

**TOWN OF HARVARD
PLANNING BOARD AGENDA
MONDAY JULY 18, 2022 @ 7:00PM**

Pursuant to Chapter 22 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on February 15, 2022, this meeting will be conducted via remote participation. Interested individuals can listen in and participate by phone and/or online by following the link and phone number below.

PLEASE NOTE: If the State legislation does not approve the continuation of virtual meetings after July 15, 2022 this meeting will be hybrid with public access being available through the link below or in the Town Hall Meeting Room at 13 Ayer Road.

Hildreth Pro is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/86043494612?pwd=U1BPUW13dXMzcUdzTUoMN2twVjJyZz09>

Meeting ID: 860 4349 4612

Passcode: 549833

One tap mobile

+13017158592,,86043494612# US (Washington DC)

+13126266799,,86043494612# US (Chicago)

Dial by your location

+1 301 715 8592 US (Washington DC)

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Meeting ID: 860 4349 4612

Find your local number: <https://us02web.zoom.us/j/86043494612?pwd=U1BPUW13dXMzcUdzTUoMN2twVjJyZz09>

Public Comment

- New Business:**
- a) Elect Chair, Vice Chair and Clerk for Fiscal Year 2023
 - b) Appoint Design Review Board & Harvard Climate Initiative Committee Representatives for Fiscal Year 2023
 - c) Review of Ayer Road Overlay District
 - d) Approval Not Required – 295 Ayer Road
 - e) ZBA Request for Comments – 175 Littleton County Road
 - f) Discuss August Meeting Schedule

Public Hearings:

7:30pm Continuation of a Special Permit & Site Plan Review – Kennedy & Company, 295 Ayer Road, for Landscape Services

8:00pm Continuation of a Special Permit, Ayer Road Village-Special Permit and Site Plan Review - Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road, for the development of three commercial use buildings, including a Commercial Entertainment and Recreation use

Old Business: a) Schedule Strategic Planning Session & Discuss Potential Topics

Standard Business: a) Board Member Reports

- Representatives & Liaisons Update
 - Community Matter
- b) Approve Minutes
- c) Approve Beals + Thomas Invoices
- 203 Ayer Road \$3,782.50
 - 295 Ayer Road \$2,285.00

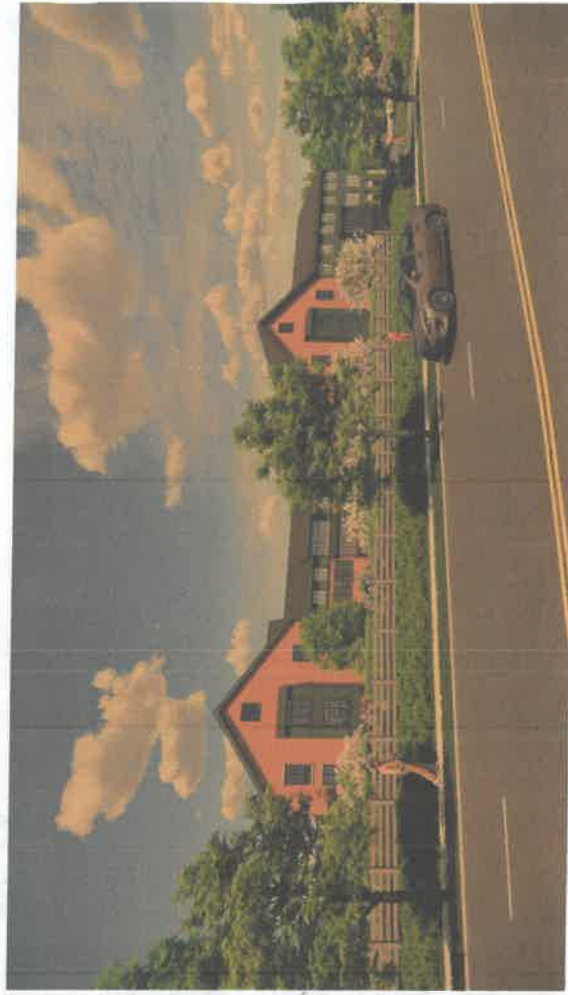
**NEXT SCHEDULED MEETING:
AUGUST 1, 2022**

