

**TOWN OF HARVARD  
PLANNING BOARD AGENDA  
MONDAY, APRIL 24, 2023 @ 7:00PM**

---

Pursuant to Chapter 2 of the Acts of 2023, An Act Making Appropriations for the Fiscal Year 2023 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects, and signed into law on March 29, 2023, 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.

THVolGovt Pro is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://us02web.zoom.us/j/86356044599?pwd=MXUva0graCtScnQreWlpeHBObm42dz09>

Meeting ID: 863 5604 4599

Passcode: 571981

One tap mobile

+13052241968,,86356044599# US

+13092053325,,86356044599# US

Dial by your location

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

Meeting ID: 863 5604 4599

Find your local number: <https://us02web.zoom.us/j/86356044599>

**Public Comment**

- Old Business:**
- a) Prospective MBTA Multi-family zoned district  
(Preliminary review of DHCD model by-law guidelines)
  - b) Ayer Road: pursue Phases II & III (vision plan & zoning to facilitate vision) RFP with funds from Rural & Small-Town Grant award
  - c) Open Space Residential Development Bylaw Amendment (\$125-35)

- New Business:**
- a) Request from Climate Initiative Committee for Letter of Support for MVP application.
  - b) Discuss alleged violations at 320 Ayer Road and provide info to Zoning Enforcement Officer.

**Public Hearings:**

**7:30pm Continuation of Special Permit - Ayer Road Village-Special Permit and Site Plan Review Hearing - Yvonne Chern & Wheeler Realty Trust, 203 Ayer Road,** for the updates on proposed development of three commercial use buildings, including a Commercial Entertainment and Recreation use.

**8:00pm Continuation of Proposed Bylaw Amendment Hearing – Wheeler Realty Trust and 12 Lancaster County Road LLC, 185-189 Ayer Road,** for proposed Overlay District

- Standard Business:**
- a) Board Member Reports
    - Representatives & Liaisons Update
    - Community Matters
  - b) Approve Minutes
  - c) Invoices
    - Beals + Thomas #3241.02-5 for Professional Services, 203 Ayer Rd. \$2,166.25

**NEXT SCHEDULED MEETING: MONDAY, MAY 1, 2023**

AS

## § 125-35. Open Space and Conservation - Planned Residential Development (OSC-PRD).

---

[Added 3-29-2003 ATM by Art. 32<sup>1</sup>]

This section establishes and regulates Open Space and Conservation Planned Residential Development (OSC-PRD). Development under this section is pursuant to a special permit granted by the Planning Board.

- A. Purpose and intent.** The purpose and intent of the OSC-PRD provision is to permit high-quality residential development that preserves open space, water resources, wetlands, habitat, prime agricultural land, scenic landscapes and natural features, reduces infrastructure and site development cost, and promotes a diversity of housing opportunities within the Town, while respecting and enhancing neighborhoods, and promoting attractive standards of appearance and aesthetics consistent with Town character.
- (1) A further purpose of the OSC-PRD provision is to reduce the anticipated negative fiscal impact on the Town associated with conventional residential development.
  - (2) The OSC-PRD provision is designed to encourage the siting of homes in a manner that clusters units together in well-designed village settings, on buildable portions of the site, as a distinct alternative to the more arbitrary siting associated with lot by lot development typically reflected in plans submitted pursuant to Massachusetts General Laws Chapter 41, Sections 81K through 81GG, the Subdivision Control Law.
- B. Applicability.** The Planning Board may grant a special permit for an OSC-PRD on an Agricultural-Residential (AR) zoned tract of land with definite boundaries ascertainable from a recorded or registered deed(s) or recorded or registered plan(s). Existing public and private ways need not constitute boundaries of the tract, but the area within such ways shall not be counted in determining tract size.
- (1) **Permitted uses in Open Space and Conservation Planned Residential Development.** Permitted uses include the following:
    - (a) Single-family detached dwellings.
    - (b) Multi-family dwellings.
    - (c) Agriculture and horticultural uses including but not limited to orchards, vineyards, forestry, farming for fruits and vegetables.

---

<sup>1</sup> Editor's Note: This article also repealed former § 125-35. Cluster development for open space conservation, added 3-31-1990 ATM by Art. 18, as amended.

- (d) Open space.
- (e) Trails.
- (f) Passive outdoor recreation, cf. 301 Mass. Reg. 5.02.
- (g) Educational and religious uses and other uses not mentioned above which are exempt from regulation by zoning under Massachusetts General Laws Chapter 40A, Section 3.
- (h) Accessory residential recreational uses (e.g., tennis court, pool, playground).
- (i) Active outdoor recreation, cf. 301 Mass. Reg. 5.02.

**C. Requirements and process for approval.** An applicant who is the owner (or with the permission of the owner) of land in the AR District as described above, may submit to the Planning Board a plan and application for a special permit for an OSC-PRD in accordance with the provisions of this section, excepting the building lots or lot shown on such plans from the lot area and other dimensional requirements specified in other sections of this Bylaw. While a subdivision plan is not required to be submitted in conjunction with the provisions of this section, in the event that a subdivision plan is being proposed by the applicant, such plan shall be submitted to the Planning Board in accordance with the Subdivision Rules and Regulations of the Planning Board.

- (1) **Submittal requirements.** Prior to the granting of a special permit pursuant to this section, a duly submitted application for said special permit shall be submitted together with a site plan to the Planning Board, in accordance with § 125-38, Site plans, of the Bylaw, and any Site Plan Rules and Regulations adopted by the Planning Board. For purposes of this Bylaw, a landscape architect, architect, land surveyor, and professional engineer must participate in the preparation of such site plan, which shall include the following:
  - (a) The location of the proposed development.
  - (b) The size of the site in acres.
  - (c) The total number of the proposed buildings and/or lots, and the size of each in square feet.
  - (d) The acreage and proposed use of permanent open space.
  - (e) A statement on the disposition or manner of ownership of the proposed open space.

- (f) The lots or areas which are to be used as building areas or lots, and the lots or areas which are to remain as permanent open space.
  - (g) Lines showing yard and setbacks as required by this Bylaw, within which dwellings or structures must lie.
  - (h) Sufficient detail of proposed built and natural features as described in § 125-35D and § 125-35E to enable the Planning Board to make the required determinations of § 125-35C(3).
  - (i) A landscape preservation plan sheet(s) to be included with the site plan, reflecting the existing, natural features to be preserved and proposed landscape features and details.<sup>2</sup>
- (2) **Submittal of preliminary plan.** An applicant must submit a plan of the required form and content standards as a "Preliminary Plan" in accordance with the Massachusetts General Laws Chapter 41, Section 81S and Harvard Planning Board governing laws for Subdivision Plans. Such plan, although not a formal subdivision plan filing, and submitted for conceptual purposes only, shall include a perimeter survey prepared by a registered land surveyor, location of wetlands, and topography based upon the most recent United States Geological Survey map. The applicant shall demonstrate to the satisfaction of the Board that a subdivision plan, if formally filed, would be buildable without reliance on significant waivers of the subdivision regulations.
- (3) **Approval criteria.** After notice and a public hearing in accordance with Massachusetts General Laws Chapter 40A, Section 9, 11, and 15 and after following the procedure outlined in this Bylaw, the Planning Board may grant such a special permit with any conditions, safeguards, and limitations, if it determines:
- (a) That the application form and content referred to in § 125-35C(1), herein is properly completed.
  - (b) That the site plan referred to in § 125-35C(1) is properly completed.
  - (c) That all the other requirements of this Section and Bylaw are fully met.
  - (d) That the design and layout of the proposed OSC-PRD preserves open space for conservation and recreation; that it preserves natural features of the land; allows more efficient provision of streets, utilities and other

---

<sup>2</sup> Editor's Note: See Ch. 130, Subdivision Control.

public services; and, that it provides a high degree of design quality, based on the criteria and considerations enumerated herein in § 125-35E.

