A traffic study may be necessary to make these determinations.
- [d] No loading docks or facilities are provided. Applicant should provide details related to any needed loading facilities unless using parking and driveway areas, which should be verified.
- [e] Recommended that a traffic impact study be conducted based on the proposed use and an assumed set of other uses (in this case suburban office and general variety retailing). Reviewing

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

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

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

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

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

[a] The applicant states on the Site Plan cover page that there is an 867' lot width but that they wish to employ the alternative building siting offered as an incentive under 125-52. While the 125-52 provision is unrelated to the buffer strip, it appears that what the applicant explained in the meeting regarding the measurement of lot width, which is not the same as that provided in the zoning table, is accurate. I would seek the peer review consultant's analysis on this point.

[b] Thus, an 86.7' buffer strip around the perimeter of the property would not be required as previously stated.

[c] Still suggest that the applicant needs to provide a complete lighting plan as indicated in the UPDATE dated 4/4/2022.

[d] Planning Board may wish to request that screening solution be upgraded to include more plantings, a berm, or fencing.

#### 6. FIRE PROTECTION

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

#### 7. DRAINAGE

[a] Peer review consultant (PRC) will provide comments on drainage. However, please see Harvard Green Order of Conditions #16 from 1997:

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

#### 8. SIDEWALKS

[a] Proposed gravel paths suggesting connection to external properties should 1) indicate how these will be received by these abutters and 2) that they connect directly to the internal sidewalk system proposed by the applicant.

[b] Proposed TIP Shared Use Path has been engineered and should be shown on the site plan.

- [c] The Board should request on bond or other surety as a provisional compliance with sidewalk requirements in the event that the SUP is not constructed.

## 9. SIGNS

- [a] Anticipated standing and wall signs shall be provided as part of the Site Plan and Design Review Board processes and the PRC and staff planner will evaluate according to the provisions of this Section 41.
- [b] Business sign appears to possibly interfere with visibility of stop sign.

## 10. ZONING REQUIREMENTS

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

## 11. SPECIAL PERMIT REQUIREMENTS

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

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

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

(iv) **Inapplicable Elements**

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

[c] Section 125-52 ARV-SP Criteria

[1] Objectives of ARV-SP

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

[2] ARV-SP Review Criteria

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

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

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

- (i) Preservation of an agricultural use, natural resources, including but not limited to woodlands, wetlands, streams and/or fields, or land with historic structures or other unique features - **NO**
- (ii) Connectivity between adjoining sites, or provisions for curb-cut reduction, shared access, and shared parking - **NO**
- (iii) Inclusion of multifamily use with a set aside of affordable housing units - **NO**

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

### **Section 125-20 Use Criteria**

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

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

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

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

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

### Comments and Recommendations

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

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

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

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

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

**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.

### **SYNOPSIS**

- **As-Built Plans** – Applicant was required to submit an as-built site plan as part of their Special Permit decision as a Special Condition. This *SHOULD* be addressed before any further discussion proceeds.
- **Design Review** – The Planning Board determined that they could conduct the necessary design review for this application given its scale. The Board should advise applicant regarding the materials needing to be submitted for this review.
- **Section 125-39 Site Standards** – Address waste receptacle issue, parking modifications, and whether lighting is an issue.
- **Section 125-46 Special Permits** – No significant issues identified.
- **Section 125-20 Use Criteria** – Parking, hours of operation, deliveries and waste hauling, and lighting are the issues the Board may wish to inquire about.
- **Design Review** – Planning Board must inform Applicant of what they wish to review.

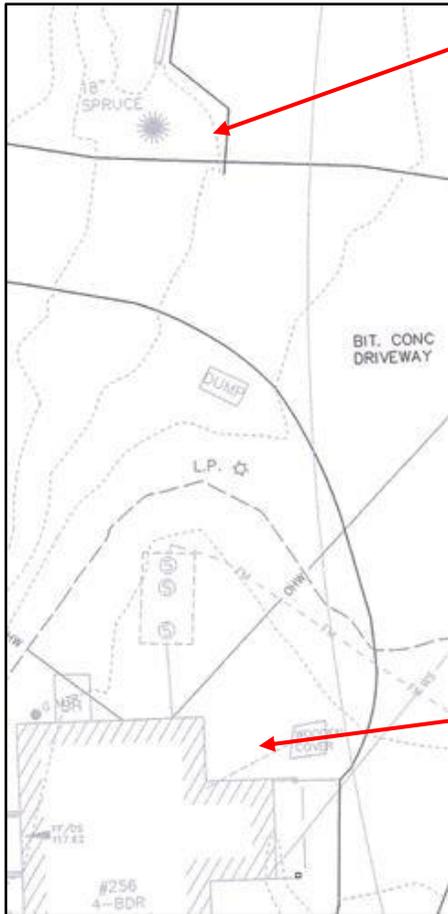
**RECOMMENDATION:** Anticipate continuing the hearing to a future date unless the Board wishes to create contingencies in any decision.