OVERVIEW OF PROPOSED MUOD BYLAW FOR HARVARD PLANNING BOARD

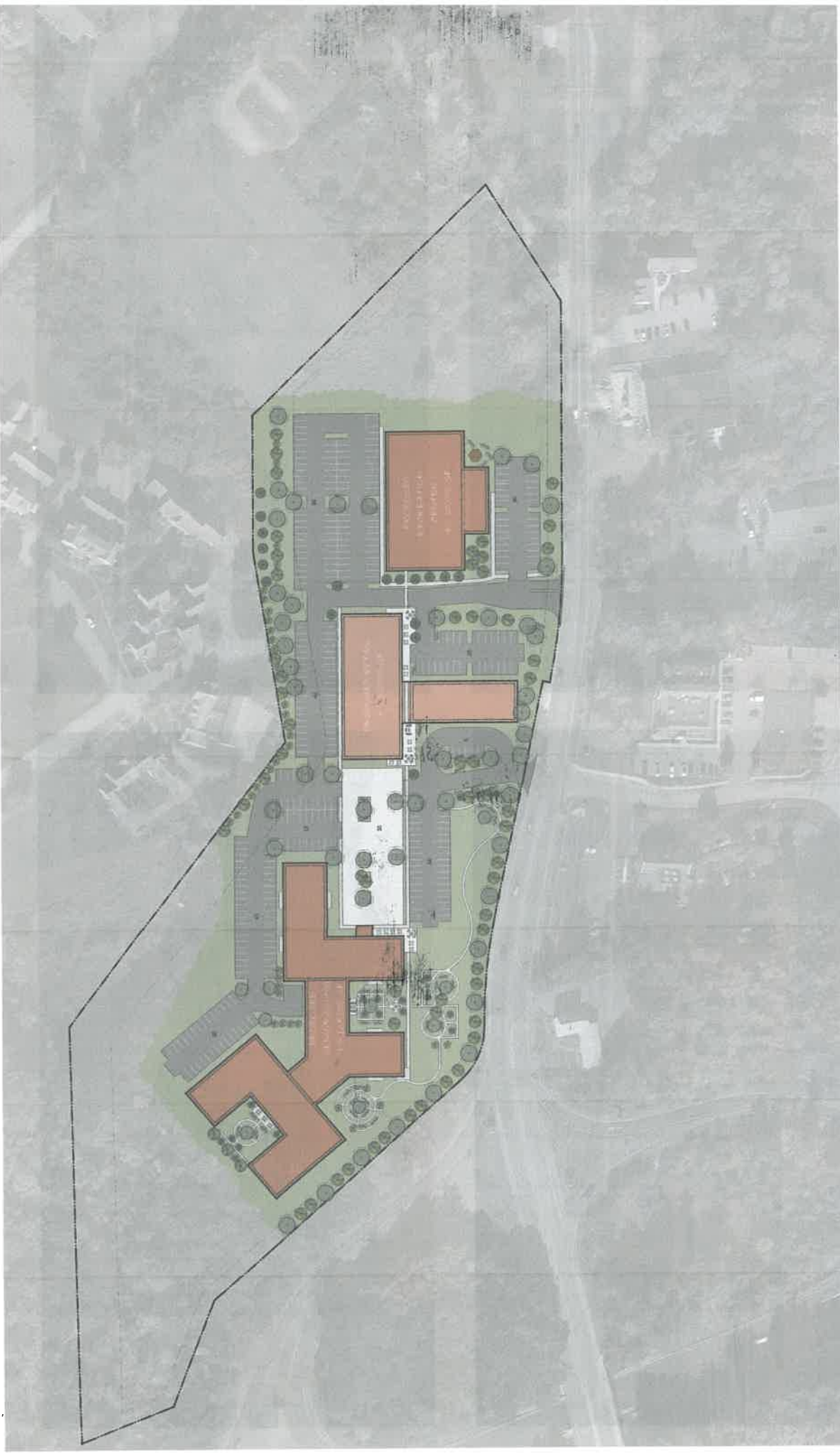
Prepared By

WINTER REAL ESTATE INVESTORS, LLC

- Site: 16 acres off Ayer Road (Assessor's Map 8, Parcels 59, 60 and 62.6)
- Zoning: Commercial (C) and Ayer Road Village Special Permit (ARV-SP)
- Proposed Bylaw: Mixed-Use Overlay District (MUOD) drafted to accommodate the following by Special Permit from the Planning Board:
- Uses:
 - Senior Living
 - Independent Living (IL)
 - Assisted Living (AL)
 - Memory Care (MC)
 - Residential
 - Commercial
 - Restaurant
 - Recreational
- Density Yield:
 - Maximum Total Units: 205
 - 85 IL units
 - 50 AL units
 - 30 MC units
 - 40 Residential units
 - Maximum Total Building SF: 255,000
 - Senior Housing @ 165,000 SF
 - Commercial @ 30,000 SF / Residential @ 30,000 SF
 - Recreational @ 30,000 SF (to match Russo/Chern Special Permit)
 - Height: three (3) stories/fifty (50) feet
- Affordability: 20% of Residential units affordable
- Open Space: 30% except parking and pervious pavers
- Parking: Maximum number of spaces: 415
- Utilities: Intended connection to Fort Devens septic and water
- Landscaping and Signage: Planning Board Special Permit



PRECEDENT IMAGES



CONCEPTUAL MASTER PLAN



06/09/22

A1.00

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§ 125-58. Mixed-Use Overlay District.

A. Purposes.

1. The purposes of the Mixed-Use Overlay District (“MUOD”) include but are not limited to:
 - a. Promoting a mixture of residential, commercial, and recreational land uses with an emphasis on providing a diversified housing stock for the Town of Harvard’s growing population of residents 55 years of age or older;
 - b. Facilitating multi-family and affording housing development for residents over 55 years of age or older to allow residents to downsize from conventional single-family housing to higher density development with smaller unit sizes;
 - c. Generating positive tax revenue for the Town of Harvard to help meet its long-term public finance and infrastructure needs;
 - d. Ensuring high-quality site planning, architecture and landscape design that enhances the visual character and identity of the Town of Harvard generally and the Ayer Road neighborhood in particular;
 - e. Allowing flexible development through appropriate lot and building dimensional requirements;
 - f. Reducing curb openings and uncoordinated access, circulation and signage;
 - g. Encouraging shared parking and utilities including water and sewer;
 - h. Promoting Smart Development with reduced impervious surfaces and greater open space; and
 - i. Enabling a pedestrian-friendly living environment.

B. Definitions.

1. “Affordable Housing” means housing that is eligible for inclusion in the Department of Housing and Community Development’s (“DHCD”) Massachusetts General Laws Chapter 40B Subsidized Housing Inventory (“SHI”).

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2. “Affordable Housing Unit” means a housing unit either leased or sold to an Income Eligible Household and that is eligible for inclusion in the Department of Housing and Community Development’s (“DHCD”) Chapter 40B Subsidized Housing Inventory (“SHI”).
3. “Income Eligible Household” means a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the DHCD in guidelines. For homeownership programs, the Subsidizing Agency (as defined in 760 CMR 56.02) may establish asset limitations for Income Eligible Households by statute, regulations, or guideline. In the absence of such provisions, Income Eligible Households shall be subject to asset and/or other financial limitations as defined by the DHCD in guidelines.
4. “MUOD” means the Mixed-Use Overlay District which is the subject of this § 125-58.
5. “MUOD Project” means a Mixed-Use Development project undertaken in accordance with the requirements of this § 125-58 and consisting of a combination of the following uses as defined herein: Senior Housing, Residential, Small-scale commercial, Medium-scale commercial, recreational and/or restaurant uses and, at a minimum, containing a mix of residential uses and non-residential uses.
6. “Senior Housing” means multi-family Independent Living, Assisted Living and Memory Care either separately or in combination for persons 55 years of age or over in compliance with the requirements of G.L. c. 151B, § 4(6) including, but not limited to, housing for those persons having reached the age of 55 or over who would qualify for low or moderate income housing.
7. “Independent Living” means housing designed for seniors who can provide for their own needs, including activities of daily living, and that provides various amenities and facility maintenance designed to improve the quality of life and includes the following uses/facilities in the Independent Living structure(s): Administration, Multi-Purpose Room, Dining Room, Seryery, Bar/Pub/Café, Library, Sunroom, SPA: Fitness, Occupational Therapy, Physical Therapy, Yoga, Salon, Massage Room, Showers, Lockers, Toilets, Juice Smoothie Area; Residential Storage, Art Studio, and other amenities.
8. “Assisted Living” means housing that (1) provides room and board, (2) provides, directly by employees of the entity or through arrangements with another organization which the entity may or may not control or own, assistance with activities of daily living for three or more adult residents who are not related by consanguinity or affinity to their care provider; (3) collects payments or third

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party reimbursements from or on behalf of residents to pay for the provision of assistance with the activities of daily living or arranges for the same and (4) includes the following uses: Dining Room, Servery, Primary programming space, Café, Library, Arts and Craft, Wellness Suite: nurse, records, doctor, charts and meds; Manager's office, resident storage and other amenities.