- (e) That if development of single family homes is being proposed on separate lots, as opposed to a clustered village concept that is a major objective of this Bylaw, exemplary site planning is demonstrated, and other determinations in § 125-35D, are met.

**D. Design criteria.** In its consideration of an OSC-PRD, the Planning Board shall give particular attention to, and shall use as a basis for its decision, all of the following:

- (1) Lots, streets, off-street parking, sidewalks, pathways and buildings which achieve the harmonious integration of the proposed development with surrounding properties.
- (2) Overall layout and design that achieves the relationship between the proposed development and the land under consideration.
- (3) Appropriately sized and configured open spaces for active or passive recreation, and where possible, links to adjoining common open space areas.
- (4) Protection of natural features such as streams, mature trees or clusters of trees, rock outcrops, bluffs, slopes, high points, views, vistas, and historic or archeological features.
- (5) Provision of buffer areas, composed of existing vegetation, to surround building groupings and building envelope areas, to discourage site clearing and encourage preservation of existing land cover and mature vegetation.
- (6) Provision of accessibility to open spaces for all, consistent with Massachusetts Architectural Access Board 521 CMR Accessibility Guidelines.
- (7) Use of open spaces for preserving, enhancing, or providing scenic vistas; preservation and protection of historic resources.
- (8) Adequacy of provisions for public safety, protection from fire and flood, and maintenance of public facilities, streets, utilities, and open space.

**E. Design quality.** Project design for an OSC-PRD shall be reviewed by the Planning Board with input from Town officials, any review consultant(s), and others as appropriate. This section is to be interpreted as guidelines to be applied flexibly by the Planning Board as appropriate to the situation under review, including factors such as foundation and soil characteristics and other extraordinary site constraints. While these guidelines apply to all site improvements and buildings

and structures, it is not the intent of this section to prescribe or proscribe use of materials or methods of construction regulated by the state building code, but rather to enhance the appearance of the built environment within an OSC-PRD.

- (1) **Building and structure placement.** The placement of buildings and structures in an OSC-PRD should:
  - (a) Provide for maximum buffering of buildings and structures to adjoining properties either within the proposed OSC-PRD or to adjacent land uses. Such buffering includes, but is not limited to: landscaping, screening materials, natural barriers, fencing, and related measures.
  - (b) Preserve attractive views from major vantage points, especially from major thoroughfares and residential neighborhoods.
  - (c) Avoid regular spacings and building placements that will be viewed as continuous walls from important vantage points, which may be identified in an OSC-PRD pre-application conference.
  - (d) Avoid the placement of structures, common area facilities, and private space related to individual units in a manner that eclipses views or access to open space areas described in § 125-35K.
  - (e) Ensure that an appropriate number of units are designed to be fully accessible consistent with Massachusetts Architectural Access Board 521 CMR Accessibility Guidelines. If greater than 4 but fewer than 10 units, one unit must be accessible. If greater than 10 and fewer than 19, two units must be made accessible. For more than 20 units, 10% must be made accessible. .
- (2) **Building massing/articulation.** The massing/articulation of buildings should:
  - (a) Avoid unbroken building facades longer than 50 feet.
  - (b) Provide human-scale features, especially for pedestrians and at lower levels.
  - (c) Avoid unarticulated and monotonous building facades and window placement.
- (3) **Building appearance and treatment.** To the extent not inconsistent with or pre-empted by the state building code, the following should be considered as applicable:

- (a) Materials and building treatments that reduce the visibility of the buildings from distant vantage points, and that are compatible with backgrounds and surroundings.
  - (b) Materials and colors compatible with other quality buildings of similar scale in the vicinity.
  - (c) Green building technologies and materials, wherever possible, to minimize adverse environmental impacts.
- (4) **Roofline articulation.** The design of buildings should:
- (a) Provide a variety of building heights and varied roofline articulation that stresses New England vernacular architecture.
  - (b) Locate taller buildings away from major streets, abutting and off-site single-family residential areas and homes.
- (5) **Landscaping.** Landscaping criteria are as follows:
- (a) All open areas, exclusive of areas to remain in an existing natural state within an OSC-PRD, should be landscaped in an appropriate manner, utilizing both natural and man-made materials such as indigenous grasses, trees, shrubs, and other appropriate elements.
  - (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 OSC-PRD and adjacent areas.
  - (c) Intensive, high-quality landscaping or preservation of existing vegetation should be provided within the OSC-PRD where it abuts major streets, existing residential areas, and along internal drives.
  - (d) 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 along external property boundaries and on the perimeter of the OSC-PRD itself, to buffer the site from adjoining parcels.

§ 125-35

§ 125-35

- (g) Any lighting in the proposed development shall comply with Lighting Bylaw §125-40.

**F. Utilities.** To the maximum extent feasible, all utilities should be located underground.

**G. Signage.** All signs shall comply with Protective Bylaw § 125-41. However, within the development, signs, not to exceed two square-feet each, of a number and location to be approved as part of the OSC-PRD, may be permitted for the sole purposes of orientation and direction, and of identifying common building spaces.

**H. Base development density.** The maximum number of dwelling units per acre permitted in an OSC-PRD shall not exceed two units per acre of land area, and in no event exceed the maximum number of lots or dwelling units obtainable under a conventional subdivision plan for the land area under consideration, except as provided in § 125-35I.

**I. Development incentive.**

- (1) The Planning Board may authorize an increase in lots or dwelling units up to a maximum of ~~350% increase over that allowed under § 125-35H of this Bylaw (a maximum density of seven~~nine units per acre). ~~Percentage of increased permissible density will be~~ is allocated ~~based on~~as each of the following individual conditions ~~being~~are met:

- (a) The applicant proposes a significant increase in open space above 50%, and preserves significant natural resources, ~~in the opinion of Planning Board.~~
- (b) There is permanent preservation of land devoted or set aside for agricultural use or other unique preservation strategy, including preservation of historic structures or barns, or other special features of the built environment.

[1] (If (a) **and** (b) above are found to be satisfied, in the opinion of Planning Board, it may authorize a ~~100%~~2 unit per acre increase ~~in applicable~~over base density.)