**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.

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

#### **Parking and Loading**

1. Need to determine if as-builts differ from originally approved plans.
2. Need to gauge if additional parking needed based on observed activity since opening and how much.
3. Need to determine optimal location for residential garbage container (see below). A better location for a residential container would be behind the residence.



**Proposed Location**

**Recommended Location**



The image below seems to indicate that this alternative waste receptacle location would be easily facilitated.



**Standards for Driveways** – Recommended 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**

1. Board should determine if lighting is an issue.
2. Waste receptacle should be screened if located in an area of site visible to the ROW.

**Fire Protection** – Need comment from Fire Department regarding suitability of plan to allow fire access to all sides of the building.

**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** – No additional information needed at this time.

**Section 125-40, Lighting** – Board should determine if lighting is an issue. If not, no additional information needed at this time.

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

### **Special Permit Requirements / Special Permit Authorization**

1. 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.
2. 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

1. Trip generation will only be applicable if additional activity is anticipated as part of this modification. Applicant asserts that there will be none.

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. Note that inapplicable criteria have been omitted from this version.

1. To preserve and increase the value of land and buildings; *The proposed modification may modestly increase property values.*
2. 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.*
3. 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.*
4. 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.*

5. 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 #4 above.*

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:

1. Concussion, vibration, noise, or other mechanical disturbance; *Applicant should speak to hours of operation and idling vehicles.*
2. Smoke, dust, odor, fumes, or other air pollution; *Idling vehicles should be prohibited due to air pollution.*
3. 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.*
4. 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** – The Planning Board will conduct an internal design review process and should inform the applicant of what will be needed for this review.

**Parking and Circulation** - Additional customer parking may be needed based on site visit evidence of overcrowding and parking on driveways. Regarding employees, how many staffers at peak? Where do they park?

**Use Activity** – The Applicant asserts that no new activity area or capacity will be facilitated by this addition.

**Water and Wastewater** – Site must meet requirements of the Harvard Board of Health.

**Other Comments** – Other departments and boards may have additional comments prior to the conclusion of 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 and go through the design review process.

### ■ 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

#### Synopsis

- **Section 125-38 and 125-39 Site Plan Review** – Peer review will be needed before additional substantive review will be conducted. There were some modifications that are noted in **RED** below.
- **Section 125-46 Special Permits** – Much of these criteria must await the review of the peer review consultant.
- **Section 125-20 Use Criteria** – A mix of “need more information” and subject to peer review.
- **Design Review** – Design review has been recommended. Board should consider a vote to authorize..

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

**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.

#### 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.

**Update:** Latest plan set (4/13) now shows two sidewalks: one from the front of parking area to front of existing house and another from handicapped area of parking lot to the proposed hoop house. The material bins and the shipping containers have been moved off the lot lines as requested.

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

*The 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.*

*The site plan should show heavy equipment and truck ingress/egress point(s), maneuvering areas, and parking/storage.*

**Update:** The 4/13 plan shows a different contouring of the site that eliminates the check dams.

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.*

**Update:** The stormwater detention basin has been downsized.

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.*

**Update:** As noted above, the site is proposed to be more evenly and uniformly graded.

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

*Not determined if these measurements will be forthcoming.*

### **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.*

**Update:** Seemed to have Planning Board support for having Applicant go through the design review process although no filings have yet been made in this regard.

### **Landscape Plan**

**Update:** Given the new proposed grading, two mature hardwoods that were previously protected are now to be removed. No additional changes noted to the Landscape Plan.