9. "Memory Care" means housing designed to provide personalized care for persons living with Alzheimer's or other forms of dementia and which includes the following use/facilities: Director's Office, Servery, Dining Room, Living Room, Activity Room, Resident Laundry, Public Toilet, Chart Room, Sun Room, Activity Zones and other amenities.
10. "Open Space" means land completely devoid of any structure; provided, however, that it shall exclude (i) parking areas and access/egress thereto and (ii) land supported by pervious pavers or a similar structure solely to permit access/egress for emergency vehicles, and (iii) drainage basins and other Low Impact Development (LID) and Best Management Practices (BMP) stormwater infrastructure, all of which shall be included as open space.
11. "Residential Use" refers to residential rental or ownership units located on the second floor above a "Small-scale commercial use" and/or "Medium-scale commercial use" as that term is defined in § 125-13 and excludes Senior Housing.
12. "Gross Floor Area" means, gross floor area as defined in the Massachusetts Building Code, which is the floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts. For purposes of this § 125-58, the following areas shall be excluded from the calculation of gross floor area: (i) The floor area of crawl spaces having less than four feet of headroom; and (ii) In a dwelling, the floor area of unfinished attic space under a roof with a pitch no greater than 8/12 (vertical over horizontal).

C. Establishment of Overlay District and Applicability.

1. The MUOD consists of parcels 59, 60, and 62.6 on the Town of Harvard Assessors' Map 8 and containing approximately 16 acres in the aggregate. The boundaries of the MUOD are shown on the Mixed Use Overlay District Map on file with the Town Clerk.

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2. The MUOD is an overlay district. Within the MUOD, all regulations of the underlying zoning district remain in effect. To the extent that the underlying zoning is inconsistent with the provisions of the MUOD, the regulations of the MUOD shall govern. To the extent that the MUOD authorizes uses, sets dimensional requirements or includes any other provisions not found in the underlying district, the provisions of the MUOD shall apply.
3. Another overlay district, entitled, “Ayer Road Village Special Permit” (“ARV-SP”), § 125-52, also applies to some of the land within the MUOD. When both the MUOD and the ARV-SP apply to a particular area of the MUOD, to the extent that both regulations are consistent, both shall apply; however, to the extent that these two regulations are inconsistent or the MUOD authorizes uses, sets dimensional requirements or includes any other provisions not found in § 125-52, the provisions of the MUOD shall apply. Notwithstanding the foregoing, the least restrictive provisions of these two overlay districts shall apply.
4. No building permit shall be issued for, and no person shall undertake, any use or improvement in the MUOD pursuant to this section unless an application for a MUOD special permit (“MUOD-SP”) has been filed for the proposed development in accordance with the requirements of this § 125-58 and the MUOD-SP has been approved by the Planning Board which shall serve as the special permit granting authority (SPGA) in the MUOD.

D. Procedures.

1. An application for a MUOD-SP shall be filed with the Town Clerk and submitted to the Planning Board. The applicant shall submit two hard copies and one digitized copy on a USB device of the application to the Planning Board which shall forthwith transmit one digitized copy from the USB device to each of the Department of Public Works, Building Department, Police Department, Fire Department, Board of Health, Conservation Commission, Historical Commission, and the Select Board. Such departments and boards shall, within 30 days of receiving said copy, submit a report containing any comments, recommendations and recommended conditions, all with supporting reasons, to the Planning Board. The Planning Board shall not render a decision until said reports have been received and considered or until the 30-day period has expired, whichever is earlier. Failure of such departments and/or boards to submit a report shall be treated as concurrence with the application.
2. The Planning Board shall commence a public hearing on an application within 65 days after the filing of a complete application, provide notice of such hearing, and render its decision within 90 days of the close of said hearing. The applicable provisions of G.L. c. 40A, §§ 9 and 11 shall govern all procedural aspects of the MUOD-SP application including the notice, hearing and decision. All costs of the

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notice requirements shall be at the expense of the Applicant. Approval of the MUOD-SP shall require a simple majority vote pursuant to G.L. c. 40A, § 9, par. 14, subsection (b).

3. The Planning Board may waive strict compliance with one or more of the standards, criteria or requirements set forth in this § 125-58 by making a finding, in writing, that the Applicant has demonstrated that the requested waiver is consistent with the purposes of the MUOD or allows the MUOD Project to achieve the density, affordability, mix of uses, and/or physical character allowable under this § 125-58. The Planning Board may also waive compliance with one or more submittal requirements set forth in this § 125-58 by making a finding, in writing that the Applicant has demonstrated that such information is not appropriate or relevant to the MUOD Project. Approval of waiver by the Planning Board shall require a simple majority vote.
4. If, in the discretion of the Planning Board, a peer review of the application is required to evaluate the impacts of an MUOD application, the Planning Board may require the Applicant to retain a Peer Review Consultant at the Applicant's expense. The Planning Board, Applicant, and Peer Review Consultant shall confer in an effort to agree on a written scope of work for and the cost of said work by the Peer Review Consultant.

E. Submittal Requirements.

1. The following plans and materials shall be included in the submittal:
 - a. Site plans as defined in § 125-38.D (1-5);
 - b. Renderings as defined in § 125-38.F (1)(a);
 - c. Landscape plans as defined in § 125-38.G;
 - d. Project Overview. Narrative and accompanying plans describing ownership of the property and MUOD Project, the number, size and type of buildings and dwelling units; number of employees, and gross floor area where applicable; estimated time required to complete the proposed project, expected start of construction, and all proposed phases and zoning compliance;
 - e. Stormwater. Drainage calculations with an accompanying narrative demonstrating compliance with the MassDEP Stormwater Management Standards and rules and regulations of the Town of Harvard Department of Public Works and showing use, to the extent practicable, of municipal,