- (c) The applicant proposes public improvements or amenities that result in substantial benefit to the Town and the general public, provided:

- [1] There are significant improvements to the environmental quality or condition of the site and its surrounding areas, including a decrease in stormwater runoff from what would otherwise result from a conventional subdivision plan.



[2] There are provisions contributing to off-site public facilities or environmental improvements beyond those necessary to mitigate the impacts of the proposed development.

(If (c) above is found to be satisfied, in the opinion of Planning Board, it may authorize a ~~100%~~2 unit per acre increase ~~in-applicable~~over base density.)

(d) Housing units for senior citizens and persons aged 55 years and over housing is provided. Such units should conform to §125-57E, Age Appropriate Design.

(If (d) above is found to be satisfied, in the opinion of Planning Board, it may authorize a ~~75%~~1.5 unit per acre increase ~~in-applicable~~over base density.)

(e) The applicant sets aside 15% or more of lots or dwelling units on the site for Affordable Housing for purchase or rental by those with households of low or moderate incomes. Such units must count toward the Town's Subsidized Housing Inventory, and be in accordance with the provisions of 760 CMR 45.00, as may be amended. The Planning Board shall review and approve the actual percentage distribution of qualifying low versus moderate income units.

(If (e) above is found to be satisfied, in the opinion of Planning Board, it may authorize up to a ~~75%~~1.5 unit per acre increase ~~in~~over applicable base density.)

Condition	Units per acre
<b>Base Density</b>	2
<b>(a+b) Additional Open Space Preservation</b>	2
<b>(c) Public Improvement/Benefit to Town</b>	2
<b>(d) Senior Housing</b>	1.5
<b>(e) Affordable Housing</b>	1.5
<b>Maximum Density if conditions met</b>	<b>9</b>

**J. Dimensional requirements.** The following provisions shall apply:

- (1) The Planning Board may waive the minimum requirements for frontage and/or yard requirements that would normally be applicable to land within the AR District in order to achieve maximum open space area, and may permit more

2. JOHN MCCORMACK

November 15, 2022 at 6:19:18 PM  
50% contiguous seems high.  
perhaps lower?km

3. JOHN MCCORMACK

November 16, 2022 at 11:55:26 AM  
How much open space should be usable? Does that mean such space will not be included in the computation of the open space percentage? How does “finished grade” align with “undisturbed natural condition”? Is this paragraph an attempt to designate Common Open Space as Open Space considered usable? Terminology is inconsistent throughout, and we should clean that up to make it consistent. eg, globally use the term “Usable Common Open Space”

§ 125-35

§ 125-35

than one single or two-family dwelling be located on a lot in an OSC-PRD, as provided below.

- (2) The parcel proposed for development must have a minimum of 50 feet of frontage on a public way or private way which is open to the public.
- (3) The minimum distance between clusters of multiple unit dwellings, shall be 50 feet.
- (4) A minimum width of 150 feet of green area shall be established and maintained between any property adjacent to the OSC-PRD and the nearest dwelling unit or units in the OSC. [Amended 4-2-2005 ATM by Art. 34]
- (5) The minimum setback from internal roads shall be 25 feet.
- (6) The maximum height of proposed buildings shall be 35 feet, and shall not exceed 3 stories.
- (7) Except as provided in this Bylaw, any lot in an OSC-PRD shall comply with any other dimensional requirements of the zoning district in which it is located.

2 | **K. Common open space.** A minimum of 50% of the OSC-PRD parcel shall be devoted to contiguous open space, completely devoid of any structure, parking, loading and unloading space, access ways thereto, or as private yards, patios, or gardens for the exclusive or principal use by residents of individual dwelling units. To the greatest extent possible, such open space shall be left in its undisturbed natural condition or shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, and where appropriate, a recreational area, and be a visual and natural amenity for the development and the Town. The common open space described herein is in substitution of and supersedes any other reference to common open space that may be described elsewhere in the Bylaw.

- 3 | (1) **Open space criteria.** The following criteria define open space, and open space that is considered **usable for passive outdoor recreation** within an OSC-PRD parcel:
- (a) No more than 25% of common open space in an OSC-PRD shall be wetlands.
  - (b) Unless approved by the Planning Board, common open space shall not be considered usable if the slope of the finished grade exceeds 33%.
  - (c) Unless approved by the Planning Board, the nearest part of the common **usable** open space shall not be more than 300 feet in distance

from the nearest point of any building that it is proposed to serve, in order to make the space accessible to those who use it.

- (d) No common open space shall be considered usable unless it is compact and contiguous and has no dimension of less than 50 feet.
- (e) All usable open space shall be open to the sky and pervious.

**L. Open space conveyance.**

- (1) The common open space shall be conveyed in the following ways as approved by the Planning Board:
  - (a) To a corporation or trust comprising a homeowners association whose membership includes the owners of all lots or units contained in the development. The developer shall include in the deed to owners beneficial rights in said open land, and shall grant a perpetual open space restriction to the Town of Harvard or a non-profit corporation or organization over such land to insure that it be kept in an open state and not be built upon for residential use, or developed for accessory uses such as parking or roadways. Such restriction shall be in such form and substance as the Planning Board shall prescribe, and may contain such additional restrictions on development and use of the open space as the Planning Board may deem appropriate.
  - (b) To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or non-profit organization shall grant an open space restriction as set forth above.
  - (c) To the Town for a park or open space use, subject to the approval of the Select Board, for management by the Park and Recreation Commission if a park, otherwise by the Conservation Commission, with a clause insuring that it be maintained as open space. [Amended 10-22-2018 STM by Art. 2]
- (2) **Multiple conveyance.** To provide flexibility, and when deemed in the public interest, the Planning Board may approve more than one organization to accept the open space conveyance, particularly when it is appropriate that a major portion of such land be conveyed to the Town or a non-profit conservation organization, and another portion of such land is more appropriately conveyed to an owners association.

**M. Passageways.** Private roadways and common driveways shall be allowed in OSCPRD parcels. While roadway surface widths may be narrower than widths associated with a traditional subdivision, the durability of passageway surfaces

4. JOHN MCCORMACK

March 6, 2023 at 3:33:17 PM

Can this be on common open space?

5. JOHN MCCORMACK

February 6, 2023 at 1:28:57 PM

doesn't work for an odd number of units.

§ 125-35

§ 125-35

and subsurfaces must be comparable to those in a conventional subdivision. [Amended 4-2-2005 ATM by Art. 34]

- (1) **Criteria for passageways.** The following criteria shall guide the development of these passageways:
  - (a) Cleared widths for traveled ways (excluding on-street parking spaces and passing turnouts) shall not be more than 20 feet or less than 12 feet. A cleared height of not less than 16 feet above the entire passageway shall be established and maintained.
  - (b) Drainage and surface runoff from all passageways must be suitably accommodated by an approved drainage system, using best management practices.
  - (c) All OSC-PRD plans shall specify that such passageways will not be dedicated to the Town, but are to remain private ways; all deeds or other instruments conveying any portion of land or structure in an OSC-PRD containing such a passageway(s), shall specify that such passage way(s) are and shall remain private way(s) in perpetuity; ~~and~~

**N. Site improvements.** Site improvements specific to an OSC-PRD are listed below. To assist the Planning Board's evaluation of site changes and improvements from any OSC-PRD plan, the applicant shall submit said plan to the Town's Conservation Commission and Board of Health for review and recommendations to the Planning Board.