### **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**

*It is not clear whether proposed driveway meets the AASHTO line of sight criteria given the plantings and sign at the entrance. This should be addressed to ensure traffic safety entering and exiting the site and reviewed as part of peer review.*

Non-residential driveway standards:

- *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.*
- *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**

*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.*

**Update:** The 4/13 plan shows a new sidewalk connection from the parking lot to the existing house. It is recommended that the applicant show a connection from this sidewalk to the proposed Shared Use Path. There is now also proposed a sidewalk leading from the parking area to the 20' x 40' hoop house.

## **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. **Note that for this 4/25 review, all inapplicable items have been deleted.**

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

*May create minor traffic issues based on increased trip generation.*

- 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.*

- 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.*

- 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 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.*

- 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.*

- 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.*

- 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 conserve natural conditions and open spaces;

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

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. Peer review required for stormwater analysis.
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, and a connection to it, should be shown on the site plan.
7. Modular office may be allowed for six (6) to twelve (12) months. Suggest no extensions other than for exceptional circumstances.
8. Consider Low Impact Development for stormwater.
9. Provide sign elevation detail.
10. Provide signage detail.
11. Water and Wastewater – Site must meet requirements of the Harvard Board of Health.
12. Other Comments – Other departments, boards, and peer review consultant 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 based on this second

(4/13) submittal. A continuance to the following meeting will be necessary for both design and peer review.

## ■ Ayer Road Vision Plan Project

### *Status of Consulting Work in Phase 1*

We are close to agreeing in principle to the revised scope of work provided by Weitzman Associates. Once we go to contract, the timeline for the project is three (3) months which if we were to start the project on May 1<sup>st</sup>, it will be completed at the end of July—well in advance of Fall Special Town Meeting.

### *Preparations for Phases 2 and 3*

There has been some public critique of the outreach conducted on Phase 2 and 3 and the request for CPIC funds. It would be helpful if members evaluated the outreach materials on the project website and provided some ideas and feedback to staff. Here are a few ideas for how we could conduct 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>

### *Eldridge Sena Tour of the Commercial District*

This event took place without drama on Friday, April 8, 2022. We hope to be able to upload pictures from this to the project website. Senator Eldridge posted on the event on his FB page.



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## ■ 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.

### *Select Board Briefing*

This required public briefing was held on Tuesday, April 12, 2022 during the Select Board's regular meeting.

### *Community Information Form*

The required Community Information Form (CIF) was submitted on Wednesday, April 13, 2022 and confirmation was sent on to Planning Board members and other stakeholders.

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

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

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

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

- 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
<ul style="list-style-type: none"> <li>4. MGL 40R provides payments to Harvard for two provisions: zoning incentives and density bonus payments.</li> <li>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.</li> <li>6. Aligns with Ayer Road Vision Plan</li> </ul>	<ul style="list-style-type: none"> <li>1. Will take a long time to develop.</li> <li>2. Will likely require a consultant to assist.</li> <li>3. May not be timed to align with ARVP.</li> <li>4. May not provide Harvard enough flexibility to control the design and layout.</li> </ul>

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.

**■ Ayer Road TIP Project Update**

*MassDOT Public Hearing*

On Wednesday, March 30, 2022, the Massachusetts Department of Transportation conducted a public hearing remotely via Zoom in regard to a project referred to as Resurfacing and Box Widening of Ayer Road, which locally is described as the Ayer Road TIP<sup>2</sup> Project. Similar to the 10% design public meetings, this hearing on the 25% design, included several comments about a roundabout at Gebo Lane and also some landscaping concerns in the right-of-way.

Given the continued concern by several members of the Transportation Advisory Committee (but not the TAC formally), MassDOT expressed its willingness to meet with Town officials to further discuss the roundabout and some other issues. This meeting will be set up by the Town Administrator and be held relatively soon.

<sup>2</sup> TIP refers to the Transportation Improvement Program that addresses federally funded highway projects.

Another concern expressed at the hearing was how the TIP project was going to take into consideration projected commercial and residential growth in the corridor and if the design was robust enough to absorb projected growth and also whether future water and sewer facility installation would necessitate excavation of the newly developed roadway shortly after completion.

MassDOT noted that to redesign the current 25% project would add 1-2 years onto a project already not set to begin until FY 2026 and would likely cost the town itself more funds for the engineering and ROW acquisition. It would also raise the cost of the federally funded portion of the project.

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