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- state and federal Best Management Practices. These materials shall be prepared by a registered professional engineer;
- f. Site planning/Architecture/Landscaping. Narrative and accompanying plans describing rationale behind and goals for the proposed design and placement of buildings, roads, driveway, open space, landscaping locations, and building design. These materials shall be prepared by a civil engineer working in collaboration with a registered architect and landscape architect;
 - g. Site Infrastructure. Narrative with accompanying plans of the design and location of proposed mechanical equipment, including HVAC equipment; related noise levels; location and operation of trash storage and removal systems; location and operation of loading facilities; mitigation measures to reduce visual and/or noise impacts on abutters. These materials shall be prepared by a professional engineer;
 - h. Sewer and Water. Plans, calculations and narrative of the existing and/or proposed sewer and water service infrastructure either on-site and/or off-site including existing and proposed capacity, impacts on municipal infrastructure, condition of any existing infrastructure, proposed infrastructure improvements, and any legal arrangements necessary to secure adequate capacity. These materials shall be prepared by a professional civil engineer;
 - i. Parking. Narrative describing the number of spaces needed for the MUOD Project and how the Project will accommodate those spaces with adequate and safe off-street parking at the MUOD Project. These materials shall be prepared by a professional traffic engineer;
 - j. Traffic. A Traffic Impact Report addressing existing and proposed site circulation, vehicular traffic volumes, peak hour levels, average daily traffic, trip distribution and levels of service (LOS) for the nearest and/or most impacted intersections. This report shall also address proposed methods to mitigate the estimated traffic impact if necessary including traffic calming measures. These materials shall be prepared by a professional traffic engineer; and
 - k. Environmental. Narrative addressing any environmental impacts to wetlands, floodplains, or other sensitive resources including proposed methods to mitigate the estimated environmental impacts. These materials shall be prepared by a professional civil engineer and/or environmental scientist.

F. Use Regulations.

1. The following uses are permitted as-of-right within the MUOD:
 - a. All uses permitted in the underlying Commercial (“C”) District.
2. The following uses are permitted by special permit, a MUOD-SP, within the MUOD:
 - a. All uses permitted by special permit in the underlying Commercial (“C”) District.
 - b. Residential Use provided that at least twenty (20) percent of residential ownership or rental units are Affordable Housing Units with affordability assured for a period of not less than 30 years through the use of an affordable housing restriction as defined in G.L. c. 184, § 31.
 - c. MUOD Project where the Senior Housing component of may include any of the following uses: studio, one-bedroom, or two-bedroom units; amenities for its residents, including but not limited to, medical facilities, dining facilities, in-unit kitchens, common dining rooms and kitchens, common rooms, activity rooms, exercise rooms, theater, chapel, library, pharmacy/gift shop/convenience store, beauty salon, barbershop, personal banking services, concierge, valet services, third-party vendor services, recreation facilities, offices and uses accessory thereto.
 - d. Restaurant.

G. Dimensional Regulations and Other Development Standards.

1. Lot Dimensions.
 - a. Minimum lot size is 10 acres.
 - b. Minimum lot frontage is 500 feet.
2. Density.
 - a. Senior Living:
 - i. The maximum number of Senior Living units is 165; and
 - ii. Notwithstanding the foregoing, the maximum SF of Gross Floor Area for Senior Living is 165,000.

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- b. Residential:
 - i. The maximum number of Residential units is 40; and
 - ii. Notwithstanding the foregoing, the maximum SF of Gross Floor Area for Residential is 30,000.
 - c. Small-scale commercial and Medium-scale commercial:
 - i. Maximum SF of Gross Floor Area is 30,000.
 - d. Recreational:
 - i. Maximum SF of Gross Floor Area is 30,000; provided, however, that Recreational excludes any recreational square footage included in the amenities for Senior Living.
3. Setbacks.
- a. Front yard setback shall be 20 feet.
 - b. Side Yard setback shall be 20 feet.
 - c. The rear yard setback (along the MUOD's common boundary with 35 Lancaster County Road) shall be 60 feet; provided, however, that parking shall be allowed within the outer 40 feet of this setback so long as landscaping screening is provided.
 - d. Between buildings the minimum setback shall be 0 feet.
 - e. From internal roads and driveways, the minimum setback shall be 15 feet.
 - f. Any sign, fence or landscape plantings, within 20 feet of the street side line and between heights of 2 ½ and 7 feet, shall be located so as not to substantially impair visibility between any driveway and oncoming street traffic.
 - g. Sewage disposal. Privately owned and maintained on-site sewage disposal or treatment systems may be approved to serve buildings and lots in an MUOD-SP development, if maintained and operated by an owner, notwithstanding the provisions of § 125-32D of this Bylaw, if such disposal or treatment facility or system is approved by the Town's Board of Health and in compliance with the requirements of Title 5, 310 CMR

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15.00, or is approved in accordance with the requirements of 314 CMR 5.00 (the Ground Water Discharge Permit Program). Such an approved system may be located on land owned in common by the owners of the building(s) or lots within the development. The minimum setbacks of such system and any absorption area can be different from the minimum setback distance set forth in § 125-32C(2)(b), provided that such setback complies with Title 5, 310 CMR 15.00, the Town Board of Health's regulations, or is approved in accordance with the requirements of 314 CMR 5.00 (the Ground Water Discharge Permit Program).

4. Height.
 - a. The maximum building height, above average grade, shall be no more than three (3) stories and fifty (50) feet. For purposes of this provision, silos, and chimneys, ventilators, antennas (except for wireless communications towers and antennas), spires, and similar unoccupied projections above the roof are not included in building height.
5. Open Space.
 - a. A MUOD must provide at least 30 percent open space.
 - b. Open Space may be either landscaped or left in its undisturbed natural condition. It shall be appropriate in size, shape, dimension, location, and character so as to serve as a visual and natural amenity for the MUOD Project, the Town of Harvard and the Ayer Road neighborhood.
6. Landscaping.
 - a. Open areas should be landscaped in an appropriate manner, utilizing both natural and man-made materials such as indigenous grasses, trees, shrubs, and attractive paving materials and outdoor furniture.
 - b. Deciduous trees should be placed along new and existing streets and ways. Outdoor lighting should be considered in the landscaping plan, and should be designed to complement both man-made and natural elements of the MUOD and adjacent areas. Appropriate methods (such as cutoff shields) should be used to avoid glare, light spillover onto abutting property.
 - c. High-quality landscaping or preservation of existing vegetation should be provided within the MUOD where it abuts Ayer Road, existing residential areas, and along internal drives.