- (1) **Water supply.** Each lot and the development in its entirety shall be served by water supply systems.
- 4 (2) **Sewage disposal.** Privately owned and maintained on-site sewage disposal or treatment systems may be approved to serve buildings and lots in an OSCPRD, if owned, maintained, operated, and monitored by a residents association, notwithstanding the provisions of § 125-32D of this Bylaw, if such treatment facility or system is approved by the Board of Health and in compliance with the requirements of Title 5, 310 CMR 15.00, or approved in accordance with the requirements of 314 CMR 5.00 (the Ground Water Discharge Permit Program). An approved system may be located on land owned in common by the owners of the building lots or residential units within the development.
- 5 (3) **Parking.** Unless otherwise approved by the Planning Board, a **minimum of 1.5 and maximum of 1.52** off-street parking spaces shall be provided for each unit, exclusive of spaces within garages. The Planning Board may also approve, based upon the nature of the development proposed and exclusive of the 1.5 parking space ratio provided, areas for visitor parking.

- (4) **Storm runoff control.** The applicant shall demonstrate that, as compared with the situation that would exist on the site without the development, no phase of the proposed OSC-PRD will result in an increase in the peak rate of storm runoff at the parcel boundary for the OSC-PRD as a whole for the 25-, 50- and 100-year design storms, and that there will be no net loss in flood storage capacity for the 100-year design storm. In making such determinations, any state or local orders or requirements of the Wetlands Protection Act or the Town's Wetlands Protection Bylaw<sup>3</sup> shall be assumed in the calculations of runoff and flood storage without the OSC-PRD, but alternative forms of development shall not be assumed.
- (5) **On-site runoff and erosion control.** The applicant shall demonstrate that any adverse existing off-site runoff and erosion conditions or off-site runoff and erosion conditions which would result from the development of the OSC-PRD, are fully identified and that workable and acceptable mitigation measures are proposed as part of the submission of a final plan, **consistent with .§ 125-58 herein;**

**O. Residents association.** In order to ensure that common open space and common facilities within the development will be properly maintained, each OSC-PRD shall have a residents association, which **shall** be in the form of a corporation, non-profit organization, or trust, established in accordance with appropriate State law by a suitable legal instrument or instruments properly recorded with the Worcester County Registry of Deeds or registered in the Worcester County Registry District of the Land Court. As part of the final OSC-PRD site plan submission, the applicant shall supply to the Planning Board copies of such proposed instruments, which shall at a minimum provide the information required by said OSC-PRD submission requirements, § 125-35L of this Bylaw, and Site Plan Rules and Regulations in effect at the time of final submission.

- (1) **Responsibilities of the residents association.** Said legal instruments pertaining to the residents association shall specify that the residents association shall be solely responsible for all related improvements, and all costs associated with the operation of the development, including:
- (a) Roadway maintenance.
  - (b) Snow-plowing.
  - (c) Maintenance of street lighting and on-site improvements and utilities.

**P. Amendments without public hearing.** Following the granting of a special permit pursuant to this Section, the Planning Board may, upon application and for good

<sup>3</sup> Editor's Note: See Ch. 119, Wetlands Protection.

cause shown, without public hearing, amend the OSC-PRD plan solely to make changes in lot lines shown on the plan, which lot lines are not part of the perimeter of the site, or other minor engineering changes, provided, however, that no such amendment shall:

- (1) Grant any reduction in the size or change in location of the open space as provided in the permit;
- (2) Grant any change in the layout of the ways as provided in the permit;
- (3) Increase the number of lots or units as provided in the permit; or
- (4) Decrease other dimensional requirements of any lot below the minima permitted by the approval of the initial site plan and special permit.

**Q. Amendments requiring public hearing.** Any proposed change to an existing OSC-PRD special permit considered substantial by the Planning Board, shall require notice and a formal public hearing in accordance with Massachusetts General Laws Chapter 40A, Section 9, 11, and 15 and an amendment to the special permit decision made pursuant to this section.

OFFICE OF THE  
**PLANNING BOARD**

13 AYER ROAD HARVARD, MA 01451 PHONE: 978-456-4100 www.harvard.ma.us



Ms. Kara Runsten, MVP Program Manager  
Executive Office of Energy & Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

April 18, 2023

Ms. Runsten:

The Harvard Planning Board fully supports the Municipal Vulnerability Preparedness grant application of the Harvard Climate Initiative Committee.

The Harvard Climate Initiative Committee is seeking grant funds for two tasks in regards to the work of the Planning Board. The first is Open Space Residential Development, while the other is Erosion Control.

Funding for Open Space Residential Development would allow a professional review and potential amendment of the town bylaw currently being redrafted. Outreach and education supporting this action would include public meetings, outreach to households and creation of a robust and beneficial schematic for Open Space Residential Development in preparation for a town meeting vote.

The other item is to draft improvements to the town's erosion control bylaw by including language to protect tree clearing for new development. Bylaw development will be facilitated by professional research. Ultimately, for passage at town meeting, education components included outreach components to local stakeholders, such as developers, environmental groups and local agriculture.

This work relates to climate and the Planning Board's work because Open Space Residential Development creates housing that is denser, more efficient and leaves significant open spaces while protecting forests, well water, biodiversity, habitat and passive recreation. Providing protection of trees from being removed by new building projects protect trees' ability to sequester carbon and provide shade/heat reduction as temperatures continue to rise.

The significance of this application goes beyond the land itself. It ties climate work to the Planning Board's activities, making climate part of the conversation. In addition, the proposal recognizes the benefits of the prior work funded by MVP. We wholeheartedly recommend funding. Thank you for your support.

Sincerely,

Richard Cabelus, Chair  
Planning Board  
Town of Harvard, MA



April 13, 2023

Mr. Frank O'Connor, Director of Planning  
Land Use Administrator/Conservation Agent  
Town of Harvard  
13 Ayer Road  
Harvard, MA 01451

Via: Email to [FOConnor@harvard-ma.gov](mailto:FOConnor@harvard-ma.gov)

Reference: Special Permit and Site Plan Application  
Second Supplemental Peer Review  
Ayer Road Village  
203 Ayer Road  
Harvard, Massachusetts  
B+T Project No. 3241.02

Dear Mr. O'Connor and Planning Board Members:

Beals and Thomas, Inc. (B+T) is pleased to assist the Town of Harvard Planning Board (the Board) with the second supplemental review of the Special Permit and Site Plan Approval applications for the proposed large scale commercial development at 203 Ayer Road, Harvard, Massachusetts (the Site). We understand that Yvonne Chern and the Wheeler Realty Trust (the Applicant) is requesting permits for three commercial-use buildings and associated site improvements. Subsequent to our last peer review iteration, the Applicant has provided more detail on Buildings B & C. The addition of residential units modifies the filing from an Ayer Road Village Special Permit (ARV-SP) to a ARV-SP and a Mixed-use Village Development (MUVD) filing as defined by §125-13z(1).