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- d. To the extent practicable, preservation of existing vegetation or tree-lined areas should be maintained.
 - e. Parking areas and lots should use landscaping and terracing to break up large areas of pavement and to enhance residential flavor and appearance; trees and shrubs should be used to the maximum extent feasible.
 - f. Features such as shade trees, forest trees, and expansive planting areas should be preserved and/or introduced where the Planning Board deems appropriate along external property boundaries on the perimeter of the MUOD to buffer it from adjoining parcels.
7. Parking.
- a. In general, in the MUOD, the Planning Board shall seek to make the most efficient use of the parking facilities to be provided and minimizing the area of land to be paved for this purpose. In implementing this goal the Planning Board shall consider complementary or shared use of parking areas by activities having different peak demand times, and the Applicant shall seek to locate adjacent uses in a manner that facilitates the complementary use of such parking areas.
 - b. The following parking ratios apply to Mixed-Use Development and include spaces for visitors:
 - i. Independent Living 0.75 spaces per unit.
 - ii. Assisted Living – 0.50 spaces per unit.
 - iii. Memory Care - 0 spaces per unit.
 - iv. Commercial - 4 spaces per 1,000 SF of gross floor area.
 - v. Residential Apartments - 2 spaces for two bedrooms units and 1 space for one bedrooms or studios.
 - vi. Recreational - 4 spaces per 1,000 SF of gross floor area.
 - c. All parking spaces required for the MUOD Project shall be off-street parking located in the MUOD. On-street parking for a MUOD Project is prohibited. Parking may be provided at ground level, underground or in a parking garage. Parking garages can be freestanding or attached to building(s) used for other purposes.

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8. Driveways.
 - a. To reduce the impact of impervious surfaces and the number of driveway cuts, within the MUOD it is intended that the number of driveways onto Ayer Road shall be at least two.

9. Utilities.
 - a. Structures and uses within the MUOD may share septic, sewer and/or water supply infrastructure and facilities either in the MUOD or off-site at Fort Devens or Town utility. An approved system may be located on land owned in common by the owners of the lots within the development. The existing buildings at 188, 196, 198 and 200 Ayer Road will be connected into any sewer system that is connected to Fort Devens.
 - b. To the maximum extent feasible, all utilities should be underground.

10. Signs
 - a. Signage in the MUOD shall be governed by § 125-41(A-C) and (E-F); provided, however, that signs are subject to applicable height and setback requirements of this § 125-58. In addition to the foregoing, two monument or standing signs of not greater than ____ square feet and not taller than ____ feet shall be permitted for the purpose of identifying all of the uses in the MUOD Project.

H. Review Criteria.

1. The Planning Board may approve a MUOD-SP application if it finds that the proposed development meets the following criteria:
 - a. The MUOD Project is consistent with the purposes of § 125-58;
 - b. The MUOD Project complies with the dimensional and other requirements of this § 125-58;
 - c. Adequate and appropriate facilities, infrastructure and utilities are provided for the proposed uses and structures;
 - d. Safe and viable access to and from the site is provided;
 - e. The uses and structures as developed will not create a hazard to abutters, pedestrians, vehicles, and/or the environment;

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- f. The uses and structures are consistent with the intent of the Zoning District as outlined in Section II.A, and with the Purpose and Intent of appropriate ordinances associated with the special permit application;
 - g. The uses and structures will not create an undue burden on abutting properties, the neighborhood, and/or the Town of Harvard;
 - h. Traffic and pedestrians can access and circulate to/from and with MUOD Project safely;
 - i. The uses and structures will not have substantial adverse impacts to the natural environment and/or the visual environment;
 - j. The Applicant has provided adequate mitigation for any impacts including to traffic, infrastructure and/or municipal services; and
 - k. The public good will be served by the MUOD-SP, the MUOD is not adversely affected by the multi-family residential use, and permitted uses are not noxious to the multi-family use.
- I. Expiration and Extension.
- 1. A MUOD-SP shall lapse within not more than 3 years which shall not include such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, § 17, from the grant of the MUOD-SP application, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.
 - 2. Prior to the expiration of the MUOD-SP, the Applicant may request an extension of time of not more than three (3) years for which the Applicant must show good cause.
- J. Amendments.
- 1. Following the granting of a MUOD-SP, the Planning Board may, upon application and for good cause shown, without public hearing, amend the MUOD-SP solely to make changes in lot lines shown on the plan, which lot lines are not part of the perimeter of the MUOD, or other minor changes, provided, however, that no such amendment shall increase the number of buildings or units, increase the height of buildings, decrease ownership Affordable Housing Units below fifteen (15) percent or decrease rental Affordable Housing Units below ten (10) percent or reduce the size or change the location of Open Space.

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2. Any proposed change to an approved MUOD-SP which the Planning Board deems substantial shall require notice, hearing and decision as provided above.

K. Subdivision Control Law.

1. In the event the Applicant seeks a subdivision approval pursuant to the Subdivision Control Law, G.L. c. 41, §§ 81K through 81GG, in connection with an application for a MUOD-SP, the Applicant shall file the appropriate application thereunder. In order to facilitate processing, the Planning Board shall consider said application simultaneously with the application for the MUOD-SP

L. Severability.

1. If any provision of this § 125-58 is found to be invalid by a court of competent jurisdiction, the remainder of § 125-58 shall remain in full force and effect.

OFFICE OF THE
PLANNING BOARD

13 AYER ROAD HARVARD, MA 01451

978-456-4100

www.harvard-ma.gov



JULY 18, 2022

**HARVARD PLANNING BOARD
NOTICE OF DECISION ON APPLICATION OF
KENNEDY & COMPANY, INC.
FOR A SPECIAL PERMIT AND SITE PLAN APPROVAL
295 AYER ROAD
HARVARD, MA 01451
ASSESSORS MAP 4 – PARCEL 27
WORCESTER REGISTRY OF DEEDS
BOOK 31418 PAGE 201**

PROCEDURAL HISTORY

- I. Application for the establishment of a landscaping business as per §125-23B, Permitted uses in C Districts, of the Protective Bylaw, for a Special Permit and site plan review pursuant to Protective Bylaw, for the property located at 295 Ayer Road was made by the above referenced applicant.
- II. The following plans and documents were submitted in support of the application:
 - A. An application for a Special Permit and site plan review with a Special Permit for a landscaping business pursuant to §125-23B of the Town of Harvard Protective Bylaw was received by the Harvard Town Clerk on March 14, 2022, including a cover letter from Bruce D. Ringwall, President, of Goldsmith, Prest & Ringwall, Inc. dated March 14, 2022 and the following:
 - 1) Corresponding fees paid via check in the amount of \$680.00
 - 2) A document entitled "Special Permit Application, 295 Ayer Road, Harvard, MA", which also included:
 - a. Application form referenced above
 - b. Cover letter referenced above
 - c. Certified abutters list report dated February 2, 2022
 - d. Owners Affidavit from Mike Kennedy, 362 Main Street, Acton, MA dated March 1, 2022.
 - B. A plan set dated March 2022 entitled "Commercial Development Special Permit/Site Plan, 295 Ayer Road, Harvard, MA" prepared for Kennedy & Company, Inc. 362 Main

Street, Acton, MA, by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, containing four (4) sheets.

C. A site design narrative for 295 Ayer Road, Harvard, MA dated March 15, 2022.

III. The following additional documents were provided to the Planning Board in regard to the application:

A. Stormwater System Operation and Maintenance Plan for 295 Ayer Road, Harvard, MA prepared by Goldsmith, Prest & Ringwall, Inc. dated March 2022.

B. A revised plan set dated April 13, 2022 entitled "Commercial Development Special Permit/Site Plan, 295 Ayer Road, Harvard, MA" prepared for applicant Kennedy & Company, 362 Main Street, Acton, MA, by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, containing four (4) sheets.

C. A revised plan set dated April 27, 2022 entitled "Commercial Development Special Permit/Site Plan, 295 Ayer Road, Harvard, MA" prepared for applicant Kennedy & Company, 362 Main Street, Acton, MA, by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, containing four (4) sheets.

D. A revised plan set dated June 16, 2022 entitled "Commercial Development Special Permit/Site Plan, 295 Ayer Road, Harvard, MA" prepared for applicant Kennedy & Company, 362 Main Street, Acton, MA, by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, containing four (4) sheets.

E. A revised site design narrative for 295 Ayer Road, Harvard, MA dated April 14, 2022.

F. Example photographs submitted by Applicant Kennedy & Company.

G. A Proposal for Peer Review Services, Special Permit and Site Plan Approval Applications, 295 Ayer Road, Harvard, MA B+T Project No. M8954.00 prepared by Beals + Thomas, 144 Turnpike Road, Southborough, MA 01722, dated April 19, 2022.

H. Special Permit and Site Plan Application Peer Review, 295 Ayer Road, Harvard, MA B+T Project No. 3241.01 prepared by Beals + Thomas, 144 Turnpike Road, Southborough, MA 01722, dated May 25, 2022.

I. Special Permit and Site Plan Application Supplemental Peer Review, 295 Ayer Road, Harvard, MA B+T Project No. 3241.01 prepared by Beals + Thomas, 144 Turnpike Road, Southborough, MA 01722, dated June 20, 2022

J. Letter to the Harvard Planning Board, Town of Harvard, from Michael Kennedy, Kennedy & Company, RE: Temporary Permit – 295 Ayer Road, Harvard, MA, dated April 5, 2022

- K. Letter to the Planning Board, from Maryann Marcoux, Ohlin Ln, Harvard, dated April 4, 2022.
- L. LONG TERM POLLUTION PREVENTION PLAN & STORMWATER SYSTEM OPERATION AND MAINTENANCE PLAN 295 Ayer Road Harvard, MA Submitted by: Kennedy & Company 362 Main Street Acton, MA 01720 Prepared by: Goldsmith, Prest & Ringwall, Inc. 39 Main Street, Suite 301 Ayer, MA 01432 Project No: 211096 March 2022
- M. Memo from Harvard Board of Health Re: 295 Ayer Road, dated April 14, 2022
- N. Plan of Land (Approval Not Required) #295 Ayer Road Harvard, Mass., Prepared for RDJ Realty Company Trust #52 Ethan Allen Drive Acton, MA 01720, prepared by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, dated June 22, 2022
- O. Special Permit and Site Plan Application Peer Review Response 295 Ayer Road Harvard, MA GPR Project #211096, B+T Project No. 3241.01, prepared by Goldsmith, Prest & Ringwall, Inc., 39 Main Street, Suite 301, Ayer, MA 01432, dated June 16, 2022
- P. Email from Lieutenant Andrew Perry, Harvard Fire Department, Re: TIME SENSITIVE: Plan Review – 295 Ayer Road, to Christopher Ryan, Rick Sicard and Jeff Hayes, dated 05/27/22

IV. Legal Notices: Advertised and Letters to Abutters

- A. An Affidavit of Mailing to Abutters dated March 15, 2022 was endorsed by the Assistant Town Clerk on the same date.
 - B. A Legal Notice advertising the virtual public hearing to be held on April 4, 2022 appeared in "The Harvard Press" on March 18, 2022 and March 25, 2022.
- V. A public hearing, after proper notice was given, was opened on April 4, 2022, and continued to April 25, 2022, May 16, 2022, June 6, 2022, June 27, 2022, and July 18, 2022. The public hearing was closed on July 18, 2022.

VI. Public Input

At public hearing sessions held on April 4, April 25, May 16, June 6, and June 27, the representative of the applicant, Bruce D. Ringwall, of Goldsmith, Prest, & Ringwall, Inc., attended all public hearing sessions, along with the applicants Mike Kennedy Sr. and Mike Kennedy Jr.

BACKGROUND AND FINDINGS

The Harvard Planning Board reviewed the application, the plan sets, and all other materials and information submitted prior to the close of the public hearing. The Board received and gave due consideration to the testimony given at the public hearing.

I. General

- A. The subject property is a 2.63-acre parcel within a Commercial (C) zoning district and the land use is commercial with one (1) existing abandoned residential structure. The applicant intends to continue their existing landscaping and nursery services that has been operating in Acton, MA. The business will include a retail nursery that will include landscaping supplies.
- B. The cover letter narrative asserts that the applicant will purchase the lot upon receiving approvals which is the reason that the initial application did not exhibit the final lot configuration.
- C. Applicant asserts that soil testing has been conducted and that the septic system is under review by the Harvard Board of Health and the Nashoba Associated Boards of Health.
- D. Applicant acknowledges that a new well meeting the Board of Health regulations will need to be permitted and installed.
- E. The applicant proposes two hoop structures as follows: The business will erect "temporary" structures described as "hoop green houses." One hoop green house is planned to be within the southeast corner of the property. Sheltering and storage of various landscape tools and plant stock will be achieved by placement of temporary Connex shipping containers and an arched cover at the southwest corner of the subject property.
- F. The site plan depicts stockpiles and equipment parking areas including block bulk material bins, other stockpiles, and machinery and trucks.
- G. Applicant originally proposed a utility trailer to host their office requirements. This was intended to be permanent but has since agreed to a condition that limits the duration of the use to coincide with the rehabilitation of the abandoned residence to serve as the office.
- H. There will be pedestrian connections from the parking area to the commercial hoop house, from the parking area to the permanent office structure, and from the permanent office structure to the Ayer Road Right-of-Way connecting to the proposed Shared Use Path along Ayer Road.
- I. Applicant proposes a new paved parking area for customers that will require a new driveway cut on Ayer Road. The existing solar farm driveway will serve the operation for deliveries of stock and parking of landscaping equipment and trucks.