B+T issued a letter to the Board, dated June 3, 2022, which presented the results of our site visit and our initial review of the original documentation submitted by the Applicant. As a result of our initial comments, the Applicant submitted supplemental documentation. B+T issued a letter to the Board dated August 18, 2022, which presented the results of our supplemental review of the revised documentation submitted by the Applicant. B+T also had the opportunity to participate in a working session on March 22, 2023 with Town Staff and representatives of the Applicant to review outstanding issues relative to our comments of August 18, 2022. In response to our supplemental comments and discussions at the March 22<sup>nd</sup> meeting, the Applicant has submitted the following additional supplemental documentation as listed herein. Specifically, B+T received the following documentation which served as the basis for our current supplemental review:

---

Civil Engineering ▪ Land Surveying ▪ Landscape Architecture ▪ Land Use Permitting ▪ Environmental Planning ▪ Wetland Science

Corporate Office  
144 Turnpike Road  
Southborough, MA 01772

T 508.366.0560 | [www.bealsandthomas.com](http://www.bealsandthomas.com) | F 508.366.4391

Regional Office  
32 Court Street  
Plymouth, MA 02360



Ms. Liz Allard  
Land Use Administrator/Conservation Agent  
Town of Harvard  
April 13, 2023  
Page 2

- *Special Permit and Site Plan Review Application, 203 Ayer Road, Harvard, MA, Project Review Response Letter Revision-2*, dated March 2, 2023, prepared by GPR Engineering Solutions for Land & Structures (GPR) (14 pages)
- *Ayer Road Village Special Permit, 203 Ayer Road, Harvard, MA*, dated March 11, 2022, revised through March 2, 2023, prepared by GPR (11 sheets)
- *Proposed Badminton Facility, 203 Ayer Road, Harvard, MA*, dated May 5, 2021, revised through April 25, 2022, prepared by Choo & Company, Inc. (6 sheets)
- *203 Ayer Road Building B & C- Rendering*, dated November 2, 2022, prepared by Mauge Destefano Architects (5 sheets)
- 203 Ayer Road Photometric plans, dated September 9, 2022, prepared by MaxLite (2 sheets)
- Lighting Product Detail Sheets (8 pages)
- Email correspondence from GPR dated April 12, 2023 regarding follow up items discussed at the March 22, 2023 working session.

We have reviewed the documentation submitted by the Applicant with respect to the relevant sections of the Protective Bylaw of the Town of Harvard, including but not limited to Chapters 125-1, 125-13, 125-14, 125-20, 125-23, 125-37, 125-38, 125-39, 125-46 and 125-52 (the Bylaws); The Code of the Town of Harvard, Chapter 133 (the Code); the Massachusetts Wetlands Protection Act and Regulations (MassDEP Regulations); the Massachusetts Department of Environmental Protection (MassDEP) Stormwater Handbook (the Handbook); and, particularly with respect to our supplemental comments dated August 18, 2022.

### **Review Format**

In an effort to establish clarity for the Administrative Record, we have presented comments and responses as follows:

- B+T original comments dated June 3, 2022 - standard font
- Applicant previous response – *italicized font*.
- B+T previous response dated August 18, 2022 – standard font.
- Applicant current response – *italicized font*.
- B+T current response – **bold font**.

To reduce redundancy, the comments that were adequately addressed as of our August 18, 2022 letter have been removed; however, the initial comment numbering has been maintained for consistency.

**General Comments:**

1. §125-20.D of the Bylaw requires the development to provide water supply and sewage disposal approved by the Board of Health (BOH). We acknowledge the proposed connections to the previously installed on-site systems. We note this for the benefit of the Board and defer review and approval of the adequacy of these connections to the Board of Health Review process.

*Applicant's Previous Response: No comment.*

B+T Previous Response: We reiterate the intent of our previous comment.

*Applicant's Current Response: Noted*

**B+T Current Response: We reiterate the intent of our previous comment.**

**2. Previously addressed.**

3. §125-30.B of the Bylaw requires a total building floor area calculation for all levels of all buildings. Understanding that buildings B & C are not fully designed, as proposed, the Project does not appear to comply with the 10% maximum coverage area. We request that the Applicant clarify the design intent and document compliance with the referenced section of the Bylaw.

*Applicant's Previous Response: The project proposes 45,998 SF of total building floor area, this is approximately 9.57% total lot area.*

B+T Previous Response: We acknowledge the calculation provided by the Applicant. We note for the benefit of the Board, as a potential condition of the approval, that the proposed floor areas for the undesigned Buildings B & C be limited to a total of 16,000 SF to maintain compliance with the referenced section of the Bylaw.

*Applicant's Current Response: As mentioned in the beginning of the letter the scope of the project has changed making the project now an ARV-SP & MUVD allowing the Planning Board to approve up to 20% maximum FAR coverage. As of this latest revision, the project proposes 49,398 SF of total building floor area, approximately 10.28% of the total lot area.*

**B+T Current Response: We acknowledge the revisions to the proposed building program. Though B+T does not take any specific exception, we defer to the Board on the appropriateness of granting the requested increase in floor area percentage in the context of the Project as proposed.**

4. §125-30.D of the Bylaw requires that the area within 20-ft of the street line be clear of signage, fences, plantings, etc., to provide adequate visibility for oncoming traffic. As proposed, the landscape plan does not appear to comply with this requirement. We request that the Applicant clarify the design intent and document compliance with the referenced section of the Bylaw.

*Applicant's Previous Response: As designed the sight triangle will not be impacted.*

B+T Previous Response: The landscape design continues to provide for plantings directly adjacent to Ayer Road in the area of the access driveway that impacts the sight triangle depicted on the plans. Accordingly, we reiterate the intent of our previous comment.

*Applicant's Current Response: The sign and associated plantings are setback from the road at 20 feet plus. The plantings adjacent to the sign are low growing plants so that even if forward of the 20 foot setback they will meet the height requirement. There are a couple of trees proposed within the 20 foot setback that are beyond the sight distance triangle and will also meet the requirement of not blocking sight distance. Sheet C3.2 indicates the directory sign at Ayer Rd and an identification sign at each of the three drive entrances.*

**B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.**

5. §125-31.B(2) of the Bylaw requires each branch of a shared driveway shall include a turnaround for vehicles, especially emergency vehicles. We acknowledge the swept path analysis provided for a SU-30, or a typical delivery truck. Based on this analysis, the required turnarounds do not appear to be provided. We request that the Applicant clarify the design intent and document compliance with the noted section of the Bylaw for vehicles larger than a SU-30 and more typical of a fire engine. We defer ultimate review and approval of the driveway geometry and adequacy of the emergency access provided to Harvard Fire Department personnel.

*Applicant's Previous Response: Turning analysis has been revised to show fire truck turning template.*

**B+T Previous Response:** The required turnarounds continue to not be provided for each branch of the parking area as prescribed by the referenced Bylaw. Accordingly, we reiterate the intent of our previous comment.

*Applicant's Current Response: The plans have been updated for turning movements from the main access into each section of the parking (see C5.1).*

**B+T Current Response:** We acknowledge they are able to enter each branch of the shared driveway but it is unclear how they will exit without backing out the way they came (while also turning). We understand the adequacy of the emergency access provided has been reviewed by Harvard Fire Department personnel. B+T defers to the findings of that ongoing review process.

6. §125-38.D(2) of the Bylaw requires that site plans include provisions for lighting. A lighting design does not appear to be included in the current submission. We request that the Applicant clarify the design intent for lighting and provide a photometric plan as may be applicable.

*Applicant's Previous Response: The proposed project has accounted for on site lighting and light fixtures as proposed are in accordance with §125-40. See Sheet C3.1. Additionally, Site photometric plan shall be submitted shortly.*

**B+T Previous Response:** We reiterate the intent of our previous comment pending the submission of the referenced photometric plan.

*Applicant's Current Response: Site photometric plans are not a requirement nor is there a foot candle/lumen requirement, however as part of this submission there is a separate package of photometric plans and lighting cut sheets. The applicant proposes manual controls for the rear lighting at the Badminton Center controlling the rear lot in two different portions of the lot. For evenings of low attendance lighting will be limited to the front lot, for weekends and events the rear lot will be illuminated as necessary. The bollards along the walkway will be illuminated for security throughout the night.*

**B+T Current Response:** This comment has been adequately addressed by the Applicant. No further action is required.

7. §125-38.D(3) of the Bylaw requires site plans include provisions for water supply to be provided. A layout of the proposed water distribution network is provided; however, the specific length, size and material of water main is designated as “to be determined.” Additionally, a fire suppression system is also proposed, but again, designated to be “designed by others”. We request that the Applicant clarify the design intent for the water system to the satisfaction of the Board and the overarching BOH review process.

*Applicant’s Previous Response: Although §125-38.D(3) of the Bylaw requires site plans to include provisions for water supply, it does not require final specifications for a fire suppression system that will be submitted as required for the building permit application.*

B+T Previous Response: We acknowledge the response provided by the Applicant. We defer to the Board on the adequacy of the response provided. Details for the water distribution system (sizing, materials, etc.) remain pending.

*Applicant’s Current Response: No comment*

**B+T Current Response: We reiterate the intent of our previous comment.**

8. §125-38.D(3) of the Bylaw requires site plans include provisions for wastewater collection to be provided. We acknowledge the Subsurface Sewage Disposal System Upgrade plan provided. We note the plan includes the use of 4” collection pipe, which appears to be smaller than industry standard for buildings of this size. We request that the Applicant clarify the design intent for the sewage collection system to the satisfaction of the Board and the overarching BOH review process.

*Applicant’s Previous Response: Final design and specifications pertaining to the subsurface sewage disposal system shall be reviewed and discussed with the Board of Health.*

B+T Previous Response: We continue to defer to the BOH review process. We note for the benefit of the Board that unique leaching fields are now proposed for Buildings B & C as opposed to use of the existing on-site system originally proposed.

*Applicant’s Current Response: No Comment. GPR will continue to coordinate the review process with the Board of Health.*

**B+T Current Response: We continue to defer to the BOH review process and the intent of our previous comment.**

9. §125-38.F(1) of the Bylaw requires that renderings for the front, rear and side elevations of the proposed development be provided including external HVAC equipment, generators, etc. A comprehensive package of the required renderings does not appear to have been provided by the Applicant. The renderings provided appear to be inconsistent with the site plans relative to the layout and orientation of Building "C". We request that the Applicant document compliance with the noted section of the Bylaw.

*Applicant's Previous Response: Revised architectural renderings have been provided as requested.*

B+T Previous Response: The revised renderings do not appear to have been provided as indicated. Accordingly, we reiterate the intent of our previous comment.

*Applicant's Current Response: As mentioned in the beginning revised architectural plans are part of this submittal. These plans have been revised reflecting comments from the Design Review Board process. As well GPR has added the HVAC locations and screening to our site plans.*

**B+T Current Response: We acknowledge the renderings provided. We defer to the Board on the adequacy of the documentation provided noting that architectural elevations are provided for all sides of the buildings but renderings in the context of the Project as proposed have not been provided from all perspectives.**

10. §125-38.G of the Bylaw requires a landscape plan, prepared by a Registered Landscape Architect (RLA). We acknowledge the landscape plan provided; however, there appears to be an inconsistency with the plan scale. We request that the Applicant clarify the noted inconsistency and revise the plan as applicable.

*Applicant's Previous Response: Landscaping plan scaling has been revised as requested.*

B+T Previous Response: This comment has been adequately addressed by the Applicant. No further action is required.

*Applicant's Current Response: Again, changes to the Landscape Architectural plan have been submitted incorporating comments from the Design Review Board.*

**B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.**

11. §125-39.B(5)(a)(2) of the Bylaw requires trip generation analysis for average daily traffic. The Applicant does not appear to reference what trip generation is being assumed for Building A, and without known uses for Buildings B and C, it is unclear how this analysis can be conducted accurately. We request that the Applicant clarify what assumptions are being made of trip generation and document compliance with the noted section of the Bylaw.

*Applicant's Previous Response: The Traffic Study Report has been provided.*

B+T Previous Response: B+T has not been authorized to review the traffic report; however, acknowledged that it has been submitted as requested.

*Applicant's Current Response: No comment.*

**B+T Current Response: We reiterate the intent of our previous comment.**

12. §125-39.B(5)(e)[1] of the Bylaw requires specific turning radii for the proposed driveway. The radii for the driveway as proposed do not appear to meet the minimum requirements. We request that the Applicant document compliance with the noted section of the Bylaw and revise the design accordingly.

*Applicant's Previous Response: Revised turning analysis has been provided.*

B+T Previous Response: The curb radii at the intersection of the proposed access drive and Ayer Road remain unchanged from the original submission. We reiterate the intent of our previous comment.

*Applicant's Current Response: No comment.*

**B+T Current Response: The referenced section of the Bylaw appears to require a 30-ft minimum radius. As designed, the driveway continues to have radii of 25-ft. We understand that the geometry of the driveway has been presented to both Department of Public Works and Fire Department personnel relative to the adequacy of the proposed layout to accommodate larger vehicles. B+T defers to the findings of those ongoing reviews.**

13. §125-39.B(5)(a) of the Bylaw requires shared entrance and exit access driveways be separated by a traffic island. We acknowledge the concrete rubble island proposed by the Applicant; however, its location would appear to intercept the referenced location of the future Town installed shared use walkway. It is unclear if the concrete rubble strip will be an acceptable or compatible material in this location or if further design coordination will be required. We note this for the benefit of the Board.