- J. No site lighting has been proposed, other than those intended for security purposes, as shown on the plan.
- K. Applicant proposes a single sign approximately 48" x 36" in dimensions, placed near the entrance with lettering for Kennedy & Company Landscaping, Nursery & Garden Center, proposed near the new commercial site entrance as depicted on the site plan.
- L. Stormwater was reviewed by Beals + Thomas
- M. Erosion Control was reviewed by Beals + Thomas

II. Special Permit Criteria

A. Advice from Planning Board or other Town boards

1. Fire Department Comments

- a. In regards to Beals + Thomas comment #9 (p. 7); based on the plans submitted it appears there will be sufficient access for emergency vehicles in both the existing solar array driveway and the proposed new commercial parking lot.
- b. In regards to Beals + Thomas comment #13 (p. 7); there are two fire department approved water sources within an acceptable distance from this location.

2. Department of Public Works Comments

- a. In regards to Beals + Thomas comment # 8, the location shouldn't be a problem and they must put in the island as required in the by-law. They will also need to apply for and obtain a residential connection permit for the curb cut.
- b. In regards to Beals + Thomas comment #19, they just need to maintain the wires and it will not have an effect on the Ayer Rd. project as that is down the road and will be dealt with at that time.

B. Special Permit Authorization

- 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. *Stormwater was reviewed by Beals + Thomas*
 - b. *Erosion Control was reviewed by Beals + Thomas*

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

The Board concluded as proposed the landscaping business would not substantially increase traffic

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.

The Board concluded as proposed the landscaping business would be in harmony with the provisions stated in § 125-1, unless otherwise noted within the conditions below.

4. 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.

The Board concluded as proposed the landscaping business would be in harmony with the provisions stated in § 125-20, unless otherwise noted within the conditions below.

III. Site Plan Review Criteria

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

A. 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 property, although in this case. The applicant has been advised to execute an Approval Not Required plan prior to plan approval.

Buildings and structures include a residence building intended for office conversion, a retail hoop house, and a storage hoop house.

Other proposed improvements include proposed signage, landscape stock bins, a proposed septic drainfield, a paved parking lot. No elevation views have been submitted. No additional information deemed necessary by the Board.

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 customer parking, including two (2) handicapped spaces. Employee and other vehicular parking will be located on gravel at the rear of the site.

Proposed storage includes stock bins, planting stock, and indoor and outdoor storage of equipment.

Driveways include an existing unpaved drive currently serving the solar garden, which will be for delivery and other heavier vehicles, and employees. There is a proposed two-way driveway serving the proposed paved parking lot that will be a new curb cut on Ayer Road. The DPW Director stated in an email dated 5/26/2022, "..., the location shouldn't be a problem and they must put in the island as required in the by-law. They will also need to apply for and obtain a residential connection permit for the curb cut." PENDING: The applicant must provide a revised site plan showing a design satisfactory to the DPW Director, who should provide a written statement indicating compliance.

There are proposed walkways connecting the parking lot to the hoop house and the office structure (permanent) plus a walkway from this structure to the ROW.

Green areas include front yard landscaping.

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

There is an existing water supply well in front of Building A to be discontinued. The septic tanks are located close to the well in the front of Building A and proposed absorption system is to be located behind the existing storage garage. Stormwater is likely sheetflow off of the property.

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

There is no major cut and fill for the site.

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

No clearing appears to be proposed.

B. Design Review, applicability, procedure, and purpose

The Planning Board determined that formal design review process was not required for this use and application and that the Planning Board would assess the appropriateness of any Design Guidelines required. These will be integrated into the site plan.

C. Landscape Plan

Applicant provided a landscape plan.

Section 125-39, Site Standards

1. Parking and Loading

- a. *No shared parking, loading, or other traffic areas are being proposed. Not recommended for this site.*
- b. *Parking areas not to the scale that would require subdivision or interspersed green landscaped areas. Parking stalls are proposed to be 9'x19' and the aisle is greater than 24' in width. A split-rail fence has been proposed for use as car stops.*

2. Standards for Driveways

- a. *Beals + Thomas and the Department of Public Works had no issue with line-of-sight criteria.*
- b. *Non-residential driveway standards*
 - 1) *Standards recommend only one ingress-egress point but existing lot has two.*
 - 2) *While a formal 10% buffer strip around the perimeter of the lot has not been established, the aerial photograph of the site indicates a setback of at least 10' that is grassy with trees along the north border of the property.*
 - 3) *No inter-parcel connectivity is proposed.*
 - 4) *The angle of intersection of the driveway center line is at least 60° and that the transition is sufficiently flared for required turn movements. The applicant will request a driveway permit from the Department of Public Works.*
 - 5) *Regarding construction, as no new development is being proposed, no construction or reconstruction is required unless the transition(s) are found to be deficient.*
 - 6) *The 30' turnaround for "circular" driveway appears to be met. The "run-out" ratio also appears to be compliant.*

3. Open Areas

- a. *Buffer strip requirement appears to be met in principle or mimicked on the ground.*
- b. *With 75% green area detailed on the plan the 50% minimum green area has been met.*

4. Screening

- a. *No existing or proposed lighting is shown on the plan.*
- b. *Outdoor storage is within a fenced area.*

c. *This property is surrounded by other commercial properties.*

5. Fire Protection

Not an applicable provision for this site.

6. Drainage

No new building construction is proposed and only some additional gravel and asphalt is being introduced to the site and therefore stormwater is not anticipated to change significantly. Agree with applicant's consultant that there will likely be no substantial increase in runoff.

7. 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. In light of plans under development for the Ayer Road corridor, this was deemed not applicable.

Section 125-40, Lighting

See above I. General J. under BACKGROUND AND FINDINGS

Section 125-41, Signs

One business sign is proposed.

DECISION

After reviewing the Application, plans, and other materials and information submitted, after reviewing the comments by the Town's Director of Community and Economic Development, the Boards consultant, Beals + Thomas, responses by the applicants consulting engineer, and testimony given at the public hearing, the Board made the above-referenced findings of fact and, based on those findings, the Board hereby decides that the Property is suitable for a landscaping business pursuant to §125-23B of the Town of Harvard Protective Bylaw and that all the required criteria for a Special Permit and Site Plan Approval have been met. Accordingly, the Board hereby grants a Special Permit and approves the accompanying Site Plan to **Kennedy & Company, Inc.**, for the establishment of a landscaping business, pursuant to §§125-1, 125-2, 125-23B, 125-38, 125-39, and 125-46 of the Town of Harvard Protective Bylaw in accordance with the terms and conditions stated below.