*Applicant's Previous Response: Noted.*

B+T Previous Response: We reiterate the intent of previous comment.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

14. §125-39.E of the Bylaw requires provision be made for fire protection. As noted herein, the fire suppression system is designated to be "designed by others." We request, to the satisfaction of Harvard Fire Department personnel, that the Applicant document compliance with the noted section of the Bylaw.

*Applicant's Previous Response: Final design and specifications of fire suppression system shall be reviewed and discussed during the filing of a building permit application.*

B+T Previous Response: We continue to defer to Fire Department personnel relative to the adequacy of the fire suppression system and emergency access proposed for the Project.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

15. §125-39.G(1) of the Bylaw requires projects subject to the site standards within the Commercial District provide curbs and sidewalks. As proposed, the Project does not propose either. Understanding that sidewalks and curbs do not exist on this portion of the Ayer Road, it is unclear if the referenced Bylaw is applicable to this specific Site. The Applicant also makes reference to a future Town installed shared use walkway parallel to Ayer Road. We defer to the Board to determine the applicability of the noted Bylaw relative to the Project location.

*Applicant's Previous Response: Noted.*



B+T Previous Response: We reiterate the intent of previous comment.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

16. §125-41.B(3) of the Bylaw stipulates setback requirements for signage. The sign location proposed does not appear to comply. We request that the Applicant clarify the design intent of the sign (dimensions and size) and document compliance with the noted section of the Bylaw relative to its proposed location.

*Applicant's Previous Response: Final sign dimensions shall be in compliance with the zoning bylaw.*

B+T Previous Response: The intent of our comment was related to the signs location and not its size. Accordingly, we reiterate the intent of our previous comment.

*Applicant's Current Response: §125-41.8(3) states that signs are subject to the criteria of §125-30 and §125-39, which are being used as a guideline to ensure compliance with the bylaw where applicable. Although the sign design has not been finalized at this time, the height will be less than 20'. With the height to be less than 20', along with the proposed sign currently setback 20.2'± away from the lot boundary, this sign complies with the setback requirements of §125-30.E(2), which states "Structures other than fences shall be set back from lot boundaries by at least the height of the structure".*

**B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.**

17. §125-52.D.(4)(a) of the Bylaw stipulates that no more than 25% of the parking should be located in the building "front yard." Building A proposes front yard parking and when considering the potential contribution for "front yard" parking spaces from Building C, it does not appear that the Project complies with the noted Bylaw. Furthermore, without known uses for Buildings B and C, it is unclear how the proposed total number of parking spaces was derived. We request that the Applicant clarify their interpretation of noted Bylaw to the satisfaction of the Board and document the assumptions made relative to the number of parking spaces provided.

*Applicant's Previous Response: Less than 25% of the Building A parking is in the front yard. No other parking is proposed in front yard of the other buildings.*

B+T Previous Response: The proposed parking lot for Building C abuts Ayer Road similar to Building A. It is unclear if this is considered as “front yard” as it will be readily visible from Ayer Road. We also reiterate our request for the Applicant to clarify the assumptions made for calculating the number of parking spaces for Building’s B & C without confirmed uses for these buildings.

*Applicant’s Current Response: The number of parking spaces is per the applicant as Harvard Zoning does not address parking maximums and minimums. The parking has been laid out in accordance with §125 -54D(4)(a) and Harvard Commercial Design Guidelines Part A. The parking complies with the bylaw and the intent of the Guidelines.*

**B+T Current Response: We continue to defer to the Board on the applicability of the referenced Bylaw and if the parking associated with Building C could be considered “front yard” as it directly abuts Ayer Road. B+T does not take exception to the parking layout as proposed; however, as referenced herein, we defer to the Board on the interpretation of the referenced Bylaw.**

#### **18. Previously addressed.**

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

*Applicant’s Previous Response: Site plan note has been added to state site lights are full cutoff fixtures and shall meet all the requirements in accordance with §125-40. See Sheet C3.1. Additionally, Site photometric plan shall be submitted shortly.*

B+T Previous Response: We acknowledge the inclusion of the referenced note. We reiterate the intent of our previous comment pending the submission of the photometric plan.

*Applicant’s Current Response: The photometric plans have been submitted as well as cutsheets.*

**B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.**

20. §125-52.D.(4)(c) of the Bylaw requires facilities to provide a means for solid waste collection. Building A is proposed with a trash enclosure; however, Buildings B and C are not. We request that the Applicant document compliance with the referenced section of the Bylaw.

*Applicant's Previous Response: Trash bins shall be utilized for Buildings B and C.*

B+T Previous Response: We acknowledge the response provided by the Applicant. We defer to the Board on the adequacy of the proposed approach and not providing formal trash enclosures for each building.

*Applicant's Current Response: A shared enclosure has been added for Buildings B & C along with additional access paths.*

**B+T Current Response: This comment has been adequately addressed by the Applicant. No further action is required.**

**21. Previously addressed.**

**22. Previously addressed.**

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

*Applicant's Previous Response: The proposed dwelling unit within Building A is dedicated for the on-site manager as required to maintain extended operating hours exclusive to the premium members of the of the badminton facility that is Building A.*

B+T Previous Response: We acknowledge the response provided by the Applicant. We defer to the Board relative to the applicability and potential permitting ramifications of the proposed residential component within the commercial zoning district.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

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

*Applicant's Previous Response: Noted. The Applicant will coordinate with Town of Harvard relative to the proposed Ayer Road TIP project.*

**B+T Current Response: No action required.**

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

*Applicant's Previous Response: Noted. The applicant believes the intent of the Bylaw has been met.*

B+T Previous Response: The proposed quantity and frequency of plantings in the area remains unchanged in the revised plans. We defer to the Board on adequacy of the screening provided.

*Applicant's Current Response: Noted*

**B+T Current Response: We reiterate the intent of our previous comment and continue to defer to the Board on the adequacy of the screening proposed.**

Stormwater Management Comments:

**26. Previously addressed.**

**27. Previously addressed.**

28. Standard 3 of the MassDEP Regulations requires a determination of the estimated seasonal high groundwater elevation and required 2-ft minimum separation to this elevation from the bottom of infiltrative BMPs. The Applicant does not appear to demonstrate a 2-ft vertical separation to groundwater from the bottom of infiltrative BMPs Pond IB-1, Pond IC-1 and IC-2. If the BMP bottom is within 4-ft of the estimated season high groundwater elevation then a mounding analysis will be required.

We acknowledge the mounding analysis provided by the Applicant; however, considering the required separation to groundwater is not provided, we request that the Applicant clarify the calculations provided. We request the Applicant clarify the design intent of the noted BMPs and demonstrate compliance with the noted regulation.

*Applicant's Previous Response: Groundwater separation summary has been provided in the revised Stormwater Management Report as requested.*

B+T Previous Response: The separation summary provided does not appear to correlate to the test pit logs provided. The test pits do not all fall within the footprints of the stormwater infrastructure they are being applied to. Accordingly, we reiterate the intent of our previous comment.

*Applicant's Current Response: Although the test pits are not located directly within the proposed stormwater infrastructure footprints, the pits were dug within close proximity. The groundwater table corresponds with the sloped topography of the site, so the groundwater depth determined from the test pits can be applied to the nearby stormwater infrastructure and verify 2' of groundwater separation. The groundwater depth determined from test pits 122-4, 122-5, and 122-8 were applied to the highest existing grades within the stormwater infrastructure footprints of 1B-1, IC-1 and IC-2 respectively, and confirmed a minimum 2' separation depth to groundwater from the bottom elevations of the stormwater infrastructure.*

**B+T Current Response: Pursuant to the MassDEP Handbook, Volume 3, Chapter 1, Standard 3, Soil Evaluation, Stage 2) a: "Conduct tests at the point where recharge is proposed. The tests are a field evaluation conducted in the actual location and soil layer where stormwater infiltration is proposed...". Additionally, the vertical separation provided for Stormwater Basin #1 still appears to be less than the 2-ft minimum required using the Applicant's methodology. As discussed on March 22<sup>nd</sup> with Town Staff and the Applicant, we recommend that as a potential condition of approval the Applicant verifies estimated season high groundwater elevations to determine the vertical separation to groundwater for each infiltrative basin in accordance with MassDEP Handbook.**

29. Standard 8 of the MassDEP Regulations requires documentation relative to Construction Period Pollution Prevention and Erosion and Sedimentation Control. Disturbing over 1-acre of land, the Project will be subject to the NPDES Construction General Permit and a Stormwater Pollution Prevention Plan (SWPPP) will be required. This is acknowledged by the Applicant; however, the Applicant commits to submitting a SWPPP under separate cover prior to construction. We note this for the benefit of the Board when considering possible conditions of approval.

*Applicant's Previous Response: No comment.*

B+T Previous Response: We reiterate the intent of our previous comment.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

### **30. Previously addressed.**

31. Section 147-14C of the Bylaw stipulates that no resource areas shall be filled for the impoundment, detention, or retention of stormwater. Pond IC-2 is proposed within the limits of the isolated vegetated wetland to be filled. We note that this area is not being filled for the express purpose of stormwater management and that Building A and the associated parking are also proposed within the area to be filled. We request the Applicant provide a narrative response to whether a waiver should be requested for the noted section of the Bylaw and defer to the Board on the applicability of this section of the Bylaw to this Project.

*Applicant's Previous Response: The filling of the isolated Harvard Freshwater Wetland area was previously approved for the express purpose of locating Building A and all its associated features under the previously approved Order of Conditions as issued by the Harvard Conservation Commission (MassDEP File #177-0707).*

B+T Previous Response: We continue to defer to the Board on the applicability of the noted Bylaw. For the benefit of the Board, we understand that the Conservation Commission review process is ongoing on a parallel track for the proposed Project. We do note, however, that the OOC referenced in the Applicant's comments notes as a Special Condition (No. 1, Page 7): *This Order of Conditions cannot be executed unless and until an additional Order of Conditions is issued by the Harvard Conservation Commission for the Development of the Property.* We understand that the OOC issued under MassDEP File No. 177-0707 was strictly to evaluate the possibility of isolated wetland impacts and to confirm the wetland delineations, though please refer to our June 3, 2022 letter to the Conservation Commission for more specific discussion on this matter.

*Applicant's Current Response: Noted*

**B+T Current Response: We continue to reiterate the intent of our previous comment.**

**32. Previously addressed.**

**33. Previously addressed.**

34. The modeling provided by the Applicant is unclear. We note the following inconsistencies relative to the modeling and site plans provided:

- a. The length and slope of the discharge pipes for Ponds CB-10, CB-9 and DMH-9
- b. The invert of the 8" pipe discharge from Pond IC-2 is inconsistent
- c. The rim and invert table appears to incorrectly label the outlet for IC-2 as DMH-7 and not DMH-8.

We request that the Applicant clarify the modeling provided and address the inconsistencies as noted herein.

*Applicant's Previous Response: Site plan and HydroCAD shall be revised to address the inconsistencies above.*

B+T Previous Response: Comments 34a and 34c have been addressed. The invert referenced in Comment 34b remains inconsistent between the plans and the modeling. Accordingly, we reiterate the intent of Comment 34b and request that the Applicant address the noted inconsistency.

*Applicant's Current Response: Sheet C4.2 has been revised so that the invert of the 8" pipe discharge from Pond IC-2 is consistent with sheet C6.2 and the stormwater computations.*

Ms. Liz Allard  
Land Use Administrator/Conservation Agent  
Town of Harvard  
April 13, 2023  
Page 17

**B+T Current Response: This comment has been adequately addressed by the Applicant.  
No further action is required.**

**35. Previously addressed.**

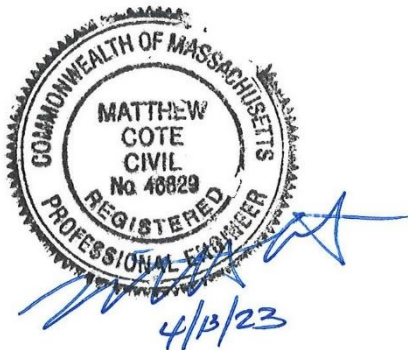
**36. Previously addressed.**

B+T is available to attend the next Planning Board virtual public hearing on April 24, 2023, upon request, to present the results of our review and be available for discussion regarding the comments listed herein.

We appreciate the opportunity to assist the Harvard Planning Board with the review of the proposed Project. Please do not hesitate to contact our office with any questions.

Sincerely,

BEALS AND THOMAS, INC.



Matthew Cote, PE  
Senior Civil Engineer

cc: Liz Allard, Town of Harvard (via email to [lallard@harvard-ma.gov](mailto:lallard@harvard-ma.gov))

MC/dmf/aak/cmv/324102LT004.docx



Town of Harvard  
Conservation Commission  
13 Ayer Road  
Harvard, MA 01451  
Liz AllardInvoice number 3241.02-5  
Date 03/31/2023Project **3241.02**  
**Peer Review Services**  
**203 Ayer Road**  
**Harvard, MA**

FOR PROFESSIONAL SERVICES RENDERED: this period through March 31, 2023

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 advanced our review of revised materials on behalf of the Planning Board, coordinated with the Applicant and Town, and participated in a working session.

**Professional Fees**

	Hours	Amount
Senior Professional Staff I	0.50	130.00
Senior Professional Staff III	0.25	51.25
Senior Professional Staff V	10.00	1,747.50
Senior Professional Staff VI	0.50	77.50
Administrative Staff I	2.00	160.00
Professional Fees Subtotal	13.25	2,166.25

Invoice total **2,166.25**By: Stacy H. Minihane  
Stacy H. Minihane  
Principal