TERMS AND CONDITIONS

Standard Conditions

- I. This Special Permit shall lapse no later than July 18, 2024 but shall not include such time required to pursue or await the determination of an appeal referenced to in M.G.L. Chapter

40A, §17, if substantial use of the Special Permit has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

- II. The site plan accompanying this Special Permit application shall be incorporated into this decision and shall be a standard condition of this approval.
- III. The granting of this Special Permit and site plan approval, and the project which is the subject of the Special Permit and accompanying site plan, including all construction and subsequent operations, is predicated on the applicant complying fully with all provisions of the Town of Harvard Protective Bylaw, the Town of Harvard Codified Bylaws, and Massachusetts General Law, as applicable.
- IV. The applicant shall be responsible for acquiring and complying with all other local, state, or federal permits, licenses, and approvals as necessary to construct and operate the project as approved by the Board. Such permits, approvals, or endorsements must be obtained prior to securing a building permit, or a Certificate of Occupancy, should a building permit not be applicable.
- V. This Decision shall be recorded by the applicant at the Worcester County Registry of Deeds. A copy of the recorded Decision shall be submitted to the Planning Board prior to commencing construction.
- VI. Duly authorized agents of the Town shall have the right to enter upon the Property to ensure continued compliance with the terms and conditions of this Special Permit.
- VII. This decision allows the proposed improvements and activities in the location shown on the approved site plan. No alterations, changed to the approved improvements, other additional uses or additional improvements shall be allowed without further review and approval by the Planning Board in the form of a modification to the Special Permit.

Special Conditions

The following Special Conditions were voted affirmatively by the Planning Board at their regular meeting of July 18, 2022:

- I. The temporary office trailer shall be limited on-site to eighteen (18) months from the date of this decision, after which it shall be removed from the site and the permanent office shall be thereafter occupied as the business office.
- II. The applicant seeks and obtains a driveway permit from the Department of Public Works prior to receiving a building permit.
- III. If any commercial scale waste receptacle is deemed necessary in the future, that the applicant submit plans for the receptacle to the Planning Board for approval.
- IV. The applicant shall not operate the garden center after October 31st.

- V. The business operations shall be limited to 7:00 am to 5:00 pm, with the garden center limited to the hours of 10:00 am to 5:00 pm for retail customers
- VI. Screening of materials limited to monthly.
- VII. There shall be no vehicular idling to minimize exhaust emissions.
- VIII. Business operations shall adhere to an appropriate combination of best practices related to dust control, including but not necessarily limited to: watering, site design, hardscape barriers and fencing, vehicular load covering, and limits to activity during high winds.
- IX. No site lighting shall be permitted without modification to this Special Permit.
- X. Proposed Approval Not Required shall be endorsed prior to seeking a building permit.
- XI. Erosion control measures shall be inspected by the Conservation Agent.

VOTE

The following members of the Board voted to grant the Special Permit and Site Plan Approval, subject to the above stated terms and conditions:

- I. Richard Cabelus, Chair
- II. Stacia Donahue, Vice-Chair
- III. Brian Cook
- IV. Doug Thornton

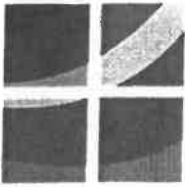
The following members voted to deny the grant of a Special Permit and Site Plan Approval:

None

This decision is not valid until after it has been certified with respect to an Appeal by the Harvard Town Clerk, as provided in MGL, Chapter 40A Section 11, and a copy as certified has been recorded in the Worcester Registry of Deeds.

An Appeal of this decision may be made pursuant to MGL Chapter 40A Section 17 within twenty (20) days after the decision is filed with the Town Clerk.

This is to certify that as of _____ no notice of appeal has been filed with the Town Clerk office in regard to this decision.



BEALS + THOMAS

BEALS AND THOMAS, INC.
144 Turnpike Road
Southborough, MA 01772-2104

T 508.366.0560
F 508.366.4391
www.bealsandthomas.com
Regional Office: Plymouth, MA

Town of Harvard
Conservation Commission
13 Ayer Road
Harvard, MA 01451
Liz Allard

Invoice number 3241.02-2
Date 06/30/2022

Project 3241.02
Peer Review Services
203 Ayer Road
Harvard, MA

FOR PROFESSIONAL SERVICES RENDERED: this period through June 30, 2022

Professional services to assist the Town of Harvard Planning Board (the Board) and Conservation Commission (the Commission) with the review of the two Special Permit Applications, a Site Plan Approval Application, and a Notice of Intent for the proposed commercial development at 203 Ayer Road, Harvard, Massachusetts. During this period we completed our initial review of project documents, issued letters to the Planning Board and Conservation Commission, and attended two Planning Board hearings.

Professional Fees

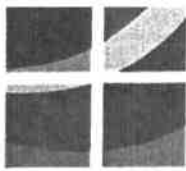
	Hours	Amount
Senior Professional Staff I	0.50	122.50
Senior Professional Staff II	3.25	715.00
Senior Professional Staff III	1.25	237.50
Senior Professional Staff V	11.75	1,938.75
Senior Professional Staff VI	4.50	675.00
Administrative Staff I	1.25	93.75
Professional Fees Subtotal	22.50	3,782.50

Invoice total **3,782.50**

By: Stacy H. Minihane
Stacy H. Minihane
Senior Associate

Order # 14284

Town of Harvard
Warrant #
AP-23-03



BEALS + THOMAS

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Regional Office: Plymouth, MA

Town of Harvard
Conservation Commission
13 Ayer Road
Harvard, MA 01451
Liz Allard


Invoice number 3241.01-2
Date 06/30/2022

Project 3241.01
Special Permit and Site Plan Approval
Applications
295 Ayer Road
Harvard, MA

FOR PROFESSIONAL SERVICES RENDERED: this period through June 30, 2022

We conducted a peer review of supplemental documents submitted for the project and issued a review letter on June 20, 2022. We prepared for and attended via zoom the Planning Board public hearing on June 27, 2022.

Professional Fees	Hours	Amount
Senior Professional Staff I	1.00	245.00
Senior Professional Staff V	12.25	2,021.25
Administrative Staff I	0.25	18.75
Professional Fees Subtotal	13.50	2,285.00
Invoice total		2,285.00

By: 
Daniel M. Feeney
Principal

Vendor #14284
Town of Harvard
Nathan #
AP-23-03